

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	
)	
GERARD MARCHELLETTA, JR.,)	Case No. 1:07-CR-107-TCB
a/k/a Jerry Marchelletta, Jr.,)	
GERARD MARCHELLETTA, SR.,)	
a/k/a Jerry Marchelletta, Sr.)	
and THERESA L. KOTTWITZ)	
)	
Defendants.)	
)	

DEFENDANTS’ JOINT RULE 33 MOTION FOR A NEW TRIAL

Gerard Marchelletta, Sr. and Gerard Marchelletta, Jr. (the “Marchellettas”), by and through their counsel of record, Robert G. Bernhoft, and Theresa L. Kottwitz (“Kottwitz”), by and through her counsel of record, Ward L. Meythaler, (*pro hac vice* application pending), respectfully and jointly move for a new trial based upon newly discovery evidence pursuant to Fed. R. Crim. P. 33(b)(1). After the recent decision of the United States Court of Appeals for the Eleventh Circuit issued on August 19, 2010, one affirmed conviction count remains, the Count One *Klein* conspiracy charged in the superceding indictment, and this Rule 33 motion for new trial is directed at that sole remaining affirmed count of conviction.

As further detailed in the accompanying memorandum of law filed concurrently herewith, this motion is based upon newly discovery evidence of outrageous government misconduct in the investigation, indictment, and trial of the defendants.

WHEREFORE, upon the grounds set forth above, as further amplified in the accompanying memorandum of law, the defendants respectfully pray for an order granting them a new trial, but first granting discovery, compulsory process, and an evidentiary hearing, after which they will renew their request that the sole remaining affirmed conviction count be vacated and a new trial ordered, based upon newly discovered evidence and in the interest of justice.

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Respectfully submitted on October 4, 2010.

THE BERNHOFT LAW FIRM, S.C.
Attorneys for the Marchellettas

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

GERARD MARCHELLETTA, SR.,)
GERARD MARCHELLETTA, JR.,)
CIRCLE GROUP, LLC,)
and CIRCLE INDUSTRIES, INC.,)

v.)

INTERNAL REVENUE SERVICE,)

Defendant.)
_____)

Civil Case No. 1:09-CV-3037-TCB

**CERTIFICATE OF
COMPLIANCE**

This is to certify the above “Motion for Leave to File an Overlength Brief” as well as the supporting memorandum has been filed in accordance with the font requirements set forth in Local R. 7.1D, N.D.Ga. Specifically, the brief is prepared using Times New Roman with a 14-point font.

Respectfully submitted on October 3, 2010.

THE BERNHOFT LAW FIRM, S.C.
Attorneys for the Marchellettas

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and THERESA L. KOTTWITZ)	
)	
Defendants.)	
)	

CERTIFICATE OF SERVICE

This is to certify that Marchelletta, Sr.’s “Notice of Appearance” of Attorney Robert G. Bernhoft has been served on the following persons by utilizing the Court’s electronic filing system on this day:

Justin S. Anand, Asst. U.S. Attorney

This also certifies that the foregoing document was served on Theresa L. Kottwitz’s new counsel, Ward A. Meythaler (*pro hac vice* application pending), via separate email transmission.

Respectfully submitted on October 4, 2010.

By: /s/ Bret C. Tollefson
Bret C. Tollefson