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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA

GERARD MARCHELLETTA, SR., et al	)	
Plaintiff,	)	1:09 CV-3037-JOF
v.	)	
INTERNAL REVENUE SERVICE	)	
Defendant.	)	

DECLARATION OF PATRICIA L. BERGSTROM

I, PATRICIA L. BERGSTROM, pursuant to the provisions of 28 U.S.C.

§ 1746, declare and say:

1. I am a Special Agent in the Internal Revenue Service [IRS] office for Criminal Investigation [CI], Southeast Area field office in Atlanta, Georgia. I have been employed as a Special Agent with CI since 1992, working in the Atlanta office since 1992. As a Special Agent, I am charged by the IRS with responsibility for investigations involving income from illegal sources that would constitute crimes under Title 26 (federal tax), Title 18 (money laundering) and Title 31 (currency transactions) of the United States Code. I have the authority to makes arrests, with or without arrest warrants, for any offense against the United States related to the Internal Revenue laws. Because I have the authority to make arrests, I am authorized to carry firearms while conducting official duties pursuant to 26 U.S.C. § 7608(b). In addition to being a Special Agent, beginning in March 2006, I am also the Public Information Officer for the Atlanta CI field office. In this role, I serve as a spokesperson to the media for local CI issues

1 and I am active in briefing and preparing my office's Special Agent in Charge  
2 [SAC] with respect to media contacts. In my capacity as Public Information  
3 Officer, I also act as a liaison to the IRS's Disclosure function when FOIA  
4 requests are made for documents relating to CI investigations.

## 5 **BACKGROUND**

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7 2. Criminal investigations can be initiated in a variety of ways. A "general  
8 investigation" is one that involves areas of non-compliance for a group from a  
9 specific occupation or industry. When the focus shifts from the group to the  
10 potential for criminal activity of an identified individual or entity, a "primary  
11 investigation" is opened with respect to that targeted individual or entity. Such  
12 primary investigations are always numbered investigations when it appears that  
13 *an identified individual or entity may have prosecution potential*. Form 4930 is  
14 used to authorize all primary investigations and the Special Agent in Charge  
15 (SAC) has approval authority within the SAC's field office to initiate all primary  
16 investigations by signing the Form 4930. A "subject criminal investigation" is one  
17 in which an individual or entity is alleged to be in non-compliance with laws  
18 enforced by the IRS. Each category of investigation (primary and subject  
19 criminal investigation) will be assigned its own unique investigation number.  
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21 (See IRM 9.4.1, *et seq.*)

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23 3. Some investigations may be conducted under the auspices of the  
24 grand jury. Such grand jury investigations can be initiated by either the IRS or by  
25 an attorney for the Government. (See IRM 9.5.2.1). When initiated by an  
26 attorney for the government, a United States Attorney or Assistant United States  
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1 Attorney (AUSA) may ask for CI's assistance in an ongoing or proposed grand  
2 jury investigation when the information available indicates possible commission  
3 of crimes under the jurisdiction of the IRS. (See IRM 9.5.2.2). When the IRS  
4 receives a request from the United States Attorney's office for IRS participation  
5 in a grand jury investigation, this request will initially be numbered as a "primary  
6 investigation." (See IRM 9.4.1.5.1.5). When such a request is received for  
7 either a proposed grand jury or to expand an existing grand jury, the SAC will  
8 review and analyze all financial and other relevant information to determine the  
9 criminal prosecution potential for a matter within IRS's jurisdiction. If the SAC  
10 believes that CI should participate in the grand jury investigation, the SAC will  
11 advise the U.S Attorney of the IRS procedures for approving the request and will  
12 assign a Special Agent to prepare a Form 9131 "Request for Grand Jury  
13 Investigation." The Form 9131 and its accompanying exhibits are reviewed by  
14 the IRS Office of Chief Counsel, Criminal Tax [CT], who is responsible for  
15 preparing a "Criminal Evaluation Memorandum" which recommends specific  
16 action and is directed to the SAC who then must approve the request for  
17 participation in the grand jury investigation. (See IRM 9.5.2.1 *et seq.*). Pursuant  
18 to "Department of Justice, Tax Division, Directive 86-59," the attorney for the  
19 Government is permitted to expand an existing non-tax grand jury to include Title  
20 26 offenses and may designate the targets and scope of the investigation and  
21 the tax periods to be investigated. (See IRM 9.5.2.3.3). Such a request should  
22 be made in writing by the U.S. Attorney directed to the SAC. Upon receipt of  
23 such a written request for expansion, the Special Agent assigned to the  
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1 investigation should prepare or update of Form 4930 "Criminal Investigation  
2 General/Primary/Subject Investigation Report" and prepare a Form 9131  
3 "Request for Grand Jury Investigation" for the expansion request. In lieu of  
4 preparing the Form 9131, the expansion request can be incorporated into the  
5 Special Agent's Report. (See IRM 9.5.2.3.3).

6  
7 4. With respect to the Marchellettas, the investigation originated in March  
8 2001 when the U.S. Customs Service seized a Federal Express package  
9 containing documents which alerted the U.S. Customs Service to the possibility  
10 that Gerard Marchelletta, Jr. was involved in illicit transfer of funds from the  
11 United States to the Bahamas. The investigation was pursued through a Federal  
12 grand jury and our office was contacted by the United States Attorney's office in  
13 Atlanta who requested that we participate in the grand jury investigation. The  
14 SAC, Andre Martin, reviewed and analyzed financial and other relevant  
15 information that had been provided with the request and determined that CI's  
16 participation was warranted based on the potential for criminal prosecution for  
17 crimes falling within CI's jurisdictional authority. In early January 2002, I was  
18 assigned to the criminal tax investigation based on this grand jury request. The  
19 investigation was opened as a "primary investigation" on 1/9/2002 and I began  
20 reviewing relevant financial data and information provided to my office with the  
21 government attorney's request in anticipation of preparing the Form 9131  
22 "Request for Grand Jury Investigation." On July 18, 2002. I completed a Form  
23 9131 which was provided to Criminal Tax. After review of the Form 9131,  
24 Criminal Tax recommended that CI should participate in the ongoing grand jury  
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1 investigation. While the investigation was initially opened as a "primary  
2 investigation" on Form 4930 dated 1/9/2002; on 9/23/2002, I opened a "subject  
3 criminal investigation." This administrative act is evidenced in those non-grand  
4 jury" documents numbered as pages 6-7 (released in full) and page 993 and  
5 page 997 (released to plaintiffs, with only social security numbers withheld).  
6 (These documents, as released, are attached as Exhibits A and B to this  
7 Declaration). I took this action because CI had received approval, through the  
8 review process with Counsel for Criminal Tax, to proceed with participation in the  
9 grand jury investigation. Such elevation from a primary investigation to a subject  
10 criminal investigation is appropriate, with submission of a Form 4930, once such  
11 approval has been obtained. Initially, the primary investigation targeted Gerard  
12 Marchelletta, Jr. and he is the individual designated in the "subject criminal  
13 investigation".  
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16 5. Based on my experience in other, similar, types of investigations  
17 involving complex financial schemes, I requested the assignment of an IRS  
18 Revenue Agent to assist with the analysis, review and organization of information  
19 gathered in the investigation and Revenue Agent Jack Lesso was subsequently  
20 assigned. In this capacity, Revenue Agent Lesso acted as the IRS expert<sup>1</sup> with  
21 respect to the determination and computations of additional tax owed through  
22 analysis of the data gathered in the course of the criminal investigation.  
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24 6. By letter dated October 24, 2005, the U.S. Attorney requested that the  
25 grand jury investigation be expanded to include additional specific targets. (This  
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<sup>1</sup> Revenue Agent Lesso testified as an IRS expert at the Marchellettas' criminal trial.

1 letter was released to plaintiffs, in part, as pages 9-10 of the non-grand jury  
2 documents). (A copy of this letter, as released, is attached as Exhibit C to this  
3 Declaration). On November 10, 2005, I updated Form 4930, with a "Fact Sheet"  
4 reflecting the expansion of subjects of investigation. (This Form was released as  
5 non-grand jury pages 1012-1014, with only social security numbers withheld). (A  
6 copy of this letter, as released, is attached as Exhibit D to this Declaration).  
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8 7. As the Special Agent assigned to the investigation, I was responsible  
9 for drafting the "Special Agent's Report" (SAR) and I began drafting the SAR in  
10 late 2005. The purpose of a SAR is to logically present the evidence that will  
11 support a recommendation for criminal prosecution. It is designed to present the  
12 facts of an investigation with fairness and impartiality such that all material facts  
13 *and evidence speak for themselves. All elements of the offense(s)*  
14 *recommended for prosecution must be supported by the evidence presented.*  
15 An SAR lists and rebuts all defenses raised or which could potentially be raised  
16 by the subjects of the investigation and introduces evidence to rebut such  
17 claimed defenses and it makes a recommendation as to charges and periods to  
18 be prosecuted for each subject. (IRM 9.5.8 *et seq.*). Based on the U.S.  
19 Attorney's request for expansion of the grand jury to include additional subjects,  
20 in lieu of preparing a Form 9131, I wrote my Special Agent's Report to include a  
21 statement that the Report served as a request for an expansion of the grand jury  
22 to include Gerard Marchelletta, Sr. and Theresa Kottwitz (an employee of Circle  
23 Industries, Inc.), for tax evasion, filing fraudulent tax returns, aiding and assisting  
24 in the preparation of false tax returns and conspiracy, for years 1999 through  
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1 2001. Such a procedure is in accordance with IRM 9.5.2.3.3(6). The SAR was  
2 completed in May 2006 and was forwarded to the Office of Chief Counsel  
3 (Criminal Tax) (hereafter "Criminal Tax") for its review on June 20, 2006. On  
4 August 29, 2006, after Criminal Tax had completed its review, it was forwarded  
5 to the Department of Justice with a recommendation for prosecution.  
6 Prosecution of the targets was approved by the Department of Justice on  
7 October 24, 2006. Gerard Marchelletta, Sr., Gerard Marchelletta, Jr. and  
8 Theresa Kottwitz were indicted on April 3, 2007. (A copy of the indictment is  
9 attached as Exhibit E to this Declaration). On October 3, 2007, after a criminal  
10 trial, a guilty verdict was returned against the defendants on charges of tax fraud  
11 and conspiracy to commit tax fraud, and, as to Marchelletta, Sr. only, tax  
12 evasion. The defendants were sentenced on June 20, 2008. (Copies of the  
13 judgments are attached as Exhibits F to this Declaration). On July 2, 2008,  
14 defendants filed an appeal of their conviction.  
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#### 17 **FOIA REQUESTS**

18 8. A federal grand jury has subpoena authority and all information  
19 gathered in the course of a grand jury investigation, whether through subpoena  
20 or otherwise, is grand jury material or information, subject to the grand jury  
21 secrecy rules. Rule 6(e) of the Federal Rules of Criminal Procedure, prohibits  
22 the disclosure of grand jury material, except as necessary to government  
23 attorneys and personnel and then only to the extent necessary to assist an  
24 attorney for the government in performing that attorney's duty to enforce federal  
25 criminal law. A list of all persons who are authorized to have access to grand  
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1 jury information is compiled and provided to the United States Attorney. As a  
2 Special Agent assigned to the grand jury, I am on the list of persons designated  
3 as authorized to access grand jury material and the material collected or  
4 generated during the course of the grand jury investigation, a total of 45 boxes, is  
5 maintained within my offices at the IRS in Atlanta.

6  
7 9.. In May 2009, I was contacted by Valdine Young of the IRS's  
8 Disclosure Office in Atlanta regarding Freedom of Information Act [FOIA]  
9 requests she had received from plaintiffs related to tax periods 1999-2008 for  
10 documents associated with Gerard Marchelletta, Sr., Gerard Marchelletta, Jr.,  
11 the Circle Group and Circle Industries. Ms. Young provided me with copies of  
12 the FOIA requests and asked if my office maintained records responsive to the  
13 requests. I reviewed the requests which generally asked the IRS to provide  
14 documents from years 1999-2008 related to the four entities from: (a)  
15 Treasury/IRS Systems of Records 26.006-- a system which consists of  
16 *information on individuals on whom a delinquency or other investigation is*  
17 *located in one IRS office, but the individual is now living or has assets located in*  
18 *the jurisdiction of another IRS office with the purpose of allowing for the tracking*  
19 *of assignments and progress in these investigations and whose records include*  
20 *taxpayer name, address, tax identification number, asset ownership information,*  
21 *chronological investigative history and, where applicable, request for preferential*  
22 *investigation on an earning discrepancy case; (b) Treasury/IRS Systems of*  
23 *Records 46.002—as system which consists of information on the subjects and*  
24 *potential subjects of criminal investigations conducted by the CI and whose*  
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1 purpose is to maintain and process investigative information that identifies  
2 patterns of noncompliance with those federal laws CI is authorized to investigate.  
3 It includes criminal investigatory materials required in making a determination or  
4 other verification in the administration of tax and other federal laws under CI's  
5 jurisdiction related to the processing of the case and also includes other  
6 management information related to a case which is used for administrative  
7 purposes; (c) Treasury/IRS 46.051; 46.051 was withdrawn in 2008, and replaced  
8 by Treasury/IRS 34.037, a system which consists of records concerning IRS  
9 employees, contractors or other individuals who have accessed IRS information  
10 or otherwise used IRS computing equipment or other resources. The purpose of  
11 this system of records is to identify and track any unauthorized accesses to  
12 sensitive but unclassified information or inappropriate access using government  
13 computers to internet sites for gambling, playing computer games, or engaging in  
14 illegal activity. Two of the requests, one from Marchelletta, Sr. and the other  
15 from Marchelletta, Jr., asked for the Form 2797, "Referral Report for Potential  
16 Criminal Fraud Cases" and any documents associated with that Form and for  
17 complete transcripts including all master file account information maintained  
18 under Sr. and Jrs.' Names. (Copies of these FOIA requests are attached as  
19 Exhibits G-L to this Declaration).

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23 10. I contacted Ms. Young by telephone on May 26, 2009, and  
24 acknowledged that I was the Special Agent originally assigned to a grand jury  
25 investigation of Marchelletta, Sr. and Marchelletta, Jr. and that, as a result of the  
26 investigation, there were several boxes of material which had been gathered and  
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3 generated during the grand jury investigation stored in my offices.<sup>2</sup> On June 1,  
4 2009, I met with Ms. Young at her office and after discussing and reviewing  
5 plaintiffs FOIA requests, although it was not clear exactly what plaintiffs were  
6 seeking in these initial requests, it seemed to me that plaintiffs were not seeking  
7 access to the information that had been gathered and generated during the  
8 grand jury investigation. This determination was reinforced in my mind by the  
9 fact that the grand jury investigatory material had either already been provided to  
10 the defendant Marchellettas or made available to them for review during the  
11 course of the criminal proceeding. Rather, I thought that the information being  
12 sought in these requests was more administrative in nature in that plaintiffs were  
13 looking for the type of data that would be reflected in CI's Criminal Investigation  
14 Management Information System (CIMIS) and other administrative case files.  
15 CIMIS is a database for tracking the status and progress of CI investigations,  
16 including, but not limited to, hours charged to the investigation, statute of  
17 limitation dates, industry codes, filing indicators, due dates of estimated  
18 completion of assignments, publicity and updates of legal actions, *i.e.*, arrests,  
19 indictments, search warrants, trial, sentencing, etc. There are no "documents"

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2 When I initially responded to Ms. Young about the number of boxes, I advised her there were no boxes of records responsive to the FOIA request. Ms. Young advised that I was required to provide the number of boxes in my possession even if none of these was responsive. I told Ms. Young there were about 20 boxes of records from the grand jury investigation. I did not include boxes obtained from Circle Industries or Circle-Parke in this estimate. After discussion with IRS attorneys Deborah Lambert-Dean and Melissa Segal, assisting the Department of Justice in this FOIA matter, I was advised to include all boxes including those obtained from Circle and Circle-Parke. After the boxes containing the Circle and Circle-Parke records were included, the total number of boxes was brought to 45.

1 which are part of the CIMIS file, rather it is a database for tracking cases as they  
2 are updated as to status and other indicators as noted above. I believed that  
3 plaintiffs' references to Treasury/IRS Systems of Record 46.002, a system which  
4 captures CIMIS information, supported my determination that the requests did  
5 not seek grand jury records.

6  
7 11. I was familiar with the information that would have been included in  
8 updates to the CIMIS system with respect to the Marchellettas' criminal  
9 investigation, but I advised Ms. Young that at the time I could not give a  
10 reasonable estimate of the number of pages of CIMIS material or other  
11 administrative files, which are stored electronically, that would be produced when  
12 this information was reduced to hard-copy. In response to Ms. Young's request  
13 for an estimate of the number of boxes of records I had in the investigation,  
14 however, I estimated 20 boxes of records (as explained in footnote 1). These  
15 were all grand jury records, which are all exclusive of the CIMIS/administrative  
16 file material. I further recommended to Ms. Young that the "administrative" files  
17 be withheld in full pursuant to those FOIA exemptions which would protect the  
18 release of documents which could compromise ongoing law enforcement actions  
19 as plaintiffs criminal convictions were currently being appealed. I further  
20 informed Ms. Young that, to the extent plaintiffs were seeking the investigatory  
21 records from the grand jury proceeding, the information in the boxes was grand  
22 jury information.  
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25 12. In July 2009, Ms. Young provided me with a copy of a FOIA request  
26 submitted by Marchelletta, Jr. dated July 8, 2009, which was much more specific  
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1 than the earlier requests had been as to exactly what information Marchelletta,  
2 Jr. was seeking. In this request, Marchelletta Jr. asked for such items as  
3 documents and information related to any inquiries I made or tasks I performed  
4 related to Marchelletta Jr., including Special Agent Reports, recommendation for  
5 prosecution reports and/or tax fraud referral reports; investigative work plans;  
6 certain of the types of Forms and other documents that are sometimes  
7 necessary in the course of pursuing a criminal investigation including those used  
8 to initiate investigations, monthly activity reports, the IRS's Criminal Tax  
9 counsel's criminal evaluation regarding Marchelletta Jr.'s case; etc. (A copy of  
10 the July 8, 2009, Marchelletta, Jr. request is attached as Exhibit M to this  
11 Declaration).

12  
13 13. After reviewing this July 8, 2009, request, I determined that certain of  
14 the items requested, especially those requested at item number 1, would capture  
15 some of the material that was generated and gathered during the course of the  
16 grand jury investigation. I also realized that this request would capture such  
17 database material as the time reports associated with the work done by myself  
18 and Special Agent Henry Chavis on the Marchelletta investigation. In an effort to  
19 provide Ms. Young with an estimate of the volume of documents that would be  
20 responsive to this July request, I told her that there were approximately 3 boxes,  
21 plus 195 pages. This estimate was based on my familiarity with the grand jury  
22 documents that would be responsive to item number 1, plus an estimate as to  
23 the number of pages of Forms and time reporting data that would be captured in  
24 the cases files, much of which are maintained electronically. The estimate of 3  
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1 boxes of documents was associated with the request at item number 1 of the  
2 July 8<sup>th</sup> letter. The 195 page estimate was based on my approximation as to  
3 how many pages of documents there would be that would be responsive to the  
4 remaining eleven items requested in this July letter, including time reporting  
5 information and was largely based on my belief that the time reporting entries,  
6 when printed to hard-copy, would reflect all time that both myself and Special  
7 Agent Chavis had worked on all cases to which we were assigned for the  
8 relevant time period. What I did not know at the time of this estimate was that  
9 the time reporting system was capable of isolating the time input into individual  
10 investigations. Therefore, once I actually obtained the time reports in hard-copy  
11 they consisted of only five pages rather than the 150 pages which I had initially  
12 thought would be responsive. Thus the total of pages responsive to items 2  
13 through 12 of the July request was 56 pages rather than 195.  
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16 14. I advised Ms. Young that certain of the information responsive to the  
17 July 8<sup>th</sup> request was grand jury material and therefore, subject to the grand jury  
18 confidentiality rules. I further advised her that I believed some of these  
19 documents were also subject to the deliberative process, attorney-client and  
20 attorney work product privileges. Further, because the Marchellettas had  
21 appealed their criminal conviction and the administrative documents being  
22 sought in the request were not subject to discovery during the criminal  
23 proceeding, I believed that release of any of these records—which were  
24 compiled for law enforcement purposes-- could interfere with enforcement  
25 proceedings in a case that was ongoing in that they provided the defendants with  
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1 a 'roadmap' of the course the Government would pursue should they matter be  
2 remanded for a new trial. I advised Ms. Young none of the documents  
3 responsive to the July 8, 2009, request should be released to Marchelletta, Jr.

4 15. In November 2009, I was made aware that plaintiffs had filed the  
5 instant FOIA litigation and I was contacted by Deborah Lambert-Dean of the IRS  
6 Office of Chief Counsel (Procedure and Administration). I understand that this  
7 litigation was assigned jointly to Ms. Lambert-Dean and Melissa Segal both of  
8 whom are employed in Branch 6 of Procedure and Administration, I briefed Ms.  
9 Lambert-Dean and Ms. Segal on the grand jury investigation and, after looking  
10 at, and counting, the boxes of documents that were stored in my offices which  
11 had been generated or gathered during the course of that grand jury  
12 investigation, I told them that there are 45 boxes of documents associated with  
13 the grand jury investigation; I also conveyed that, in addition to the information in  
14 these 45 boxes, there are other documents that were generated during the  
15 investigation including administrative/CIMIS type documents, memorandum of  
16 interviews and memorandum of contacts. After consulting with Ms. Lambert-  
17 Dean, Ms. Segal and Carmen Banerjee, the attorney in the Tax Division at the  
18 Department of Justice representing the IRS in the instant litigation, we  
19 determined that, based on the descriptions of types of documents plaintiffs were  
20 seeking, as those had been conveyed to Ms. Banerjee by plaintiffs' counsel, Mr.  
21 Bernhoft, we would consider all documents associated with the investigation to  
22 be responsive, including both CIMIS/administrative types material and those  
23 grand jury records that had either been provided or made available to the  
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1 Marchellettas during the criminal proceeding. We determined that I would send  
2 all documents that were responsive to the April, May and July 8, 2009, FOIA  
3 requests which did not fall within the confidentiality provisions of Rule 6(e) of the  
4 Federal Rules for Criminal Procedure to Ms. Lambert-Dean and Ms. Segal for  
5 processing and release, through the Department of Justice, to plaintiffs.  
6 Because neither Ms. Lambert-Dean nor Ms. Segal were persons designated to  
7 be able to access the grand jury material, I did not provide any of the data  
8 protected by Rule 6(e) to them. We further determined that, even though  
9 everything in the 45 boxes had either been provided or made available to  
10 plaintiffs earlier in the criminal proceeding, we would provide such information to  
11 plaintiffs again as part of the release of responsive documents in this FOIA  
12 litigation. *(An index of the documents housed within each of these 45 boxes is*  
13 *attached as Exhibit N to this Declaration).*

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16 16. Therefore, in mid-June, 2010, I made the grand jury material that had  
17 already been provided or made available to the Marchellettas, a total of 45  
18 boxes, available for pick-up and duplication by a vendor working for the  
19 government. On June 8, 2010, I met representatives of the government vendor,  
20 Ivize, at the Richard Russell Federal Building, where IRS Criminal Investigation  
21 maintains office and storage space. I escorted these representatives to the IRS  
22 space in the building, where I observed them loading the 45 boxes onto carts. I  
23 then escorted the representatives with the 45 boxes to the loading dock of the  
24 building where they loaded the 45 boxes into their van. On or about June 28,  
25 2010, I received a telephone call from a representative of Ivize, advising the 45  
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1 boxes were ready to be returned to my custody. On July 1, 2010, I met  
2 representatives of Ivize at the loading dock of the Richard Russell Federal  
3 Building and escorted them to the IRS Criminal Investigation office and storage  
4 space in the building and observed them returning the 45 boxes to my custody.  
5 Approximately 89,552 pages were provided to plaintiffs in this June release.  
6 One box of records, Box 36, were records obtained via trial subpoena and thus  
7 were not subject to Rule 6(e) protection, most of which were provided to plaintiffs  
8 prior to the conclusion of the criminal proceeding. On June 10, 2010, I sent the  
9 contents of Box 36 to Ms. Lambert-Dean for processing. A box labeled as "Box  
10 36" was provided to the copy service vendor containing one page marked  
11 "Contents provided to Deborah Lambert-Dean in June 2010."  
12

13 **CERTAIN DOCUMENTS, OR PORTIONS OF DOCUMENTS, ARE**  
14 **EXEMPT FROM DISCLOSURE UNDER THE FOIA**  
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16 **NON-GRAND JURY DOCUMENTS**

17 17. To summarize, beginning in December 2009 through June 10, 2010, I  
18 provided Ms. Lambert-Dean and Ms. Segal with those documents that are non-  
19 grand jury material for processing in response to plaintiffs' FOIA requests.  
20 Included in this material were those documents from Box 36, described in the  
21 preceding paragraph. These non-grand jury documents total 1170 pages. I had  
22 reviewed these 1170 pages of documents prior to providing them to Ms.  
23 Lambert-Dean and Ms. Segal and consulted with both them and Ms. Banerjee  
24 with respect to whether any of these documents or portions of documents should  
25 be withheld under applicable FOIA exemptions.  
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1 18. I have personally reviewed and am familiar with these 1170 pages of  
2 non-grand jury records; these documents have the annotation "Marchelletta nongj"  
3 in the bottom left corner of each page and are numbered page "1" through "1170"  
4 with the Bates number appearing in the bottom right corner of each page. It is my  
5 understanding that, through the Department of Justice, all non-exempt documents,  
6 or portions of documents, from these 1170 pages have been, or soon will be,  
7 released to plaintiffs. With respect to those documents, or portions of documents,  
8 which have been withheld, I believe that certain of these are exempt from  
9 disclosure under the FOIA either because they are subject to the deliberative  
10 process privilege, the attorney-client privilege as reflected at Exemption 5 to the  
11 FOIA and/or because their release could reasonably be expected to interfere with  
12 ongoing enforcement proceeding as reflected at Exemption 7(A) and/or impair a  
13 tax administration purpose pursuant to FOIA Exemption 3 in conjunction with 26  
14 U.S.C. § 6103(e)(7). Further, the release of certain of the information could reveal  
15 techniques and procedures or guidelines and is being withheld pursuant to  
16 Exemption 7(E); because the release of some information would constitute an  
17 unwarranted invasion of personal privacy, it is being withheld pursuant to  
18 Exemption 6 and/or Exemption 7(C).

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22 **FOIA Exemption 5**

23 19. Exemption 5 to the FOIA exempts from disclosure "inter-agency or  
24 intra-agency memoranda or letters which would not be available by law to a party  
25 other than an agency in litigation with the agency." This exemption has been  
26 construed to encompass the attorney-client privilege, the work product doctrine,  
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1 and the deliberative process privilege. Certain of the responsive documents, or  
2 portions of documents are being withheld pursuant to Exemption 5 and the  
3 deliberative process privilege and/or attorney-client privilege. These are:

4 (a) Non-Grand Jury Pages 5 and 7: These pages are from a document  
5 which begins at page 1 and is entitled "View/Edit Investigation-Marchelletta,  
6 Gerard C (SCI)"; pages 5 and 6 are being withheld in part. The portion being  
7 withheld from each of these pages is the "recommended criminal tax deficiency  
8 amount." This amount was the "recommended" amount and by its nature  
9 deliberative in that no final determination had been made at the time the Form was  
10 generated as to a final criminal tax deficiency amount. This information is being  
11 withheld since it represents the opinions and recommendations of IRS personnel  
12 as proposed to be provided to the Department of Justice personnel as they were  
13 formulating prosecution of the case. This information is being withheld pursuant to  
14 Exemption 5 of the FOIA and the deliberative process privilege.  
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17 (b) Non-Grand Jury Page 9: This document is being withheld in part. The  
18 document is a letter, dated October 24, 2005, from the United States Attorney  
19 signed by Assistant U.S. Attorney Barbara Nelan (AUSA), to James Vickery, the  
20 SAC in my office. From this letter, the second and third paragraphs are being  
21 withheld pursuant to FOIA exemption 5 under both the deliberative process  
22 privilege and the attorney client privilege. In this letter, the AUSA, acting as the  
23 Government's attorney, is communicating with the IRS, a client agency, with  
24 respect to proposed grand jury actions. Specifically, the letter references  
25 information which had been supplied to the U.S. Attorney by the IRS during the  
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1 grand jury investigation and, based on this information, expresses the U.S.  
2 Attorney's position as to likelihood of conviction on specific criminal charge and  
3 recommends expansion of the grand jury to include additional subjects. Certain  
4 of the redacted portions are deliberative in that they express the views of the U.S.  
5 Attorney's office with respect to the findings in the investigation to date and the  
6 likelihood of a criminal charges being proven against specific named individuals.  
7  
8 The letter further recommends certain actions by the grand jury and requests that  
9 CI look at the information gathered in the investigation to date and consider  
10 whether their involvement in actions proposed by the U.S. Attorney are warranted.

11 The information is being withheld as deliberative because it represents the  
12 opinions, views and recommendations of an attorney for the Department of Justice  
13 and solicits the consideration for those views, opinions and recommendations by  
14 IRS personnel as they formulate investigatory strategy and consider whether the  
15 broaden the scope of the investigation. This inter-agency communication is  
16 deliberative in nature; it expresses the legal opinion of it's' attorney author in an  
17 open and frank communication with a client agency who is acting in concert with  
18 the author, the Government's attorney, in an ongoing investigation. It provides the  
19 Government's attorney's rationale in support of proposed actions and requests  
20 that the client agency consider the matter and make determinations as to the  
21 investigation going forward, *i.e.*, a request that CI consider their continued  
22 participation in a grand jury investigation that could be expanded to include  
23 additional targets. Those portions of the document which have been withheld are  
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1 exempt from disclosure under the FOIA under Exemption 5's deliberative process  
2 privilege and attorney-client privilege.

3 (c) Non-Grand Jury Page 22: This document is being withheld in part. This  
4 page is an email dated July 16, 2008 from Harry Chavis to Thomas Holloman. A  
5 portion of this email is being withheld pursuant to Exemption 5 and the deliberative  
6 process privilege and the attorney-client privilege. The information being withheld  
7 apprises certain fellow CI personnel of instructions I had received from SAC  
8 Reginael McDaniel, with respect to communicating our office's position to the  
9 Department of Justice with respect to positions DOJ was contemplating asserting  
10 with the court while the court was considering whether to allow defendants to post  
11 a bond pending appeal of their conviction. As this withheld information consists of  
12 a description of the views, opinions and recommendations of IRS personnel as  
13 they were conveyed to personnel in the Department of Justice for their  
14 consideration as they formulated determinations with respect to an aspect of a  
15 criminal case for which the Department of Justice was the ultimate decision-  
16 maker, this information is deliberative. As it reflects communications from a client  
17 agency intended for conveyance to the agency's attorney, it is protected by the  
18 attorney-client privilege. It is therefore being withheld pursuant to Exemption 5.  
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22 (d) Non-Grand Jury Page 23: The page is being withheld in full pursuant to  
23 Exemption 5 the deliberative process privilege and the attorney-client privilege.  
24 This is an email dated July 16, 2008, from Assistant United States Attorney Justin  
25 Anand, the AUSA who prosecuted the Marchellettas' criminal case, to me. The  
26 subject of the email is a defense motion for bond pending appeal. AUSA Anand  
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1 sets out the legal standard for bond pending appeal, applies the standards to the  
2 defendants and expresses his legal opinion as to whether under the standards the  
3 court could justify granting the motion. AUSA Anand presents hypothetical  
4 arguments the Government could make in opposition to the motion and expresses  
5 his legal opinion as to the likelihood that the court would agree with the  
6 Government's positions and a discussion of the risks the Government would incur  
7 with respect to the case going forward on appeal should they pursue those  
8 considered arguments in opposition of the motion. The email was sent in  
9 response to an inquiry I put to AUSA Anand in an earlier email (see the discussion  
10 below for page 24) and as such is a confidential communication between an  
11 attorney for the Government and a representative of a client agency relating to a  
12 legal matter for which I, the client, had sought professional advice. As such it is  
13 protected by the attorney client privilege. Further, it consists, in part, of AUSA  
14 Anand's conveyance of his opinion to a client based on his perception of the future  
15 behavior of defendants and of the court and the legal impact such projected  
16 behavior could have on the criminal case as it goes forward on appeal. Such  
17 information is a frank and speculative discussion, it expresses Mr. Anand's  
18 opinions, views and recommendations for consideration by a client agency as they  
19 Department of Justice was formulating determinations as how to proceed with a  
20 specific aspect of the criminal prosecution of the case. It does not represent a  
21 final decision and is deliberative in nature. This document is therefore being  
22 withheld pursuant to Exemption 5 and the deliberative process privilege and the  
23 attorney-client privilege.  
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1 (e) Non-Grand Jury Page 24: This page is being withheld in full pursuant to  
2 Exemption 5 the deliberative process privilege and the attorney-client privilege.  
3 This is the email dated July 16, 2008, from myself to AUSA Anand inquiring as to  
4 whether he plans on opposing the defense motion for bond pending appeal. I  
5 wrote this email as a representative of CI and in it I express CI's opinion as to  
6 whether the Government should oppose the motion. This information conveys the  
7 views, opinions and recommendations of IRS personnel to the Department of  
8 Justice as they were formulating determinations as to how to proceed with a  
9 specific aspect of the criminal prosecution. It is deliberative in nature. Further,  
10 this document is a confidential communication from a client agency to the  
11 agency's attorney and is subject to the attorney-client privilege.  
12

13 (f) Non-Grand Jury Page 33: This page is being withheld in part. This page,  
14 entitled "June 2005 Update/Marchelletta, Gerard" summarizes a meeting I had  
15 with Office of Chief Counsel attorney Roslyn Grand on June 16, 2005. The  
16 second paragraph and the first sentence in the third paragraph on this page are  
17 being withheld pursuant to Exemption 5 and the attorney-client privilege. The  
18 withheld information consists of a summary of discussions between me and  
19 agency Criminal Tax attorney Grand who was assigned to assist my office with  
20 legal issues related to the grand jury investigations. The discussions reflect my  
21 communication of my speculations to Ms. Grand with respect to the reason certain  
22 actions then under contemplation by the defendant Marchellettas and Ms. Grand's  
23 reaction to and analysis with respect to those contemplated actions and how such  
24 actions, should they come to fruition, could impact the investigation going forward.  
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1 The withheld portion consists of confidential communications from myself in my  
2 capacity as a Special Agent assigned to a grand jury investigation and agency  
3 Counsel who had been assigned to provide me with legal assistance in that  
4 investigation. Ms. Grand's communications to me reflect her analysis of the  
5 impact actions under contemplation by the defendant Marchelletta and her opinion  
6 as to the impact such actions could have on the investigation going forward. The  
7 information being withheld also reflects Ms. Grand's analysis regarding actions  
8 that could be taken by the Department of Justice's Tax Division as the  
9 investigation proceeds to the level of recommending prosecution through the  
10 submission of my Special Agent's Report to DOJ. The information is being  
11 withheld as confidential communications between an agency client and the agency  
12 client's attorney subject to Exemption 5 and the attorney-client privilege.  
13

14  
15 **FOIA Exemption 3 in Conjunction with 26 U.S.C. § 6103(e)(7)**

16 **and Exemption 7(A)**

17 20. Based on my familiarity with the documents at issue in the instant  
18 litigation, I have determined that disclosure of certain of the documents described  
19 in the following paragraphs would seriously impair federal tax administration as  
20 prescribed at 26 U.S.C. § 6103(e)(7). Further, I have also determined that  
21 disclosures of these documents could reasonably be expected to interfere with the  
22 proceedings of both the IRS and the United States Attorney's Office because the  
23 plaintiffs, Gerard Marchelletta, Sr. and Gerard Marchelletta, Jr. were convicted of  
24 criminal tax charges in June 2008; appealed their conviction in July 2008 which  
25 remains pending; and the court of appeals could remand the case for a new trial.  
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1 Certain of the documents, or portions of documents, are being withheld pursuant  
2 to FOIA Exemption 3 in conjunction with 26 U.S.C § 6103(e)(7) and/or Exemption  
3 7A. These are:

4 (a) Non-Grand Jury Page 29: This page, entitled "Supervisory Special  
5 Agent's General/Primary/Subject Investigation Progress Record" is being withheld  
6 in part. This information constitutes return information because it is material  
7 generated by the Service based upon information that it either received, gathered  
8 or prepared in connection with potential criminal tax liability charges against the  
9 Marchellettas. Comments made in the "narrative" portion on this page are being  
10 withheld pursuant to Exemption 3 in conjunction with 26 U.S.C. § 6103(e)(7) and  
11 Exemption 7A. The information being withheld consists of a summary of  
12 discussions between myself and law enforcement personnel from another federal  
13 agency about investigatory data showing potential criminal activity by third parties.  
14

15 There is also information related to initial contacts with a third party who indicated  
16 he may have information that could be useful in the grand jury investigation, but  
17 who did not, at that time, provide any useful data. Since this information reflects  
18 areas of interest in a law enforcement action that were not fully developed during  
19 the grand jury proceeding and which have the potential to lead to fruitful data in  
20 any further investigation that may be warranted should the appellate court remand  
21 the case for a new trial, this information is being withheld as its premature  
22 disclosure could provide the defense with information as to the nature, direction  
23 and scope of the investigation that could be employed by the Government should  
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1 the case be remanded for a new trial. It is being withheld pursuant to Exemption 3  
2 in conjunction with 26 U.S.C. § 6103(e)(7) and Exemption 7A.

3 (b) Non-Grand Jury Page 30: This is a continuation of the "Supervisory  
4 Special Agent's General/Primary/Subject Investigation Progress Record" that  
5 began at page 29 and this page is being withheld in part. Those portions being  
6 withheld are, at entry for 1-31-03, last full sentence of the sixth segment, which  
7 begins with "[i]n December 2002", information related to action contemplated with  
8 respect to a third party defendant is being withheld because the action was not  
9 completed. This information constitutes return information because it is material  
10 generated by the Service based upon information that it either received, gathered  
11 or prepared in connection with potential criminal tax liability charges against the  
12 Marchellettas. This information is being withheld pursuant to Exemption 7A and  
13 Exemption 3 in conjunction with 26 U.S.C. § 6103(e)(7) because the contemplated  
14 activity could be undertaken in the event of further investigation as a result of a  
15 remand and its premature disclosure could provide the defense with information  
16 as to the nature, direction and scope of the investigation that the Government may  
17 employ should the case be remanded for a new trial.

20 (c) Non-Grand Jury Pages 30 and 31: These pages are a continuation of the  
21 "Supervisory Special Agent's General/Primary/Subject Investigation Progress  
22 Record" that began at page 29 and these pages are being withheld in part. Those  
23 portions being withheld are the last two lines on page 30 and the first two lines on  
24 page 31 under an entry entitled "Monthly update by SA Bergstrom (2-14 to 2-28-  
25 03)." This information constitutes return information because it is material  
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1 generated by the Service based upon information that it either received, gathered  
2 or prepared in connection with potential criminal tax liability charges against the  
3 Marchellettas. The withheld information relates to an investigative tool that I had  
4 contemplated being useful in the grand jury investigation, but which was later  
5 abandoned. Since the appellate case could result in a remand which would  
6 warrant further investigation by my office and the use of this tool could be revived,  
7 information regarding its specifics is being withheld pursuant to Exemption 7A and  
8 Exemption 3 in conjunction with 26 U.S.C. § 6103(e)(7) because the contemplated  
9 activity could be undertaken in the event of further investigation as a result of a  
10 remand and its premature disclosure could provide the defense with information  
11 as to the nature, direction and scope of the investigation that the Government may  
12 employ should the case be remanded for a new trial.  
13

14  
15 (d) Non-Grand Jury Page 31: This page is a continuation of the "Supervisory  
16 Special Agent's General/Primary/Subject Investigation Progress Record" that  
17 began at page 29 and this page is being withheld in part. The portion being  
18 withheld is the fifth and sixth sentences in the first full paragraph on this page.  
19 This information constitutes return information because it is material generated by  
20 the Service based upon information that it either received, gathered or prepared in  
21 connection with potential criminal tax liability charges against the Marchellettas.  
22 This information communicates actions that were being contemplated in the grand  
23 jury investigation but which were not completed. This information is exempt under  
24 Exemption 5 and deliberative process privilege. Further, since the appellate case  
25 could result in a remand which would warrant further investigation by my office and  
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1 the contemplated action could be revived, information regarding its specifics are  
2 being withheld pursuant to Exemption 7A and Exemption 3 in conjunction with 26  
3 U.S.C. § 6103(e)(7) because its disclosure would be harmful to a law enforcement  
4 purpose in that it would prematurely provide the defense with information as to the  
5 nature, direction and scope of strategy which may be employed by the  
6 Government should the case be remanded for a new trial.

7  
8 (e) Non-Grand Jury Page 31: This page is a continuation of the "Supervisory  
9 Special Agent's General/Primary/Subject Investigation Progress Record" that  
10 began at page 29 and this page is being withheld in part. At the first full paragraph  
11 at the entry dated 2-25-03, all information after the first sentence is being withheld.

12 This information constitutes return information because it is material generated by  
13 the Service based upon information that it either received, gathered or prepared in  
14 connection with potential criminal tax liability charges against the Marchellettas.

15 This withheld data consists of information from a potential witness. This  
16 information was not used in the criminal trial. But, since the appellate case could  
17 result in a remand which would warrant further investigation by my office and the  
18 line of inquiry based on this information could be revived, its specifics are being  
19 withheld pursuant to Exemption 7A and Exemption 3 in conjunction with 26 U.S.C.  
20 § 6103(e)(7) because its disclosure would be harmful to a law enforcement  
21 purpose in that it would prematurely provide the defense with information as to the  
22 nature, direction and scope of strategy which may be employed by the  
23 Government should the case be remanded for a new trial.  
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1 (f) Non-Grand Jury Page 31: This page is a continuation of the "Supervisory  
2 Special Agent's General/Primary/Subject Investigation Progress Record" that  
3 began at page 29 and this page is being withheld in part. At the second paragraph  
4 under the entry for 2-25-03, all but the first 4 words are being withheld. This  
5 information constitutes return information because it is material generated by the  
6 Service based upon information that it either received, gathered or prepared in  
7 connection with potential criminal tax liability charges against the Marchellettas.  
8 The withheld information consists of data I had learned from another IRS agent  
9 regarding a person who was not a target of the grand jury investigation. At the  
10 time these inquiries were being made, CI was gathering information on this  
11 individual to determine whether there was a basis for focusing more closely on this  
12 person for purposes of the grand jury investigation, but ultimately that line of  
13 investigative inquiry was abandoned. However, since the appellate case could  
14 result in a remand which would warrant further investigation by my office and this  
15 line of inquiry could be revived, information regarding its specifics are being  
16 withheld pursuant to Exemption 7A and Exemption 3 in conjunction with 26 U.S.C.  
17 § 6103(e)(7) because its disclosure would be harmful to a law enforcement  
18 purpose in that it would prematurely provide the defense with information as to the  
19 nature, direction and scope of strategy which may be employed by the  
20 Government should the case be remanded for a new trial.  
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24 (g) Non-Grand Jury Page 32: This page, entitled "Investigation Workplan for  
25 Oct., Nov., & Dec. 2003" is being withheld in part. The portion being withheld is  
26 the last paragraph on the page, number 3 under "Investigative Step." This  
27  
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1 information constitutes return information because it is material generated by the  
2 Service based upon information that it either received, gathered or prepared in  
3 connection with potential criminal tax liability charges against the Marchellettas.  
4 The withheld information relates to an investigative tool that I had contemplated  
5 being useful in the grand jury investigation, but which was later abandoned. Since  
6 the appellate case could result in a remand which would warrant further  
7 investigation by my office and the use of this tool could be revived, information  
8 regarding its specifics is being withheld pursuant to Exemption 7A and Exemption  
9 3 in conjunction with 26 U.S.C. § 6103(e)(7).  
10

11 (h) Non-Grand Jury Page 33: This page, entitled "June 2005  
12 Update/Marchelletta, Gerard," is being withheld in part. The second paragraph on  
13 this page and the first sentence in the third paragraph are being withheld pursuant  
14 to Exemption 7A and Exemption 3 in conjunction with 26 U.S.C. § 6103(e)(7).  
15 This information constitutes return information because it is material generated by  
16 the Service based upon information that it either received, gathered or prepared in  
17 connection with potential criminal tax liability charges against the Marchellettas.  
18 The withheld information summarizes discussions between me and Roslyn Grand,  
19 the Chief Counsel Criminal Tax attorney assigned to assist my office with legal  
20 issues related to the grand jury investigations. The discussions reflect actions that  
21 were being contemplated by the Government and the ramifications of those  
22 actions on the criminal case going forward. These actions were not completed  
23 and, since the appellate case could result in a remand which would warrant further  
24 investigation by my office and this line of proposed activity could be revived,  
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1 information regarding its specifics are being withheld pursuant to Exemption 7A  
2 and Exemption 3 in conjunction with 26 U.S.C. § 6103(e)(7) because its disclosure  
3 would be harmful to a law enforcement purpose in that it would prematurely  
4 provide the defense with information as to the nature, direction and scope of  
5 strategy which may be employed by the Government should the case be  
6 remanded for a new trial.

7  
8 (i) Non-Grand Jury Page 33: This page, entitled "June 2005  
9 Update/Marchelletta, Gerard" is being withheld in part. Information is being  
10 withheld in the fourth, fifth and sixth paragraphs of this page pursuant to  
11 Exemption 7A and Exemption 3 in conjunction with 26 U.S.C. § 6103(e)(7). This  
12 information constitutes return information because it is material generated by the  
13 Service based upon information that it either received, gathered or prepared in  
14 connection with potential criminal tax liability charges against the Marchellettas.  
15 The withheld information consists of lines of investigative inquiry by CI that were  
16 later abandoned. Although these lines of inquiry were abandoned, since the  
17 appellate case could result in a remand which would warrant further investigation  
18 by my office and this line of inquiry could be revived, information regarding its  
19 specifics are being withheld pursuant to Exemption 7A and Exemption 3 in  
20 conjunction with 26 U.S.C. § 6103(e)(7) because its disclosure would be harmful  
21 to a law enforcement purpose in that it would prematurely provide the defense with  
22 information as to the nature, direction and scope of strategy which may be  
23 employed by the Government should the case be remanded for a new trial.  
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1 (j) Non-Grand Jury Pages 36-37: These pages, entitled "CI Report Control  
2 Log," are being withheld in part. The last paragraph on page 36 continuing on  
3 the page 37 and the first full paragraph on page 37 are being withheld pursuant  
4 to Exemption 5 and deliberative process privilege, Exemption 3 in conjunction  
5 with 26 U.S.C. § 6103(e)(7) and Exemption 7A. This information constitutes  
6 return information because it is material generated by the Service based upon  
7 information that it either received, gathered or prepared in connection with  
8 potential criminal tax liability charges against the Marchellettas. The withheld  
9 information consists of a discussion of how evidence uncovered during the  
10 investigation should be interpreted and the impact of such interpretations with  
11 respect to recommendations of criminal violations. Consideration was given to  
12 incorporating these interpretations into those documents that were being  
13 prepared for submission to Criminal Tax counsel for their legal sufficiency  
14 review. The discussion concerns certain financial transactions relevant to the  
15 Marchellettas' business dealings and how these would be considered as the  
16 Government sought to determine whether any criminal tax laws had been  
17 violated. Revealing these considerations could interfere with an ongoing law  
18 enforcement matter as it would prematurely provide the defense with information  
19 as to the nature, direction and scope of strategy which may be employed by the  
20 Government should the case be remanded for a new trial.  
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24 (k) Non-Grand Jury Pages 48-56. These pages are being withheld in full.  
25 The withheld information is the printout from database entries relating to an  
26 investigative tool that I had initially began because I thought it would be useful in  
27  
28

1 the grand jury investigation, but which was later abandoned. This information  
2 constitutes return information because it is material generated by the Service  
3 based upon information that it either received, gathered or prepared in connection  
4 with potential criminal tax liability charges against the Marchellettas. Since the  
5 appellate case could result in a remand which would warrant further investigation  
6 by my office and the use of this tool could be revived, information regarding its  
7 specifics, including information which reflects exactly what type of information was  
8 being entered into the database, is being withheld pursuant to Exemption 7A and  
9 Exemption 3 in conjunction with 26 U.S.C. § 6103(e)(7).

11 (i) Non-Grand Jury Pages 521-777: These pages, which consist of a  
12 transcript from a hearing in a third party litigation, are being withheld in full. The  
13 testimony at the hearing was of a person who was a potential defense witness in  
14 the Marchelletta criminal trial and the transcript was obtained by the prosecution  
15 for use in the event of such testimony. This information constitutes return  
16 information because it is material received or gathered by the Service in  
17 connection with potential criminal tax liability charges against the Marchellettas.  
18 The transcript is being withheld in its entirety pursuant to FOIA exemption 7A and  
19 exemption 3 in conjunction with § 6103(e)(7). Since this case is currently on  
20 appeal and could be remanded, premature disclosure of the transcript could be  
21 harmful to a law enforcement purpose in that it would prematurely provide the  
22 defense with information as to the nature, direction and scope of strategy which  
23 may be employed by the Government should the case be remanded for a new  
24 trial.  
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1 (m) Non-Grand Jury Pages 1020-1021: These pages are being withheld in  
2 full under FOIA Exemption 3 in conjunction with 26 U.S.C. § 6103(e)(7) and  
3 Exemption 7A. These pages consist entirely of a printout reflecting information  
4 gleaned by a law enforcement search for website information/internet service  
5 provider [ISP] information for an entity with close ties to the targets of the grand  
6 jury investigation. This information constitutes return information because it is  
7 material generated by the Service based upon information that it either received,  
8 gathered or prepared in connection with potential criminal tax liability charges  
9 against the Marchellettas. This information is being withheld in full pursuant to  
10 Exemption 7A. These pages reflect an investigative search of website information  
11 that was conducted on behalf of a CI, law enforcement agency, in the course of an  
12 ongoing investigation and reveals factual information unique to that website. The  
13 website belonged to one of the plaintiffs in the instant litigation. Revelations  
14 concerning the specifics of the types of data that was obtained from this search  
15 would impair an ongoing law enforcement proceeding as the Marchellettas'  
16 criminal convictions are pending on appeal which could result in a remand for a  
17 new trial. Therefore, these pages are being withheld pursuant to Exemption 3 in  
18 conjunction with 26 U.S.C. § 6103(e)(7) and Exemption 7A.  
19  
20  
21

22 **FOIA Exemption 7E**

23 21. FOIA Exemption 7E affords protection to all law enforcement information  
24 that would disclose techniques and procedures for law enforcement investigations  
25 or prosecutions, or would disclose guidelines for law enforcement investigations or  
26 prosecutions if such disclosure could reasonably be expected to risk circumvention  
27  
28

1 of the law. Certain of the responsive documents are being withheld pursuant to  
2 FOIA exemption 7E; these are:

3 (a) Non-Grand Jury Pages 1020-1021: These pages are being withheld in  
4 full. These pages consist entirely of a printout reflecting information gleaned by a  
5 law enforcement search for website information/internet service provider [ISP]  
6 information for an entity with close ties to the targets of the grand jury  
7 investigation. This information is being withheld in full pursuant to Exemption 7E.  
8 These pages reflect an investigative search of website information that was  
9 conducted on behalf of a CI, law enforcement agency, in the course of an ongoing  
10 investigation and reveals factual information unique to that website. The website  
11 belonged to one of the plaintiffs in the instant litigation. This information reflects a  
12 law enforcement technique protected by Exemption 7E of the FOIA which allows  
13 information compiled for law enforcement purposes when the disclosure of such  
14 data would disclose guidelines for law enforcement investigations or prosecutions  
15 if such disclosure could reasonably be expected to risk circumvention of the law.  
16 Here the information being withheld reveals the techniques used and the types of  
17 information gleaned in law enforcement's traces of ISP data. Having the public  
18 know exactly what type of data is available in these searches could result in those  
19 who are engaged in illegal activity and who have established websites available  
20 through the internet to take evasive actions attempting to thwart law enforcement  
21 by making the trace of their website domain and server information much more  
22 difficult, if not impossible, for law enforcement agencies. Therefore this data is  
23 being withheld under FOIA Exemption b7E.  
24  
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**FOIA Exemption 7C and Exemption 6**

1  
2           22. Personal Privacy interests are protected by two provisions of the FOIA,  
3 Exemption 6 and Exemption 7C. Exemption 6 protects information about  
4 individuals when the disclosure of such information would constitute a clearly  
5 unwarranted invasion of personal privacy. Exemption 7C is limited to information  
6 compiled for law enforcement purposes, providing protection for personal  
7 information in law enforcement records the disclosure of which could reasonably  
8 be expected to constitute an unwarranted invasion of personal privacy. Further,  
9 the disclosure of information that reveals the identify of third parties could have a  
10 chilling effect on the participation of third parties in future investigations. Such an  
11 effect would seriously impair tax administration; therefore Exemption 3 in  
12 conjunction with 26 U.S.C. § 6103(e)(7) are being asserted for the withholding of  
13 the following information described below in subparagraphs 22(a)-(e). Certain  
14 information subject to Exemptions 6 and 7C have been withheld from the following  
15 documents:  
16  
17

18           (a) Social Security Numbers, some of which are for plaintiffs, some for third  
19 parties and some for CI Special Agents, have been withheld from the following  
20 pages. These pages are withheld in part pursuant to FOIA Exemption 6: Non-  
21 Grand Jury Pages 2, 3, 14, 35, 44, 46, 57-973, 974, 979, 980, 985, 987, 988, 989,  
22 990, 992, 993, 995, 996, 997, 999, 1001, 1003, 1005, 1008, 1010, 1012, 1014,  
23 1017, 1032, 1033 and 1058.  
24

25           (b) The names, addresses, dates of birth, telephone numbers and other  
26 personal and identifying information of third parties is being withheld from the  
27  
28

1 following pages. These pages are withheld in part pursuant to FOIA Exemption 6:  
2 Non-Grand Jury Pages: 2, 12, 13, 57-993, 995, 1031, 1032, 1033, 1053, 1054,  
3 1058, 1059, 1060, 1063, 1064, 1065, 1115 and 1117.

4 (c) Cellular telephone numbers for IRS employees is being withheld from the  
5 following pages. These pages are withheld in part pursuant to FOIA Exemption 6:  
6 Non-Grand Jury Pages: 20, 21, 22, 25, 26, 27 and 991.

7  
8 (d) The name, address, social security number, gender, date of birth, of a  
9 third party who had initially been considered as the target of a CI investigation  
10 because of the relationship the individual had with the Marchellettas and Circle  
11 entities, but who was later dropped from such consideration is being withheld from  
12 pages the following pages. These pages are withheld in part pursuant to FOIA  
13 Exemption 6 and Exemption 7C: Non-Grand Jury Pages 2, 33, 34 and 995.

14  
15 (e) The names and other identifying information of third parties who were  
16 either in contact with the Government during the course of the investigation or  
17 were considered by the Government to be possible associates of targets of the  
18 investigation are being withheld from the following pages. These pages are  
19 withheld in part pursuant to FOIA Exemption 6 and Exemption 7C: Pages 12, 13,  
20 29, 30, 31, 33, 36, 37, 1031, 1032, 1033, 1058, 1059 and 1060.

21  
22 **GRAND JURY DOCUMENTS**

23 23. I have personally reviewed and am familiar with those 2698 pages  
24 (including 5 pages non-responsive to any of the requests at issue in the instant  
25 litigation) of grand jury material that were neither provided nor made available to  
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1 plaintiffs during the criminal proceeding and which have not been provided to  
2 plaintiffs during the course of the instant litigation. With respect to those  
3 documents which have been withheld<sup>3</sup>, I believe that these are exempt from  
4 disclosure in full under the FOIA pursuant to FOIA Exemption 3 in conjunction with  
5 Rule 6(e) of the Federal Rules of Criminal Procedure; Exemption 3 in conjunction  
6 with 26 U.S.C. § 6103(e)(7); Exemption 5 and the deliberative process, attorney  
7 work product and attorney-client privileges and Exemption 7A, and, in part,  
8 pursuant to Exemptions 6 and 7C.  
9

10 24. With respect to these grand jury documents that are subject to the  
11 confidentiality provisions of Rule 6(e) of the Federal Rules of Criminal Procedure,  
12 these documents are being withheld pursuant to FOIA Exemption 3 and Rule 6(e)  
13 which protects from disclosure those documents which would reveal a secret  
14 aspect of the grand jury proceeding. Certain of these documents are exempt from  
15 disclosure under the FOIA pursuant to FOIA Exemption 3 in conjunction with 26  
16 U.S.C. § 6103(e)(7) because their release could impair a tax administration  
17 purpose and pursuant to FOIA Exemption 7A because their release could  
18 reasonably be expected to interfere with enforcement proceedings in an ongoing  
19 case where criminal convictions are on appeal that could result in the case being  
20 remanded for a new trial. Further, certain of this material is being withheld  
21 pursuant to FOIA Exemption 5 and the deliberative process, attorney-client and  
22 attorney work product privileges; the disclosure of information protected under  
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26 <sup>3</sup> Pages GJ 0005-06 were released in full to plaintiffs' counsel during this FOIA litigation. GJ 0005-06 is an  
27 inter-agency memorandum dated September 12, 2002, that is technically subject to non-disclosure under  
28 applicable FOIA exemptions, but the Service determined that this document could be released.

1 these privileges would reveal internal IRS communications about litigation theories  
2 and strategies under contemplation during the grand jury investigation, including  
3 an IRS attorney's assessment as to the theories under which defendants should  
4 be prosecuted in the criminal case. Certain information in these documents which  
5 would reveal the identity of third parties is being withheld pursuant to FOIA  
6 Exemptions 6 and 7C. The disclosure of information that reveals the identify of  
7 third parties could have a chilling effect on the participation of third parties in future  
8 investigations. Such an effect would seriously impair tax administration; therefore  
9 Exemption 3 in conjunction with 26 U.S.C. § 6103(e)(7) is being asserted for the  
10 withholding of the following information described below as subject to withholding  
11 pursuant to Exemptions 6 and 7C. Grand jury documents are being withheld as  
12 follows:  
13

14 (a) Grand Jury Pages 00001-00004: These pages are being withheld in full.

15 These pages consist of a "Memorandum for Special Agent in Charge" prepared  
16 by the Service's Office of Chief Counsel (Criminal Tax) dated August 29, 2002; its  
17 subject is "US Attorney Request to Expand Grand Jury Investigation." This record  
18 is an intra-agency memoranda containing the Service's attorney's (Linda J.  
19 Bourquin) rationale for her recommendation to expand the non-tax grand jury  
20 investigation to add tax charges; it discusses and refers to Form 9131 and several  
21 exhibits attached to Form 9131. The memorandum contains matters presented to  
22 the grand jury pertaining to the U.S Customs investigation of Marchelletta, Jr., and  
23 discussion of one or more third parties. The memorandum constitutes return  
24 information because it contains information generated by the Service based upon  
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1 material that it either received, gathered or prepared in connection with potential  
2 criminal tax liability charges against Marchelletta, Jr. The disclosure of this  
3 memorandum would seriously impair federal tax administrations because: (a) it  
4 would threaten the threat of grand jury secrecy because it contain information  
5 presented to a grand jury pertaining to the non-tax Customs violations; (b) it would  
6 reveal to the Marchellettas access to evidence obtained against Marchelletta, Jr.  
7 and would reveal the direction, scope, and limits of the Service's investigation  
8 should the Eleventh Circuit Court of Appeals remand their conviction to this Court;  
9 (c) it would reveal the identification of one or more third parties; and (d) it would  
10 improperly reveal the Service's internal communications about its litigation theories  
11 and strategies that were contemplated during the Service's request for grand jury  
12 investigation expansion, a preliminary stage in anticipation of criminal litigation.

13 This document is, therefore, being withheld in full pursuant to FOIA Exemption 3 in  
14 conjunction with Rule 6(e); Exemption 3 in conjunction with 26 U.S.C.

15 § 6103(e)(7); and Exemption 7A. Further, as its disclosures would reveal the  
16 communications between the agency's attorney, counsel in Criminal Tax, and a  
17 client function, Criminal Investigation, as to the Services litigation theories and  
18 strategies that were then under contemplation, it is being withheld under  
19 Exemption 5 and the deliberative process, the attorney-client and the attorney  
20 work product privileges. Those portions of the document which would reveal the  
21 identity of third parties is being withheld pursuant to FOIA Exemption 7C and  
22 Exemption 6.  
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1 (b) Grand Jury Pages 00010-00163: This document, Form 9131, entitled  
2 "Grand Jury Request" is being withheld in full. I prepared this document, in a  
3 binder format, on July 18, 2002. The binder consists of Form 9131, a one-page  
4 attachment to Form 9131, and exhibits 1 through 5 in support of the Request The  
5 purpose of this grand jury request was to allow the government to expand an  
6 existing grand jury investigation of Marchelletta, Jr. done by the U.S. Customs  
7 Enforcement to include the Service's investigation of potential tax law violations by  
8 Marchelletta, Jr. For example, "Ex. 4" to the grand jury request is a three page  
9 document entitled "Summary of U.S. Customs Seizure/Other Information." (GJ  
10 Pages 00058-00060). The information in Form 9131 and its accompanying  
11 exhibits contains information: (a) presented to a grand jury pertaining to the non-  
12 tax U.S. Customs violations, which was received by the Service to assist in its  
13 request to add tax law violations to the grand jury investigation, and (b) the Service  
14 otherwise gathered or collected. Item 8 of Form 9131, for example, is entitled,  
15 "Reasons for IRS participation and deterrent effect of anticipated investigations(s)  
16 (include justification for the need of a Grand Jury.)" (GJ 00012). This section of  
17 Form 9131 contains its rationale for requesting a grand jury expansion to include  
18 tax charges; the rationale includes discussion of information obtained from one or  
19 more third parties. This Form 9131 and its exhibits constitute return information  
20 because, together, they consist of material generated by the Service based upon  
21 information that it either received, gathered or prepared in connection with  
22 potential criminal tax liability charges against Marchelletta, Jr. The disclosure of  
23 this compendium of records would seriously impair federal tax administrations  
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1 because: (a) it would threaten the threat of grand jury secrecy because it contains  
2 information presented to a grand jury pertaining to the non-tax Customs violations;  
3 (b) it would reveal Marchellettas access to evidence obtained against Marchelletta,  
4 Jr. and would reveal the direction, scope, and limits of the Service's investigation  
5 should the Eleventh Circuit Court of Appeals remand their conviction to this Court;  
6 and (c) it would reveal the identification of one or more third parties. This  
7 document is, therefore, being withheld pursuant to FOIA Exemption 3 in  
8 conjunction with Rule 6(e); Exemption 3 in conjunction with 26 U.S.C.  
9 § 6103(e)(7); and Exemption 7A. Those portions of the document which would  
10 reveal the identity of third parties are being withheld pursuant to Exemption 7C  
11 and Exemption 6.

12  
13 (c) Grand Jury Pages 00164-1602 and 01629-2698:4 This document is  
14 being withheld in full. The document is "The Special Agent Report" (SAR) and  
15 accompanying exhibits and appendices, as well as an IRS Office of Chief Counsel  
16 (Criminal Tax) attorney's analysis of the SAR. These documents are exempt from  
17 disclosure under Rule 6(e) because they contain matters that occurred before the  
18 first grand jury investigating violations to U.S. Customs laws, and matters that  
19 occurred before the second grand jury investigating tax offenses. I prepared the  
20 SAR for two purposes. First, it is the Service's request to expand the grand jury  
21 investigation, which had been only investigating Marchelletta, Jr., to include  
22 Marchelletta Sr. and another defendant. Second, the SAR also contains CI's  
23 recommendation to prosecute Marchelletta, Jr., Marchelletta Sr. and the third  
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27 4 Pages GJ 00007-00009 and GJ 001603-001605 are not responsive to plaintiffs' FOIA requests.

1 defendant. The SAR is supported by evidence, including a list of witnesses with a  
2 corresponding descriptive list of the exhibits, and appendices. Together, the SAR,  
3 and its exhibits and appendices, contain the Service's theories of investigation,  
4 conclusions, and recommendations as they relate to the criminal investigation and  
5 prosecution of the Marchellettas. The SAR identifies third parties and discusses  
6 their role in the case, including whether any of these individuals are the subject of  
7 separate grand jury investigations. The SAR exhibits include memoranda of  
8 interviews, memoranda of contacts, memoranda to the file, and financial  
9 statements pertaining to several entities. The Marchellettas' appeal of their  
10 criminal conviction is pending. The SAR, its exhibits, and its appendices constitute  
11 return information because, together, they consist of information the Service either  
12 received, gathered or prepared in connection with criminal charges against the  
13 Marchellettas. The release of the SAR would seriously impair Federal tax  
14 administration because: (a) it would threaten the secrecy of two grand juries (the  
15 initial grand jury pertaining to the non-tax Customs violations, and the subsequent  
16 one relating to tax offenses) as the Marchellettas would not be able to obtain these  
17 grand jury materials in the criminal case; (b) it could allow the Marchellettas  
18 access to evidence the government contemplated using in the trial, but did not,  
19 and this may be evidence the government could use in the event the pending  
20 appeal remands the case to this Court (c) would otherwise reveal the direction,  
21 scope, and limits of the Service's investigation should the Eleventh Circuit Court of  
22 Appeals remand their conviction to this Court. This SAR, with its exhibits and  
23 appendices, is therefore being withheld in full pursuant to FOIA Exemption 3 in  
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1 conjunction with 26 U.S.C § 6103(e)(7) and Rule 6(e) of the Federal Rules of  
2 Criminal Procedure and Exemption 7A.

3 (d) Grand Jury Pages 01606-01628: This document is being withheld in full.  
4 This is a "Memorandum for Special Agent in Charge" prepared by the Service's  
5 Senior Attorney (Criminal Tax), dated August 11, 2006; its Subject is "Evaluation  
6 of SAR and Exhibits, Grand Jury Tax Case." This record is an intra-agency  
7 memoranda by Roslyn D. Grand, Senior Attorney for the Special Agent in Charge;  
8 it is the agency attorney's recommendation to prosecute Marchelletta, Jr.,  
9 Marchelletta, Sr., and a third person for tax-related offenses. This record contains  
10 the attorney's legal and factual analysis on which her recommendation to  
11 prosecute is based. At the outset of the memorandum, attorney Grand states that  
12 her recommendation for prosecution differs from Special Agent's Bergstrom's  
13 prosecution recommendation. Federal tax administration would seriously be  
14 impaired by disclosure of the memorandum because it will cause the following  
15 harm: (a) it would threaten the secrecy of two grand juries (the initial grand jury  
16 pertaining to the non-tax Customs violations, and the subsequent one relating to  
17 tax offenses) as the Marchellettas would not be able to obtain these grand jury  
18 materials in the criminal case; (b) it would reveal several of the Service's privileges  
19 that the Marchellettas would not otherwise have access to, particularly, the  
20 Service's attorney work product prepared in anticipation of criminal litigation.  
21 Disclosure would improperly reveal the Service's internal communications about its  
22 litigation theories and strategies that were either implemented and/or rejected  
23 during the prosecution; plaintiffs knowledge of any unrevealed theories of  
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1 prosecution would harm the Service because it would reveal to plaintiffs potential  
2 strategies if the Court of Appeals remands the case to this Court; and (c) would  
3 otherwise reveal the direction, scope, and limits of the Service's investigation  
4 should the Eleventh Circuit Court of Appeals remand their conviction to this Court.

5 This document is, therefore, being withheld in full pursuant to FOIA Exemption 3  
6 in conjunction with Rule 6(e); Exemption 3 in conjunction with 26 U.S.C.  
7 § 6103(e)(7); Exemption 7A. Further, as its disclosure would reveal the  
8 communications between the agency's attorney, counsel in Criminal Tax, and a  
9 client function, Criminal Investigation, as to the Services litigation theories and  
10 strategies that were then under contemplation, it is being withheld under  
11 Exemption 5 and the deliberative process, the attorney-client and the attorney  
12 work product privileges.  
13

14 I declare under penalty of perjury that the foregoing is true and correct.  
15

16 Executed on JULY 8, 2010 in Atlanta, GA  
17

18  
19 

20 PATRICIA L. BERGSTROM  
21 Special Agent  
22 Criminal Investigation  
23 Internal Revenue Service  
24 Atlanta, Georgia  
25  
26  
27  
28

Recommended Money Laundering Amount:

**Sentencing Information**

Judicial District: Georgia, Northern

Months to Serve: 36

Months Probation: 36

Amount of Fines to Pay: \$50000.00

Amount of Restitution:

Conditional Probation Date:

Conditional Probation Terms:

Conditional Probation Results:

**Status**

Status	Status Date	Status Insert Date	Authorized By
Defendant files an Appeal of the sentencing	7/2/2008	8/7/2008	CHAVIS, HARRY THOMPSON JR
Sentenced with No Appeal of Conviction	6/20/2008	8/6/2008	CHAVIS, HARRY THOMPSON JR
Jury Guilty	10/3/2007	10/3/2007	CHAVIS, HARRY THOMPSON JR
Defendant pleads Not Guilty	10/3/2007	10/3/2007	CHAVIS, HARRY THOMPSON JR
Indictment	4/3/2007	4/4/2007	HOLLOMAN, THOMAS J III
DOJ forwards the SAR to the USAO with Pros. Rec.	10/24/2006	10/25/2006	HOLLOMAN, THOMAS J III
SAC forwards the SAR to the DOJ	8/29/2006	8/29/2006	MCDANIEL, REGINAEL D

SA/SSA forwards the SAR to the SAC with a request for Pros. Rec.	8/23/2006	8/23/2006	HOLLOMAN, THOMAS J III
CT Attorney forwards the SAR to SSA	8/11/2006	8/17/2006	HOLLOMAN, THOMAS J III
SA/SSA forwards the SAR to Criminal Tax Attorney	6/20/2006	8/10/2006	HOLLOMAN, THOMAS J III
CCR forwards the SAR to SSA	5/31/2006	8/10/2006	HOLLOMAN, THOMAS J III
SA/SSA forwards the SAR to CCR	5/5/2006	8/10/2006	HOLLOMAN, THOMAS J III
SCI Approved (Elevated)	9/12/2002	9/23/2002	Conversion, Data
PI Requested to be elevated to a SCI	9/12/2002	9/23/2002	
PI Approved	1/9/2002	1/9/2002	Conversion, Data
PI Requested	1/9/2002	1/9/2002	

**Statute of Limitations**

Statute of Limitations Expiration Date: 12/6/2007

**Summons Enforcement**

Summons Enforcement: No

**Tax Deficiencies/ML Dollar Amounts**

Estimated Criminal Tax Deficiency Amount: \$0.00

Recommended Criminal Tax Deficiency Amount: [REDACTED] b5 ap

Estimated Money Laundering Amount:

Recommended Money Laundering Amount:

**Tax Period**

Tax Period Level	Tax Period	Tax Form
Under Investigation	199912	U.S. Individual Income Tax Return

General/Primary/Subject Investigation Report

**SECTION I - Input Control**

<b>A. Action:</b> <input checked="" type="checkbox"/> Initiate <input type="checkbox"/> Update <input type="checkbox"/> Change Relationship		<b>B. Investigation Type:</b> <input type="checkbox"/> General <input checked="" type="checkbox"/> Primary <input type="checkbox"/> Subject Criminal <input type="checkbox"/> Subject Seizure		<b>C. Investigation Number:</b> <del>50000000</del> 580220049 <b>D. Related Investigation(s):</b> General Primary		<b>E. Initials:</b> Review: EMD Operator: YW <b>F. Entry Date:</b> 1/9/2009	
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**SECTION II - Required Data Entries**

General Investigation (G-1): 1,2,6,12,13,15,16,17,23,71	G,P,S, or SSI = Mandatory entries
Primary Investigation (P-2): 1,2,3,4,6,7,8,9,10,12,13,15,16,17,18,23,27,29,71	g,p,s, or ssi = Optional entries
Subject Investigation (S-3): 1,2,3,4,6,7,8,9,10,12,13,15,16,17,18,19,20,23,25,27,29,71	
Subject Seizure (SSI-4): 1,2,3,4,6,7,8,9,10,12,13,19,23,29,71	

**SECTION III - Special Agent Assignment**

1. SSN (G/P/S/SSI) Lead [REDACTED] Secondary [REDACTED]	2. Name (Last) (G/P/S/SSI) BERGSTROM 56
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**SECTION IV - Investigation Identification**

3. Gender Code (P/S/SSI) M	4. TIN (P/S/SSI) [REDACTED]	5. Date of Birth (p/s) 06/10/1965 56
6. Name (G/P/S/SSI) Last: MARCHELLETTA First: GERARD Middle: C. Extended:		
7. Address (P/S/SSI) 6790 Sterling Drive		
8. City/Town (P/S/SSI) Suwanee		
9. State (P/S/SSI) GA	10. Zip Code (P/S/SSI) 30124	
11. Alias/DBA/Partnership (s) Code 1 - Alias Code 2 - DBA Code 3 - Partnership	THE CIRCLE GROUP LLC	

12. Allegation of Non-Compliance (G/P/S/SSI)  
 Marchelletta owns large drywalling business (Circle Group LLC) in Alpharetta, GA, that specializes in large scale construction projects. In March 2001, U.S. Customs seized \$1.5 million in endorsed checks to Circle Group Ltd. (a Bahamian Co.) sent via Fed Ex to the Bahamas. Fed Ex package was valued at \$1.00. Circle Group LLC attorney asked Customs if Customs was going to contact IRS. Subsequent interview by Customs of a CI disclosed that Marchelletta was sending funds offshore to evade taxes.

13. CIP NO. (G/P/S/SSI) 110	14. Grand Jury (p/s) Code	Date (MM/YYYY)	15. Industry (G/P/S) 605
16. Occupation (G/P/S) 121	17. Illegal Act (G/P/S) 998	18. Source (P/S) 73	19. Level (S/SSI) 13
20. Notoriety (S) B	21. Organized Crime Group (g/p/s/ssi) 02	22. OCDEF Number (p/s)	23. Fraud Scheme Code (G/P/S/SSI) 149
24. Service Center Scheme Number (p/s)	25. Statute Date (S) 03/15/2005	26. Due Date (g/p/s) 07/15/2002	27. Method of Filing (P/S) 98
28. Related Statute Test (Yes/No) Indicator (p/s) No	29. Violations Under Investigation (P/S/SSI) Principal 26-7201 Other 18-371 Other		30. Tax Periods Under Investigation (p/s) 1998/12 1120 1999/12 1120 2000/12 1120 2001/12 1120 1998/12 1040 1999/12 1040 2000/12 1040 2001/12 1040
31. Provable Money Laundering Amount (\$)		\$	
32. Money Laundering/Currency Violations (g/p/s/ssi) Violation		33. Fugitive/Arrest(s) (Fugitive = CD60 Arrest = CD61) Fugitive Date Arrest Date CI Arrest (Yes/ No)	

**SECTION V - Investigation Status**

34. Status Code (g/p/s/ssi) 01 Status Date	35. Reason Closed (g/p/s/ssi)
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## Criminal Investigator General/Primary/Subject Investigation Report

### SECTION I - Input Control

<b>A. Action:</b> <input checked="" type="checkbox"/> Initiate <input type="checkbox"/> Update <input type="checkbox"/> Change Relationship	<b>B. Investigation Type:</b> <input type="checkbox"/> General <input type="checkbox"/> Primary <input checked="" type="checkbox"/> Subject Criminal <input type="checkbox"/> Subject Seizure	<b>C. Investigation Number:</b> 580230198 <b>D. Related Investigation(s)</b> General Primary 580220049	<b>E. Initials:</b> Review: <u>EMD</u> Operator: <u>[Signature]</u> <b>F. Entry Date:</b> 9/23/02
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### SECTION II - Required Data Entries

General Investigation (G-1): 1,2,6,12,13,15,16,17,23,71 Primary Investigation (P-2): 1,2,3,4,6,7,8,9,10,12,13,15,16,17,18,23,27,29,71 Subject Investigation (S-3): 1,2,3,4,6,7,8,9,10,12,13,15,16,17,18,19,20,23,25,27,29,71 Subject Seizure (SSI-4): 1,2,3,4,6,7,8,9,10,12,13,19,23,29,71	G,P,S, or SSI = Mandatory entries g,p,s, or ssi = Optional entries
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### SECTION III - Special Agent Assignment

<b>1. SSN (G/P/S/SSI)</b> Lead [Redacted] Secondary [Redacted]	<b>2. Name (Last) (G/P/S/SSI)</b> BERGSTROM 56
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### SECTION IV - Investigation Identification

<b>3. Gender Code (P/S/SSI) M</b>	<b>4. TIN (P/S/SSI)</b> [Redacted]	<b>5. Date of Birth (p/s)</b> 06/10/1965 56	
<b>6. Name (G/P/S/SSI)</b> Last MARCHELLETTA First GERARD Middle C. Extended			
<b>7. Address (P/S/SSI)</b> 515 Tullamore Way			
<b>8. City/Town (P/S/SSI)</b> Alpharetta			
<b>9. State (P/S/SSI)</b> GA		<b>10. Zip Code (P/S/SSI)</b> 30004	

<b>11. Alias/DBA/Partnership (s)</b> Code 1 - Alias <input type="checkbox"/> Code 2 - DBA <input type="checkbox"/> Circle Industries USA, Circle Group Code 3 - Partnership <input type="checkbox"/>	
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**12. Allegation of Non-Compliance (G/P/S/SSI)**  
 Marchelletta owns large drywalling business (Circle Industries USA and Circle Group LLC) in Alpharetta, GA, that specializes in large scale construction projects. In March 2001, U.S. Customs seized \$1.5 million in endorsed checks to Circle Group Ltd. (a Bahamian Co.) sent via Fed Ex to the Bahamas. Fed Ex package was valued at \$1.00. Circle Group LLC attorney asked Customs asked if Customs was going to contact IRS. Subsequent interview by Customs of a CI disclosed that Marchelletta was sending funds offshore to evade corporate taxes.

<b>13. CIP NO. (G/P/S/SSI)</b> 110	<b>14. Grand Jury (p/s) Code</b> 98	<b>Date (MM/YYYY)</b> 01/2002	<b>15. Industry (G/P/S)</b> 605
<b>16. Occupation (G/P/S)</b> 121	<b>17. Illegal Act (G/P/S)</b> 998	<b>18. Source (P/S)</b> 73	<b>19. Level (S/SSI)</b> 13
<b>20. Notoriety (S)</b> B	<b>21. Organized Crime Group (g/p/s/ssi)</b> 02	<b>22. OCDETF Number (p/s)</b>	<b>23. Fraud Scheme Code (G/P/S/SSI)</b> 149
<b>24. Service Center Scheme Number (p/s)</b>	<b>25. Statute Date (S)</b> 03/15/2005	<b>26. Due Date (g/p/s)</b> 04/30/2003	<b>27. Method of Filing (P/S)</b> 98
<b>28. Related Statute Test (Yes/No) Indicator (p/s)</b> No			

<b>29. Violations Under Investigation (P/S/SSI)</b> Principal 26-7206(1) Other 26-7206(2) Other	<b>30. Tax Periods</b> Under Investigation (p/s) Periods (YYYY/MM) 1999/12 1040 2000/12 1040 2001/12 1040 1999/03 1120 2000/03 1120 2001/03 1120	<b>31. Provable Money Laundering Amount (s)</b> \$	
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<b>32. Money Laundering/Currency Violations (g/p/s/ssi)</b> Violation Form Code Scheme Code	<b>33. Fugitive/Arrest (s)</b> (Fugitive = CD60 Arrest = CD6) Fugitive Date Arrest Date CI Arrest (Yes/ No)
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### SECTION V - Investigation Status

<b>34. Status Code (g/p/s/ssi)</b> 01 Status Date	<b>35. Reason Closed (g/p/s/ssi)</b>
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MARCHELLETTA NONGJ





U.S. Department of Justice

United States Attorney  
Northern District of Georgia

Suite 600 Richard Russell Building Telephone (404)381-6000  
75 Spring Street, S.W. Fax (404)381-4181  
Atlanta, Georgia 30303

October 24, 2005

James D. Vickery, Special Agent in Charge  
Criminal Investigation  
Internal Revenue Service  
401 West Peachtree Street, N.W.  
Suite 600  
Atlanta, Georgia 30365

Re: Grand Jury Investigation: GERARD C. MARCHELLETTA, JR.

Dear Mr. Vickery:

For the past three years, this office, has been involved in a grand jury criminal investigation of GERARD C. MARCHELLETTA, JR. The investigation is assigned to CID Agent Patricia Bergstrom and involves allegations of violation of various criminal income tax statutes for the years 1999 through 2002.

b5  
d.p.  
A.C.

b5  
d.p.  
A.C.

You are hereby notified that any Service personnel necessary may review this grand jury material. Your expeditious review of this matter is greatly appreciated.

Sincerely,

DAVID E. NAHMIAS  
UNITED STATES ATTORNEY



BARBARA E. NELAN  
ASSISTANT U.S. ATTORNEY

### Criminal Investigation General/Primary/Subject Investigation Report

#### SECTION I - Input Control

<b>A. Action:</b> <input type="checkbox"/> Initiate <input checked="" type="checkbox"/> Update <input type="checkbox"/> Change Relationship	<b>B. Investigation Type:</b> <input type="checkbox"/> General <input type="checkbox"/> Primary <input checked="" type="checkbox"/> Subject Criminal <input type="checkbox"/> Subject Seizure	<b>C. Investigation Number:</b> 580230198  <b>D. Related Investigation(s)</b> General Primary	<b>E. Initials:</b> Review: <u>PJ</u>  Operator: <u>EMW</u>  <b>F. Entry Date:</b> 11/14/2005
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#### SECTION II - Required Data Entries

General Investigation (G-1): 1,2,6,12,13,15,16,17,23,71 Primary Investigation (P-2): 1,2,3,4,6,7,8,9,10,12,13,15,16,17,18,23,27,29,71 Subject Investigation (S-3): 1,2,3,4,6,7,8,9,10,12,13,15,16,17,18,19,20,23,25,27,29,71 Subject Seizure (SSI-4): 1,2,3,4,6,7,8,9,10,12,13,19,23,29,71	G,P,S, or SSI = Mandatory entries g,p,s, or ssi = Optional entries
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#### SECTION III - Special Agent Assignment

<b>1. SSN (G/P/S/SSI)</b> Lead      Patty Secondary	<b>2. Name (Last) (G/P/S/SSI)</b> Bergstrom
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#### SECTION IV - Investigation Identification

<b>3. Gender Code (P/S/SSI)</b>	<b>4. TIN (P/S/SSI)</b>	<b>5. Date of Birth (p/s)</b> 06/10/1965
<b>6. Name (G/P/S/SSI)</b>	Last      MARCHELLETTA, JR. First      GERARD Middle      C. Extended	
<b>7. Address (P/S/SSI)</b>	515 Tullamore Way	
<b>8. City/Town (P/S/SSI)</b>	Alpharetta	
<b>9. State (P/S/SSI)</b>	GA	<b>10. Zip Code (P/S/SSI)</b> 30004
<b>11. Alias/DBA/Partnership (s)</b> Code 1 - Alias Code 2 - DBA Code 3 - Partnership		
<b>12. Allegation of Non-Compliance (G/P/S/SSI)</b>		

<b>13. CIP NO. (G/P/S/SSI)</b>	<b>14. Grand Jury (p/s) Code</b>	<b>Date (MM/YYYY)</b>	<b>15. Industry (G/P/S)</b>
<b>16. Occupation (G/P/S)</b>	<b>17. Illegal Act (G/P/S)</b>	<b>18. Source (P/S)</b>	<b>19. Level (S/SSI)</b>
<b>20. Notoriety (\$)</b>	<b>21. Organized Crime Group (g/p/s/ssi)</b>	<b>22. OCDETF Number (p/s)</b>	<b>23. Fraud Scheme Code (G/P/S/SSI)</b>
<b>24. Service Center Scheme Number (p/s)</b>	<b>25. Statute Date (S)</b>	<b>26. Due Date (g/p/s)</b> 01/31/2006	<b>27. Method of Filing (P/S)</b>
<b>28. Related Statute Test (Yes/No) Indicator (p/s)</b>	<b>29. Violations Under Investigation (P/S/SSI)</b>	<b>30. Tax Periods Under Investigation (p/s)</b>	<b>31. Provable Money Laundering Amount (s)</b>
	Principal Other Other	Periods (YYYY/MM) Form Number	\$
<b>32. Money Laundering/Currency Violations (g/p/s/ssi) Violation</b>	<b>Form Code</b>	<b>Scheme Code</b>	<b>33. Fugitive/Arrest (s) (Fugitive = CD60 Arrest = CD6)</b>
			Fugitive Date      Arrest Date CI Arrest (Yes/No)

#### SECTION V - Investigation Status

<b>34. Status Code (g/p/s/ssi)</b> Status Date	<b>35. Reason Closed (g/p/s/ssi)</b>
------------------------------------------------	--------------------------------------

MARCHELLETTA NONGJ

1012

Exhibit D

**SECTION VI - Other Investigation Information**

36. AFTRAK/CATS No. (ssi)	S	S	S
37. Multi Agency Code (g/p/s)	Code	Code	Code
38. Undercover Number (g/p/s/ssi)		Date Approved	
39. Consensual Number (g/p/s)		Date Approved	
40. Search Warrant (p)	Number Executed	Date Executed	
41. U.S. Mail Cover (p)	Number Approved	Date Approved	
42. Summons Enforcement Indicator (s)			
43. Financial Investigative Task Force Indicator (p/s)			
44. Reserved			
45. Headquarters Purpose Code (g/p/s/ssi)			
46. Area Purpose Code (g/p/s/ssi)			
47. Field Office Purpose Code (g/p/s/ssi)			

**SECTION VII - Prosecution Recommendation Information**

48. Judicial District Code (p/s)	
49. Counsel Office Code (s)	
50. Method of Evasion Code (s)	
51. Method of Computation Code (s)	
52. Total Criminal Deficiency (s) \$	
53. Principal Recommended Violation IRS Violations only (s)	
54. Other Recommended Violation IRS Violations only (s)	
55. Recommended Period (s):	Periods (YYYY/MM) Form Number

56. Sentencing Impact - SAR (s)

**SECTION VIII - Legal Action Information**

57. Principal Information/Indictment Violation - IRS Violations only (s)		
58. Other Information/Indictment Violation - IRS Violations only (s)		
59. District Court Docket Number (s)		
60. Associated Non-IRS Indictments (s):	Name (Last, First, Middle Initial) Violation	
61. Final Sentencing Impact (s)		
62. Principal Sentenced Violation (s)		
63. Other Sentenced Violation (s)		
64. Months to Serve (s)	65. Months Probation (s)	66. Fines to Pay (s) \$
67. Conditional Probation Expiration Date (s)	68. Conditional Probation Terms Met (s)	
69. Media Coverage Code (s)	Date	Code Date
70. Federal Record Center Information (g/p/s/ssi)		

**SECTION IX - Criminal Investigation Approval**

71. Signature	<i>Patricia Lee Acting</i>	Acting Supervisory Special Agent Title	11/10/2005 Date Authorized
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**Fact Sheet  
Special Agent Report**

In re: GERARD C. MARCHELLETTA SR.  
320 Newport Bay Cove  
Alpharetta, GA 30005  
Investigation Number: 580630083  
Social Security Number: [REDACTED]

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Origin of Investigation: Referral from Immigration and Customs Enforcement (ICE) Grand Jury  
Violation(s): 18-371, 26-7206(1), 26-7206(2)  
Years: 2000, 2001,  
Method of Proof: Specific Item  
Statute of Limitations: 4-15-2007  
Venue: Northern Georgia, Southern New York  
Type of Investigation: Legal Income Tax  
Subject's Age: 71  
Subject's Health: Good  
Formal Conference: N/A  
Power of Attorney: Yes  
Priority of Investigation: Regular  
Investigative Techniques:  
Search Warrant No  
Undercover No  
Controlled Informant No  
Electronic Surveillance No  
Polygraph No

Related Investigations:  
GERARD C. MARCHELLETTA TIN: [REDACTED]  
THERESA KOTTWITZ TIN: [REDACTED]  
Name TIN:  
Name TIN:  
Special Agent: Patricia Bergstrom, (404) 338-7540  
Centralized Case Reviewer: Cathy Cunard, (478) 752-6816  
Criminal Tax Counsel Reviewer: Roslyn Grand, (404) 338-7941  
Supervisory Special Agent: Thomas Holloman, (404) 338-9403  
Special Agent in Charge: Rebecca Sparkman, (404) 338-7502  
401 W. Peachtree St., N.W., Suite 600  
STOP 400-D  
Atlanta, GA 30308

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FILED IN CHAMBERS  
U.S.D.C. Atlanta

ORIGINAL

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

APR 03 2007

JAMES N. HATTEN, Clerk  
By: *[Signature]*  
Deputy Clerk

UNITED STATES OF AMERICA :  
 :  
 v. :  
 :  
 GERARD MARCHELLETTA, :  
 a/k/a Jerry Marchelletta, :  
 GERARD MARCHELLETTA, SR., :  
 a/k/a Jerry Marchelletta, Sr., :  
 [REDACTED] :

CRIMINAL INDICTMENT

NO. 1: 07-CR-107

THE GRAND JURY CHARGES THAT:

COUNT ONE  
(Conspiracy)  
18 U.S.C. § 371

1. From in or about January 1999, the exact date being unknown to the Grand Jury, and continuing thereafter until in or about April 2004, in the Northern District of Georgia and elsewhere, defendants GERARD C. MARCHELLETTA, a/k/a Jerry Marchelletta, GERARD C. MARCHELLETTA, SR., a/k/a Jerry Marchelletta, Sr., [REDACTED], did unlawfully, willfully, and knowingly conspire, combine, confederate, agree and have a tacit understanding with one another and with others known and unknown to the Grand Jury to defraud the United States, for the purpose of impeding, impairing, obstructing, and defeating the lawful government functions of the Internal Revenue Service of the Treasury Department of the United States in the ascertainment, computation, assessment, and collection of the revenue: to wit,

Exhibit E

income taxes.

PARTIES, PERSONS AND ENTITIES

2. At all times relevant to this Indictment:

A. Circle Industries, Inc. ("Circle"), a/k/a Circle Industries U.S.A., Inc., was a Georgia corporation with its principal place of business in Alpharetta, Georgia, in the Northern District of Georgia. Circle's business primarily involved serving as a drywall contractor on large scale construction projects, including hotels and casinos, malls and office buildings. Circle was a Subchapter C corporation for tax reporting purposes, and its fiscal and tax reporting years ended March 31.

B. Defendant GERARD C. MARCHELLETTA, a/k/a Jerry Marchelletta, was Circle's president and owned 25 percent of the company.

C. Defendant GERARD C. MARCHELLETTA, SR., a/k/a Jerry Marchelletta, Sr., was Circle's chief executive officer and owned 75 percent of the company.

D. Defendant [REDACTED] was Circle's controller. In this capacity, [REDACTED] maintained Circle's books and records and was the principal Circle employee responsible for interacting with Circle's outside accountant.

E. G.S. was an outside accountant who prepared Circle's and defendant MARCHELLETTA'S and MARCHELLETTA, SR.'s federal income tax returns. G.S. also conducted annual certified audits of Circle's

books and records.

F. G.G. and C.R. were principals of C&G Enterprises Limited ("C&G Enterprises") and G&C Enterprises Limited ("G&C Enterprises"), both affiliated companies that, among other things, provided labor to a Circle affiliate on a drywall installation project related to construction of the Atlantis Casino and Resort in the Bahamas.

G. Nastasi & Associates was a drywall installation firm formed by F.N. and defendant GERARD C. MARCHELLETTA, SR., a/k/a Jerry Marchelletta, Sr. Defendant MARCHELLETTA, SR. owned 30 percent of Nastasi & Associates, which had its principal place of business in New York. Defendant MARCHELLETTA, SR. separated from Nastasi & Associates effective on or about January 1, 2000 to move from New York to Georgia.

MANNER AND MEANS

3. It was part of the conspiracy and the manner and means by which the defendants sought to carry it out that:

A. During 1999-2001, defendants MARCHELLETTA and MARCHELLETTA, SR. diverted business income from Circle to pay for certain purely personal expenses of defendants MARCHELLETTA and MARCHELLETTA, SR.

B. These payments included clothing and entertainment expenses and building costs for a new home in Alpharetta, Georgia for defendant MARCHELLETTA. The payments also included building



costs for a new home in Alpharetta, Georgia, landscaping expenses for an existing home in New York, and rental payments for an apartment in Georgia for defendant MARCHELLETTA, SR.

C. In addition, G.G., acting through C&G Enterprises and G&C Enterprises, paid \$250,000 on defendant MARCHELLETTA's behalf to acquire 6.8 acres of land in Alpharetta, Georgia, upon which defendant MARCHELLETTA intended to build a new home.

D. Circle's and C&G/G&C Enterprises' payment of the land acquisition costs and certain of the building costs of defendant MARCHELLETTA's and MARCHELLETTA, SR.'s new homes in Alpharetta, Georgia, as well as Circle's payment of defendant MARCHELLETTA's personal clothing and entertainment expenses and defendant MARCHELLETTA, SR.'s landscaping and apartment rental expenses constituted income of defendants MARCHELLETTA and MARCHELLETTA, SR., which defendant MARCHELLETTA failed to report to the Internal Revenue Service on his and his wife's personal federal income tax returns for the 1999 and 2000 tax years and defendant MARCHELLETTA, SR. failed to report to the Internal Revenue Service on his and his wife's personal federal income tax return for the 2000 tax year.

E. Defendant MARCHELLETTA, SR. also failed to report certain consulting income he was paid by Nastasi & Associates following his relocation from New York to Alpharetta, Georgia on his and his wife's personal federal income tax return for the 2000 tax year. This income, which was paid to Circle, was falsely recorded on

Circle's books as a note payable to defendant MARCHELLETTA, SR. to conceal and to facilitate its payment to defendant MARCHELLETTA, SR.

F. The defendants ensured that the new home construction costs and personal expenses Circle paid for defendants MARCHELLETTA and MARCHELLETTA, SR. were falsely entered on Circle's books and records as legitimate corporate expenses. Such entries were primarily made by defendant [REDACTED] and communicated to G.S. as Circle's outside accountant in connection with his preparation of Circle's corporate income tax return for the taxable period ended March 31, 2001 and defendant MARCHELLETTA's 1999 and 2000 personal income tax return and defendant MARCHELLETTA, SR.'s 2000 personal income tax return.

G. The defendants further ensured that the new home construction costs and personal expenses paid on defendant MARCHELLETTA's and defendant MARCHELLETTA, SR.'s behalf were falsely reported to the Internal Revenue Service as legitimate corporate expenses on Circle's corporate income tax return for the tax period ending March 31, 2001 and deducted from Circle's taxable income.

#### OVERT ACTS

4. In furtherance of the conspiracy, and to effect the illegal objects thereof, certain overt acts were committed in the Northern District of Georgia and elsewhere, including, but not

limited to, the following:

Payment of Land Acquisition and Construction  
Costs for Defendant MARCHELLETTA's New Home

A. On or about January 29, 1999, defendant MARCHELLETTA acquired 1,000 shares in G&C Enterprises.

B. On or about January 29, 1999, G.G. authorized a purported discretionary loan of not more than \$300,000 from G&C Enterprises to defendant MARCHELLETTA.

C. On or about March 3, 1999, defendant MARCHELLETTA signed a purchase and sale agreement to acquire 6.8 acres of land in the Tullamore subdivision of Fulton County, Georgia, for a purchase price of \$250,000.

D. On or about April 10, 1999, defendant MARCHELLETTA entered into a purported loan agreement with G&C Enterprises to borrow \$250,000, due as a balloon payment of approximately \$353,000 on April 11, 2004.

E. On or about April 13, 1999, \$250,000 was wired from C&G Enterprises' account at ScotiaBank Bahamas Limited to the closing attorney for defendant MARCHELLETTA's acquisition of 6.8 acres of land in the Tullamore subdivision.

F. Defendant MARCHELLETTA closed on Lot 9A in the Tullamore subdivision of Fulton County, Georgia on or about April 14, 1999.

G. On or about April 30, 2004, G.G. extended until April 11, 2005 the balloon payment due from defendant MARCHELLETTA on his purported \$250,000 note to G&C Enterprises. Defendant MARCHELLETTA

has never repaid the purported loan.

H. In or about November 1999, defendant MARCHELLETTA signed an approximately \$730,000 contract with B.S., a builder, to construct a new home in Alpharetta, Georgia.

I. In or about December 1999, defendant MARCHELLETTA obtained a \$300,000 construction loan from First Colony Bank. Defendant MARCHELLETTA confirmed to a First Colony bank official that Circle was paying certain of his home construction costs.

J. In or about April 2000, defendants MARCHELLETTA and MARCHELLETTA, SR. disclosed in a meeting with B.S. that Circle was paying for certain of the construction costs on defendant MARCHELLETTA's new home.

K. In or about April 2000, defendant MARCHELLETTA gave B.S. an approximately \$49,000 check, drawn on a Circle account and made payable to a subcontractor on defendant MARCHELLETTA's new home. Defendant [REDACTED] posted the check to an account in Circle's books and records related to the construction of defendant MARCHELLETTA's home.

L. From 1999 through 2001, defendant [REDACTED] fraudulently posted construction costs related to defendant MARCHELLETTA's new home as purported Circle expenses in its books and records. These false expenses were deducted as Costs of Goods sold on Circle's corporate income tax return for the taxable period ended March 31, 2001.

Circle's Payment of Defendant MARCHELLETTA's  
Clothing and Entertainment Expenses

M. From 1999 through 2001, defendant [REDACTED] also fraudulently posted defendant MARCHELLETTA's personal credit card expenses, including defendant MARCHELLETTA's personal clothing and personal entertainment expenses, as purported Circle expenses in its books and records. These false expenses were also deducted as Costs of Goods sold on Circle's corporate income tax return for the taxable period ended March 31, 2001.

Circle's Payment of Defendant MARCHELLETTA, SR.'s  
New Home Construction Costs and Personal Expenses

N. In or about September 1999, defendant MARCHELLETTA, SR. entered into a \$270,000 purchase agreement for a residential lot in Alpharetta, Georgia. Defendant MARCHELLETTA, SR. thereafter assigned his interest in the contract to Circle.

O. On or about October 4, 1999, Circle purchased a \$270,000 cashier's check to purchase the residential lot on defendant MARCHELLETTA, SR.'s behalf.

P. Circle closed on the lot on or about October 5, 1999.

Q. Because his house remained under construction, defendant MARCHELLETTA, SR. moved into an apartment in Alpharetta, Georgia in or about September 2000. Circle paid defendant MARCHELLETTA, SR.'s \$1,000 per month lease on the apartment. Circle also paid landscaping expenses for defendant MARCHELLETTA, SR.'s home in Oyster Bay, New York.

R. In or about January 2001, defendant MARCHELLETTA, SR. gave M.D., the builder of defendant MARCHELLETTA, SR.'s new home, a check for \$15,000 drawn on a Circle account.

S. On or about March 31, 2002, Circle deeded the new home to defendant MARCHELLETTA, SR. No consideration was exchanged in the transaction. The deed was executed by defendant MARCHELLETTA as Circle's president and witnessed by defendant [REDACTED].

T. From 2000 through 2001, defendant [REDACTED] fraudulently posted construction costs related to defendant MARCHELLETTA, SR.'s new home as purported Circle expenses in its books and records. These false expenses were deducted as Costs of Goods sold on Circle's corporate income tax return for the taxable period ended March 31, 2001.

Defendant MARCHELLETTA SR.'s Unreported Nastasi Income

U. On or about January 1, 2000, defendant MARCHELLETTA, SR. executed a \$1.3 million consulting agreement with Nastasi & Associates, payable in \$6,000 weekly installments.

V. Defendant MARCHELLETTA, SR. directed that the \$6,000 weekly installments be made payable to Circle, rather than himself.

W. Defendant MARCHELLETTA, SR. additionally directed that Circle submit \$6,000 weekly invoices to Nastasi & Associates to give the appearance that the payments were Circle receivables.

X. Nastasi & Associates paid defendant MARCHELLETTA, SR.'s \$6,000 weekly consulting income to Circle, pursuant to Circle's

invoices. These funds were deposited into a Circle bank account.

Y. Defendant [REDACTED] created fraudulent entries in Circle's books and records to give the false impression that the Nastasi & Associates' payments were a loan from defendant MARCHELLETTA, SR. to Circle. Defendant [REDACTED] also directed G.S. to record the fraudulent entries on Circle's books and records.

Z. Defendant [REDACTED] thereafter withheld the true nature of the Nastasi & Associates' payments from G.S. in connection with his certified audit of Circle's fiscal year ended March 31, 2001.

AA. The Grand Jury incorporates by reference as overt acts the acts charged in Counts 2 through 9 of this Indictment.

All in violation of Title 18, United States Code, Section 371.

COUNT TWO

(Filing of a Materially False  
U.S. Income Tax Return)  
26 U.S.C. § 7206(1)

5. The Grand Jury re-alleges and incorporates herein by reference the factual allegations of paragraphs 2 and 3 of Count 1 of this Indictment as if fully set forth herein.

6. On or about December 18, 2001, in the Northern District of Georgia, defendant GERARD C. MARCHELLETTA, a/k/a Jerry Marchelletta, did willfully make and subscribe a United States Individual Income Tax Return (Form 1040) for the 1999 tax year, which return was verified by written declaration that it was made under penalty of perjury and was filed with the Internal Revenue

Service at Atlanta, Georgia, and which return defendant MARCHELLETTA did not believe to be true and correct as to every material matter, in that line 22 of said Form 1040 indicated that the total income of defendant GERARD C. MARCHELLETTA, a/k/a Jerry Marchelletta, and his wife, S.M., for the 1999 tax year was \$164,719, whereas, as defendant MARCHELLETTA then and there well knew and believed, the amount of \$164,719 reported as total income was a material understatement of defendant MARCHELLETTA's and his wife's actual total income for the 1999 tax year.

All in violation of Title 26, United States Code, Section 7206(1).

COUNT THREE  
(Filing of a Materially False  
U.S. Income Tax Return)  
26 U.S.C. § 7206(1)

7. The Grand Jury re-alleges and incorporates herein by reference the factual allegations of paragraphs 2 and 3 of Count 1 of this Indictment as if fully set forth herein.

8. On or about December 18, 2001, in the Northern District of Georgia, defendant GERARD C. MARCHELLETTA, a/k/a Jerry Marchelletta, did willfully make and subscribe a United States Individual Income Tax Return (Form 1040) for the 2000 tax year, which return was verified by written declaration that it was made under penalty of perjury and was filed with the Internal Revenue Service at Atlanta, Georgia, and which return defendant



MARCHELLETTA did not believe to be true and correct as to every material matter, in that line 22 of said Form 1040 indicated that the total income of defendant GERARD C. MARCHELLETTA, a/k/a Jerry Marchelletta, and his wife, S.M., for the 2000 tax year was \$156,992, whereas, as defendant MARCHELLETTA then and there well knew and believed, the amount of \$156,992 reported as total income was a material understatement of defendant MARCHELLETTA's and his wife's actual total income for the 2000 tax year.

All in violation of Title 26, United States Code, Section 7206(1).

COUNT FOUR  
(Filing of a Materially False  
U.S. Income Tax Return)  
26 U.S.C. § 7206(1)

9. The Grand Jury re-alleges and incorporates herein by reference the factual allegations of paragraphs 2 and 3 of Count 1 of this Indictment as if fully set forth herein.

10. On or about April 15, 2001, in the Northern District of Georgia, defendant GERARD C. MARCHELLETTA, SR., a/k/a Jerry Marchelletta, Sr., did willfully make and subscribe a United States Individual Income Tax Return (Form 1040) for the 2000 tax year, which return was verified by written declaration that it was made under penalty of perjury and was filed with the Internal Revenue Service at Brookhaven, New York, and which return defendant MARCHELLETTA, SR. did not believe to be true and correct as to

every material matter, in that line 22 of said Form 1040 indicated that the total income of defendant GERARD C. MARCHELLETTA, SR., a/k/a Jerry Marchelletta, Sr., and his wife, M.M., for the 2000 tax year was \$344,246, whereas, as defendant MARCHELLETTA, SR. then and there well knew and believed, the amount of \$344,246 reported as total income was a material understatement of defendant MARCHELLETTA, SR.'s and his wife's actual total income for the 2000 tax year.

All in violation of Title 26, United States Code, Section 7206(1).

COUNT FIVE  
(Tax Evasion)  
26 U.S.C. § 7201

11. The Grand Jury re-alleges and incorporates herein by reference the factual allegations of paragraphs 2 and 3 of Count 1 of this Indictment as if fully set forth herein.

12. On or about the dates set forth below, in the Northern District of Georgia and elsewhere, defendant GERARD C. MARCHELLETTA, SR., a/k/a Jerry Marchelletta, Sr., did willfully attempt to evade and defeat a part of the income tax due and owing by him to the United States of America for the 2000 tax year by engaging in various affirmative acts, including:

A. On or about April 15, 2001, defendant GERARD C. MARCHELLETTA, SR., a/k/a Jerry Marchelletta, Sr., caused to be

prepared a United States Individual Income Tax Return (Form 1040) for the 2000 tax year, which was filed with the Internal Revenue Service at Brookhaven, New York, wherein defendant MARCHELLETTA, SR. reported on line 22 that his and his wife's total income was \$344,246, and, on line 57, that the total tax due and owing was \$91,801, whereas, as defendant MARCHELLETTA, SR. then and there well knew and believed, his total income and tax due and owing substantially exceeded these amounts.

B. During the 2000 tax year, defendant MARCHELLETTA, SR. directed that the \$6,000 weekly payments Nastasi & Associates paid him pursuant to his consulting agreement be paid to Circle, rather than himself. Defendant MARCHELLETTA, SR. also directed during the 2000 tax year that Circle submit \$6,000 weekly invoices to Nastasi & Associates to convey the false impression that the payments were Circle receivables, rather than defendant MARCHELLETTA, SR.'s personal income.

C. During the 2000 tax year, defendant MARCHELLETTA, SR. solicited and accepted Circle's payment of his Alpharetta, Georgia apartment lease and landscaping expenses for defendant MARCHELLETTA, SR.'s home in Oyster Bay, New York.

All in violation of Title 26, United States Code, Section 7201.

COUNT SIX

(Aiding and Assisting the Filing of a  
Materially False U.S. Income Tax Return)  
26 U.S.C. § 7206(2)

13. The Grand Jury re-alleges and incorporates herein by reference the factual allegations of paragraphs 2 and 3 of Count 1 of this Indictment as if fully set forth herein.

14. On or about December 6, 2001, in the Northern District of Georgia, defendants GERARD C. MARCHELLETTA, a/k/a Jerry Marchelletta, GERARD C. MARCHELLETTA, SR., a/k/a Jerry Marchelletta, Sr., and [REDACTED], aided and abetted by each other, did willfully aid and assist in, and procure, counsel, and advise the preparation and presentation to the Internal Revenue Service of a Corporation Income Tax Return (Form 1120) of Circle Industries, Inc. for the tax reporting period ended March 31, 2001, which was false and fraudulent as to a material matter, in that line 30 of the Form 1120 indicated that Circle Industries, Inc.'s taxable income for the tax reporting period ended March 31, 2001 was \$1,090,354, whereas, as the defendants then and there well knew and believed, the amount of \$1,090,354 was a material understatement of the taxable income of Circle Industries, Inc. for the tax reporting period ended March 31, 2001.

All in violation of Title 26, United States Code, Section 7206(2).

COUNT SEVEN

(Aiding and Assisting the Filing of a  
Materially False U.S. Income Tax Return)  
26 U.S.C. § 7206(2)

15. The Grand Jury re-alleges and incorporates herein by reference the factual allegations of paragraphs 2 and 3 of Count 1 of this Indictment as if fully set forth herein.

16. On or about December 18, 2001, in the Northern District of Georgia, defendant [REDACTED] did willfully aid and assist in, and procure, counsel, and advise the preparation and presentation to the Internal Revenue Service of a Personal Income Tax Return (Form 1040) for defendant GERARD C. MARCHELLETTA, a/k/a Jerry Marchelletta, for the 1999 tax year, which was false and fraudulent as to a material matter, in that line 22 of said Form 1040 indicated that the total income of defendant GERARD C. MARCHELLETTA, a/k/a Jerry Marchelletta, and his wife, S.M., for the 1999 tax year was \$164,719, whereas, as defendant [REDACTED] then and there well knew and believed, the amount of \$164,719 reported as total income was a material understatement of defendant MARCHELLETTA's and his wife's actual total income for the 1999 tax year.

All in violation of Title 26, United States Code, Section 7206(2).

COUNT EIGHT

(Aiding and Assisting the Filing of a  
Materially False U.S. Income Tax Return)  
26 U.S.C. § 7206(2)

17. The Grand Jury re-alleges and incorporates herein by reference the factual allegations of paragraphs 2 and 3 of Count 1 of this Indictment as if fully set forth herein.

18. On or about December 18, 2001, in the Northern District of Georgia, defendant [REDACTED] did willfully aid and assist in, and procure, counsel, and advise the preparation and presentation to the Internal Revenue Service of a Personal Income Tax Return (Form 1040) for defendant GERARD C. MARCHELLETTA, a/k/a Jerry Marchelletta, for the 2000 tax year, which was false and fraudulent as to a material matter, in that line 22 of said Form 1040 indicated that the total income of defendant GERARD C. MARCHELLETTA, a/k/a Jerry Marchelletta, and his wife, S.M., for the 2000 tax year was \$156,992, whereas, as defendant [REDACTED] then and there well knew and believed, the amount of \$156,992 reported as total income was a material understatement of defendant MARCHELLETTA's and his wife's actual total income for the 2000 tax year.

All in violation of Title 26, United States Code, Section 7206(2).

COUNT NINE

(Aiding and Assisting the Filing of a  
Materially False U.S. Income Tax Return)  
26 U.S.C. § 7206(2)

19. The Grand Jury re-alleges and incorporates herein by reference the factual allegations of paragraphs 2 and 3 of Count 1 of this Indictment as if fully set forth herein.

20. On or about April 15, 2001, in the Northern District of Georgia, defendant [REDACTED] did willfully aid and assist in, and procure, counsel, and advise the preparation and presentation to the Internal Revenue Service of a Personal Income Tax Return (Form 1040) for defendant GERARD C. MARCHELLETTA, SR., a/k/a Jerry Marchelletta, Sr., for the 2000 tax year, which was false and fraudulent as to a material matter, in that line 22 of said Form 1040 indicated that the total income of defendant GERARD C. MARCHELLETTA, SR., a/k/a Jerry Marchelletta, Sr., and his wife, M.M., for the 2000 tax year was \$344,246, whereas, as defendant [REDACTED] then and there well knew and believed, the amount of \$344,246 reported as total income was a material understatement of defendant MARCHELLETTA, SR.'s and his wife's actual total income for the 2000 tax year.

All in violation of Title 26, United States Code, Section  
7206(2).

A True BILL  
Dale Perleberg  
FOREPERSON

DAVID E. NAHMIAS  
UNITED STATES ATTORNEY

Paul N. Monnin

PAUL N. MONNIN  
ASSISTANT UNITED STATES ATTORNEY

Georgia Bar No. 516612

600 U.S. Courthouse  
75 Spring Street, S.W.  
Atlanta, Georgia 30303  
(404) 581-6189  
(404) 581-6181 (facsimile)



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

FILED IN CLERK'S OFFICE  
U.S.D.C. Atlanta

JUN 30 2008

By JAMES N HATTEN, Clerk  
*[Signature]*  
Deputy Clerk

UNITED STATES OF AMERICA

-vs-

Case No. 1:07-CR-107-2-TCB

Gerard Marchelletta, Sr., a/k/a Jerry Marchelletta, Sr.

Defendant's Attorney:  
Wilmer Parker, III

JUDGMENT IN A CRIMINAL CASE  
(For Offenses Committed On or After November 1, 1987)

The defendant was found guilty by jury on Count(s) 1, 4, 5, & 6 of the

Accordingly, the defendant is adjudged guilty of such count(s) which involves the following offense:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Count No.</u>
18 USC §371	Conspiracy to Defraud the IRS	1
26 USC §7206(1)	Filing of Materially False US Tax Return	4
26 USC §7201	Tax Evasion	5
26 USC §7206(2)	Aiding and Assisting the Filing of Materially False US Tax Return	6

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay the special assessment of \$ 400.00 which shall be due immediately.

**IT IS FURTHER ORDERED** that the defendant shall notify the United States attorney for this district within thirty days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No. [REDACTED]  
Defendant's Date of Birth: [REDACTED]  
Defendant's Mailing Address:  
Alpharetta, GA

Date of Imposition of Sentence: June 20, 2008

Signed this the 30<sup>th</sup> day of June, 2008.

*[Signature of Timothy C. Batten, Sr.]*

TIMOTHY C. BATTEN, SR.  
UNITED STATES DISTRICT JUDGE

1:07-CR-107-2-TCB ; Gerard Marchelletta, Sr., a/k/a Jerry Marchelletta, Sr.

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **33 months on Counts 1, 4, 5, & 6, all to run concurrent.**

The Court recommends that the defendant be incarcerated at the Atlanta Prison Camp.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons as notified by the United States Marshal.

**RETURN**

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By: \_\_\_\_\_  
Deputy U.S. Marshal

1:07-CR-107-2-TCB : Gerard Marchelletta, Sr., a/k/a Jerry Marchelletta, Sr.

### **SUPERVISED RELEASE**

**Upon release from imprisonment, the defendant shall be on supervised release for a term of three years on Counts 1 & 5 and one year on Counts 4 & 6, all to run concurrent.**

While on supervised release, the defendant shall not commit another federal, state or local crime and shall not illegally possess a controlled substance. The defendant shall comply with the standard and special conditions that have been adopted by this court (set forth below). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

The defendant shall not possess a firearm as defined in 18 U.S.C. § 921.

The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall cooperate with DNA collection at the direction of the Probation Officer.

The defendant shall submit to a financial audit and provide complete disclosure of all financial records at the direction of the Probation Officer. The defendant shall not incur new credit charges or open additional lines of credit without first obtaining approval from the Probation Officer.

The defendant shall cooperate with the Internal Revenue Service to determine and collect any additional income tax liabilities.

The periodic drug testing mandated by the Violent Crime Control and Law Enforcement Act of 1994 is hereby suspended.

1:07-CR-107-2-TCB : Gerard Marchelletta, Sr., a/k/a Jerry Marchelletta, Sr.

### **STANDARD CONDITIONS OF SUPERVISION**

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer within 72 hours of any change in residence or employment;
7. The defendant shall refrain from the excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician, and shall submit to periodic urinalysis tests as directed by the probation officer to determine the use of any controlled substance;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
11. The defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

1:07-CR-107-2-TCB : Gerard Marchelletta, Sr., a/k/a Jerry Marchelletta, Sr.

**FINE**

If the fine is not paid, the court may sentence this defendant to any sentence which might have been originally imposed. See 18 USC 3614.

The defendant shall pay a fine of **\$ 50,000.00**.

This fine includes any costs of incarceration and supervision.

This fine (plus any interest required) is due and payable immediately. If not paid immediately, the fine shall be paid in monthly installments of at least \$2,000.00. Monthly installment payments shall begin no later than 30 days after release from custody.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

FILED IN CLERK'S OFFICE  
U.S.D.C. Atlanta

JUN 30 2008

By JAMES N. HATTEN, Clerk  
Deputy Clerk

UNITED STATES OF AMERICA

-vs-

Case No. 1:07-CR-107-TCE

Gerard Marchelletta, Jr., a/k/a Jerry Marchelletta

Defendant's Attorney:  
W. Bruce Maloy

JUDGMENT IN A CRIMINAL CASE  
(For Offenses Committed On or After November 1, 1987)

The defendant was found guilty by jury on Count(s) 1, 3, & 6 of the Indictment.

Accordingly, the defendant is adjudged guilty of such count(s) which involves the following offense:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Count No.</u>
18 USC §371	Conspiracy to Defraud the IRS	1
26 USC §7206(1)	Filing of Materially False US Tax Return	3
26 USC §7206(2)	Aiding and Assisting the Filing of Materially False US Tax Return	6

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay the special assessment of \$ 300.00 which shall be due immediately.

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within thirty days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No. [REDACTED]  
Defendant's Date of Birth: [REDACTED]  
Defendant's Mailing Address:  
Alpharetta, GA

Date of Imposition of Sentence: June 20, 2008

Signed this the 30<sup>th</sup> day of June, 2008.

  
TIMOTHY C. BATTEN, SR.  
UNITED STATES DISTRICT JUDGE

1:07-CR-107-1-TCB : Gerard Marchelletta, Jr., a/k/a Jerry Marchelletta

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **36 months on Counts 1, 3, & 6, all to run concurrent.**

The Court recommends that the defendant be incarcerated at the Atlanta Prison Camp

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons as notified by the United States Marshal.

**RETURN**

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By: \_\_\_\_\_  
Deputy U.S. Marshal

1:07-CR-107-1-TCB : Gerard Marchelletta, Jr., a/k/a Jerry Marchelletta

### **SUPERVISED RELEASE**

**Upon release from imprisonment, the defendant shall be on supervised release for a term of three years on Count 1 and one year on Counts 3 & 6, all to run concurrent.**

While on supervised release, the defendant shall not commit another federal, state or local crime and shall not illegally possess a controlled substance. The defendant shall comply with the standard and special conditions that have been adopted by this court (set forth below). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

The defendant shall not possess a firearm as defined in 18 U.S.C. § 921.

The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall cooperate with DNA collection at the direction of the Probation Officer.

The defendant shall submit to a financial audit and provide complete disclosure of all financial records at the direction of the Probation Officer. The defendant shall not incur new credit charges or open additional lines of credit without first obtaining approval from the Probation Officer.

The defendant shall cooperate with the Internal Revenue Service to determine and collect any additional income tax liabilities.

The periodic drug testing mandated by the Violent Crime Control and Law Enforcement Act of 1994 is hereby suspended.



1:07-CR-107-1-TCB : Gerard Marchelletta, Jr., a/k/a Jerry Marchelletta

### **STANDARD CONDITIONS OF SUPERVISION**

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer within 72 hours of any change in residence or employment;
7. The defendant shall refrain from the excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician, and shall submit to periodic urinalysis tests as directed by the probation officer to determine the use of any controlled substance;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
11. The defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

1:07-CR-107-1-TCB : Gerard Marchelletta, Jr., a/k/a Jerry Marchelletta

**FINE**

If the fine is not paid, the court may sentence this defendant to any sentence which might have been originally imposed. See 18 USC 3614.

The defendant shall pay a fine of **\$ 50,000.00**.

This fine includes any costs of incarceration and supervision.

This fine (plus any interest required) is due and payable immediately. If not paid immediately, the fine shall be paid in monthly installments of at least \$2,000.00. Monthly installment payments shall begin no later than 30 days after release from custody.

Disclosure Office 6  
MS 602-D Room 1905  
401 W Peachtree St  
Atlanta, GA 30308  
(404) 338-8539-telephone

April 30, 2009

**RE: FOIA and Privacy Acts Request; Gerard Marchelletta, Jr.**  
**SSN: [REDACTED]**

Dear Disclosure Officer:

Attached to this FOIA Request please find a completed IRS Form 2848, which empowers us to represent Mr. Marchelletta before the Internal Revenue Service with respect to this Request and other income tax matters.

This Request is made pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a. Under the authority of 26 C.F.R. 601.702(f)(3)(E), the category of requestor is "other." Please consider this correspondence, in part, as our firm promise to pay fees and costs for locating, duplicating, and reviewing the documents requested below. If said costs are expected to exceed \$50.00, please send an estimate of the cost to the address above, care of the undersigned. **When responding, please reference the specific date of this request, as shown above.**

Furthermore, if some portion of the documents/records responsive to the Request are exempt from release, please furnish those portions which are reasonably segregatable. If you determine that any portion of documents/records responsive to this Request is exempt, please furnish an indexing, itemization, and detailed justification concerning the information which you intend to withhold.

1. Provide a complete copy of the system of records identified as "Treasury/IRS 26.006," Form 2209, Courtesy Investigations, OP:C--Treasury/IRS, bearing Mr. Marchelletta's name and/or account number for the years: 1999 through 2008.
2. Provide a complete copy of the records, documents and information's maintained in a system of records called "Case Management and Time Reporting System." Criminal Investigation Division-Treasury/IRS 46.002 bearing Mr. Marchelletta's name and/or account number for the years: 1999 through 2008.

Exhibit G

3. Provide a complete copy of the system of records identified as "Treasury/IRS 46.051" Criminal Investigation Audit Trail Records System, bearing Mr. Marchelletta's name and/or account number for the years: 1999 through 2008.

**Should you decide that this request has been sent to the wrong office please forward this to the proper office and notify me of same.**

Finally, if you have any questions or require additional information, please correspond with me at any of the contact points above.

Sincerely yours,



Robert G. Bernhoff  
Attorney and Counselor at Law

cc: Gerard Marchelletta, Jr.

Disclosure Office 6  
MS 602-D Room 1905  
401 W Peachtree St  
Atlanta, GA 30308  
(404) 338-8539-telephone

May 2, 2009

**RE: FOIA and Privacy Acts Request; Gerard Marchelletta, Jr.**  
**SSN:** [REDACTED]

Dear Disclosure Officer:

Attached to this FOIA Request please find a completed IRS Form 2848, which empowers us to represent Mr. Marchelletta before the Internal Revenue Service with respect to this Request and other income tax matters.

This Request is made pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a. Under the authority of 26 C.F.R. 601.702(f)(3)(E), the category of requestor is "other." Please consider this correspondence, in part, as our firm promise to pay fees and costs for locating, duplicating, and reviewing the documents requested below. If said costs are expected to exceed \$50.00, please send an estimate of the cost to the address above, care of the undersigned. **When responding, please reference the specific date of this request, as shown above.**

Furthermore, if some portion of the documents/records responsive to the Request are exempt from release, please furnish those portions which are reasonably segregatable. If you determine that any portion of documents/records responsive to this Request is exempt, please furnish an indexing, itemization, and detailed justification concerning the information which you intend to withhold.

The information requested is a copy of Form 2797 entitled Referral Report for Potential Fraud Cases and any attachments filed thereto. Mr. Marchelletta also requests a copy of any other documents in his file that were drafted by any IRS employee referring Mr. Marchelletta's file to the Criminal Investigation Division. Please provide the complete transcript that includes all information on the master file account maintained under my client's name for the years 1999 through 2008.

Finally, if you have any questions or require additional information, please correspond with me at any of the contact points below.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Robert G. Bernhoft". The signature is fluid and cursive, with a long horizontal stroke at the end.

Robert G. Bernhoft  
Attorney and Counselor at Law

cc: Gerard Marchelletta, Jr.

---

Disclosure Office 6  
MS 602-D Room 1905  
401 W Peachtree St  
Atlanta, GA 30308  
(404) 338-8539-telephone

April 29, 2009

**RE: FOIA and Privacy Acts Request; Gerard Marchelletta, Sr.**  
**SSN: [REDACTED]**

Dear Disclosure Officer:

Attached to this FOIA Request please find a completed IRS Form 2848, which empowers us to represent Mr. Marchelletta before the Internal Revenue Service with respect to this Request and other income tax matters.

This Request is made pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a. Under the authority of 26 C.F.R. 601.702(f)(3)(E), the category of requestor is "other." Please consider this correspondence, in part, as our firm promise to pay fees and costs for locating, duplicating, and reviewing the documents requested below. If said costs are expected to exceed \$50.00, please send an estimate of the cost to the address above, care of the undersigned. **When responding, please reference the specific date of this request, as shown above.**

Furthermore, if some portion of the documents/records responsive to the Request are exempt from release, please furnish those portions which are reasonably segregatable. If you determine that any portion of documents/records responsive to this Request is exempt, please furnish an indexing, itemization, and detailed justification concerning the information which you intend to withhold.

1. Provide a complete copy of the system of records identified as "Treasury/IRS 26.006," Form 2209, Courtesy Investigations, OP:C--Treasury/IRS, bearing Mr. Marchelletta's name and/or account number for the years: 1999 through 2008.
2. Provide a complete copy of the records, documents and information's maintained in a system of records called "Case Management and Time Reporting System." Criminal Investigation Division-Treasury/IRS 46.002 bearing Mr. Marchelletta's name and/or account number for the years: 1999 through 2008.

3. Provide a complete copy of the system of records identified as "Treasury/IRS 46.051" Criminal Investigation Audit Trail Records System, bearing Mr. Marchelletta's name and/or account number for the years: 1999 through 2008.

**Should you decide that this request has been sent to the wrong office please forward this to the proper office and notify me of same.**

Finally, if you have any questions or require additional information, please correspond with me at any of the contact points below.

Sincerely yours,



Robert G. Bernhoft  
Attorney and Counselor at Law

cc: Gerard Marchelletta, Sr.



Disclosure Office 6  
MS 602-D Room 1905  
401 W Peachtree St  
Atlanta, GA 30308  
(404) 338-8539-telephone

May 1, 2009

**RE: FOIA and Privacy Acts Request; Gerard Marchelletta, Sr.  
SSN: [REDACTED]**

Dear Disclosure Officer:

Attached to this FOIA Request please find a completed IRS Form 2848, which empowers us to represent Mr. Marchelletta before the Internal Revenue Service with respect to this Request and other income tax matters.

This Request is made pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a. Under the authority of 26 C.F.R. 601.702(f)(3)(E), the category of requestor is "other." Please consider this correspondence, in part, as our firm promise to pay fees and costs for locating, duplicating, and reviewing the documents requested below. If said costs are expected to exceed \$50.00, please send an estimate of the cost to the address above, care of the undersigned. **When responding, please reference the specific date of this request, as shown above.**

Furthermore, if some portion of the documents/records responsive to the Request are exempt from release, please furnish those portions which are reasonably segregatable. If you determine that any portion of documents/records responsive to this Request is exempt, please furnish an indexing, itemization, and detailed justification concerning the information which you intend to withhold.

The information requested is a copy of Form 2797 entitled Referral Report for Potential Fraud Cases and any attachments filed thereto. Mr. Marchelletta also requests a copy of any other documents in his file that were drafted by any IRS employee referring Mr. Marchelletta's file to the Criminal Investigation Division. Please provide the complete transcript that includes all information on the master file account maintained under my client's name for the years 1999 through 2008.

Finally, if you have any questions or require additional information, please

207 East Buffalo Street Suite 500 Milwaukee, Wisconsin 53202  
p (414) 276-3333 f (414) 276-2822 www.bernhoflaw.com

correspond with me at any of the contact points below.

Sincerely yours,



---

Robert G. Bernhoff  
Attorney and Counselor at Law

cc: Gerard Marchelletta, Sr.

Disclosure Office 6  
MS 602-D Room 1905  
401 W Peachtree St  
Atlanta, GA 30308  
(414) 338-8539-telephone

April 30, 2009

**RE: FOIA and Privacy Acts Request, The Circle Group, LLC**  
**EIN: [REDACTED]**

Dear Disclosure Officer:

Attached to this FOIA Request please find a completed IRS Form 2848, which empowers us to represent The Circle Group, LLC before the Internal Revenue Service with respect to this Request and other income tax matters.

This Request is made pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a. Under the authority of 26 C.F.R. 601.702(f)(3)(E), the category of requestor is "other." Please consider this correspondence, in part, as our firm promise to pay fees and costs for locating, duplicating, and reviewing the documents requested below. If said costs are expected to exceed \$50.00, please send an estimate of the cost to the address above, care of the undersigned. **When responding please reference the specific date of this request, as shown above.**

Furthermore, if some portion of the documents/records responsive to the Request are exempt from release, please furnish those portions which are reasonably segregatable. If you determine that any portion of documents/records responsive to this Request is exempt, please furnish an indexing, itemization, and detailed justification concerning the information which you intend to withhold.

1. Provide a complete copy of the system of records identified as "Treasury/IRS 26.006," Form 2209, Courtesy Investigations, OP:C-Treasury/IRS, bearing The Circle Group, LLC's name and/or account number for the years: 1999 through 2008.
2. Provide a complete copy of the records, documents and information's maintained in a system of records called "Case Management and Time Reporting System." Criminal Investigation Division-Treasury/IRS 46.002 bearing The Circle Group, LLC's name and/or account number for the years: 1999 through 2008.

207 East Buffalo Street Suite 600 Milwaukee, Wisconsin 53202  
p (414) 276 3333 f (414) 276 2822 www.bernhoflaw.com

3. Provide a complete copy of the system of records identified as "Treasury/IRS 46.051" Criminal Investigation Audit Trail Records System, bearing The Circle Group, LLC's name and/or account number for the years: 1999 through 2008.

**Should you decide that this request has been sent to the wrong office please forward this to the proper office and notify me of same.**

Finally, if you have any questions or require additional information, please correspond with me at any of the contact points given at the bottom of page one of this request.

---

Sincerely yours,



Robert G. Bernhoft  
Attorney and Counselor at Law

cc: The Circle Group, LLC

Disclosure Office 6  
MS 602-D Room 1905  
401 W Peachtree St  
Atlanta, GA 30308  
(414) 338-8539-telephone

May 5, 2009

**RE: FOIA and Privacy Acts Request, Circle Industries, Inc.**  
**EIN: [REDACTED]**

Dear Disclosure Officer:

Attached to this FOIA Request please find a completed IRS Form 2848, which empowers us to represent Circle Industries, Inc. before the Internal Revenue Service with respect to this Request and other income tax matters.

This Request is made pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a. Under the authority of 26 C.F.R. 601.702(f)(3)(E), the category of requestor is "other." Please consider this correspondence, in part, as our firm promise to pay fees and costs for locating, duplicating, and reviewing the documents requested below. If said costs are expected to exceed \$50.00, please send an estimate of the cost to the address above, care of the undersigned. **Please reference the specific date of this request, as shown above, when replying to our request.**

Furthermore, if some portion of the documents/records responsive to the Request are exempt from release, please furnish those portions which are reasonably segregatable. If you determine that any portion of documents/records responsive to this Request is exempt, please furnish an indexing, itemization, and detailed justification concerning the information which you intend to withhold.

1. Provide a complete copy of the system of records identified as "Treasury/IRS 26.006," Form 2209, Courtesy Investigations, OP:C--Treasury/IRS, bearing Circle Industries, Inc.'s name and/or account number for the years: 1999 through 2008.
2. Provide a complete copy of the records, documents and information's maintained in a system of records called "Case Management and Time Reporting System." Criminal Investigation Division-Treasury/IRS 46.002 bearing Circle Industries Inc.'s name and/or account number for the years: 1999 through 2008.

3. Provide a complete copy of the system of records identified as "Treasury/IRS 46.051" Criminal Investigation Audit Trail Records System, bearing Circle Industries, Inc.'s name and/or account number for the years: 1999 through 2008.

**Should you decide that this request has been sent to the wrong office please forward this to the proper office and notify me of same.**

Finally, if you have any questions or require additional information, please correspond with me at any of the contact points found at the bottom of page one of this request.

Sincerely yours,



Robert G. Bernhoft  
Attorney and Counselor at Law

cc: Circle Industries, Inc.

THE BERNHOF LAW FIRM, S.C.

04393  
Offices in Milwaukee • Malibu

Internal Revenue Service  
Disclosure Office  
JUL 14 2009  
Nashville, TN 37203  
Received

July 8, 2009

Disclosure Specialist V. Young  
ID # badge 58-09008  
IRS FOIA Request  
Disclosure Office 8  
801 Broadway, MDP 44  
Room 480  
Nashville, TN 37203

INTERNAL REVENUE SERVICE  
RECEIVED  
JUL 24 2009  
MICHIGAN DISCLOSURE OFFICE

RE: FOIA and Privacy Act Requests, Gérard Marchelletta, Jr.  
SSN: [REDACTED]  
Case No. 08-2009-02441

Dear Disclosure Officer:

Attached to this FOIA request please find completed IRS Form 2848, which empowers us to represent Mr. Marchelletta before the Internal Revenue Service with respect to this Request and other income tax matters.

This Request is made pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a. Under the authority of 26 C.F.R. 601.702(i)(3)(E), the category of requestor is "other." Please consider this correspondence, in part, as my firm promise to pay fees and costs for locating, duplicating, and reviewing the documents requested below. If said costs are expected to exceed \$50.00, please send an estimate of the cost to the address above, care of the undersigned.

Furthermore, if some portion of the documents/records responsive to the Request are exempt from release, please furnish those portions that are reasonably segregable. If you determine that any portion of documents/records responsive to this Request is exempt, please furnish an indexing, itemization, and detailed justification concerning the information that you intend to withhold.

1. Please send copies of all documents and information related to any inquiries made by Special Agent Patricia Bergstrom, or tasks performed by Special Agent Patricia Bergstrom, pertaining to Gerard Marchelletta, Jr., account number 061-62-5519, including but not exclusively any Special Agent Reports, recommendation for prosecution reports and/or tax fraud referral reports.

2. On May 2, 2009 a copy of Form 2797 (Referral Report for Potential Fraud Cases) was requested (letter attached) relating to Gerard Marchelletta, Jr. account number 061-62-5519. Subsequently, Disclosure Manager Tim D. Christian replied that there were "no documents specifically responsive to your request." Gerard Marchelletta, Jr. was indicted, tried and

convicted in the Northern District of Georgia (1:07-CR-107-TCB). Please provide any and all referrals from the U.S. Attorney's Office – N.D. Georgia to DOJ-Tax with respect to the prosecution of Gerry Marchelletta, Jr., account number 061-62-5519.

3. Please send copies of all documents and information related to any investigative workplans (Form 6085) developed by Special Agent Bergstrom and/or Special Agent Henry Chavis in the investigation of Gerard Marchelletta, Jr., account number 061-62-5519.

4. Please send copies of all documents and information related to and including Form 6544 (Request for Cooperating Examiner) resulting from the investigation of Gerard Marchelletta, Jr., account number 061-62-5519.

5. Please send copies of all documents and information related to and including Form 9838 (Criminal Investigation Report Control Log) relating to the investigation of Gerard Marchelletta, Jr., account number 061-62-5519.

6. Please send copies of all documents and information related to and including Form 6082 (Assessment of Closed General/ Subject Seizure/ Primary/ Subject Investigation Narrative Appraisal) relating to the investigation of Gerard Marchelletta, Jr., account number 061-62-5519.

7. Please send copies of all documents and information related to the Special Agent in Charge, N.D. GA – Atlanta, referral authority for prosecution recommendation to the DOJ-Tax Division for Gerard Marchelletta, Jr., account number 061-62-5519.

8. Please send copies of all documents and information related to and including Criminal Tax Counsel's criminal evaluation report regarding Case No. 1:07-CR-107-TCB in the Northern District of Georgia and/or Gerard Marchelletta, Jr., account number 061-62-5519.

9. Please send copies of all documents and information related to and including Forms 5043 and 5043(A) (Criminal Investigation monthly activity reports) relating to the investigation of Gerard Marchelletta, Jr., account number 061-62-5519.

10. Please send copies of all documents and information related to and including Form 4930 used to initiate general investigations and/or primary investigations of Gerard Marchelletta, Jr., account number 061-62-5519.

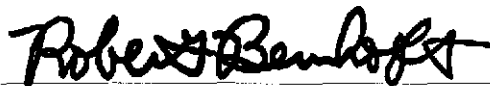
11. Please send copies of all documents and information related to and including Form 211's filed by or on behalf of Shawn Andrew McBride, account number 311-98-2519.

12. Please limit your response to the time period January 1, 1999 through December 31, 2008.



Finally, if you have any questions or require additional information, please correspond with me at any of the contact points below.

Sincerely yours,



Robert G. Bernhoff  
Attorney and Counselor at Law

Cc: Gerard Marchelletta, Jr

Enclosures: - From 2848  
- FOIA Request dated May 2, 2009  
- Response to the May 2, 2009 Request fr. Tim D. Christian, Disclosure Office,  
letter dated June 8, 2009

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Box #	Contents	Grand jury	Discovery at indictment	Made available to review	Trial Subpoena	Content Details
1 of 45	U.S. Customs Records	yes	yes			
			(Box 2)			US Customs investigations, Treasury investigation transcript Fed-ex checks copies Booher private aircraft activity records Treasury Financial Crimes Enforcement Network Intelligence Report Database extracts pf Circle Industries, Higgs & Johnson, & G. Marchelletta Shipping Records Fed Ex Dest Address Query results
2 of 45	Yates Construction	yes	yes			Yates Construction contracts, transaction records
	Delta Airlines		(Box 10)			financials, transaction records
	NY NY Casino					financials, transaction records
	Industrial Corrosion Control					financials, transaction records
	GBIC Bank Statements-Suntrust					financials, transaction records
	Eagle Finishing Bank Statements-BOA					financials, transaction records
	RGB Commercial Statements-BB&T					financials, transaction records
	Hardin Construction project records					financials, transaction records
	Consulta America Statements-Suntrust					financials, transaction records
	Choate Construction project records					financials, transaction records
	Beck Construction project records					financials, transaction records
3 of 45	Bank of America -Circle Industries	yes	yes			wire transfers, checks, deposits '99/00
			(Box 7)			
4 of 45	Bank of America -Circle Industries	yes	yes			statements and signature cards, checks '00
			(Box 5)			
5 of 45	IRS Filings	yes	yes			Gerard Marchelletta's transcripts
	IRS Forensic Lab Report		(Box 1)			G&C Loan agreement
	CPA Gary Schwartz					grand jury subpoena response, company and personal transcripts and business records
	CPA Stanley Schleger					company and personal transcripts and business records
6 of 45	Circle records (from Circle)	yes		yes		*returns taken out for use as trial exhibits Circle check copies: AT&T Card services, MBNA of America, Citibank Advantage, American Express, AT&T Circle financial invoices, bank statements, general ledgers
7 of 45	Royal Crown Drywall -Bank of America	yes	yes			Nationsbank George Gorman d/b/a Royal Crown Drywall Exchange Control Dept records from Scotia Bank, Bahamas C&G Enterprises payment invoices, deposit slips G&C Enterprises, G&C loans, board minutes, financial records, payment records
	Records from Eagle Managed Subcontractors		(Box 4)			Eagle Management Subcontractors returns (from CPA)

EXHIBIT N

Box #	Contents	Grand jury	Discovery at indictment	Made available to review	Trial Subpoena	Content Details
8 of 45	Bank of America Circle checks	yes	yes			
			(Box 6)			
9 of 45	Bank of America 1998 Circle checks	yes		yes		Royal Crown Drywall account summaries, deposit items, and checks (BoA), Circle Enterprises (NationsBank), account summaries
10 of 45	Bank of America acct. for J. Marchelletta Jr.	yes	yes			
	American Express Records		(Box 9)			George Gorman & Deborah Greco
	Banco Popular acct. for George Gorman					
	First Union acct. for Harborside @Sun Int'l					
	Scotia Bank-Circle Group					
	File from Johnny Isaakson' Office					letters of correspondence
11 of 45	Randy Brown CPA	yes	yes			
	Marc Dorman Builder		(Box 13)			building & design clients' records
	Diversified Cabinet Distributors Inc.					building & design clients' records
	Williams Bros. Lumber					building & design clients' records
	Cameron Padgett Architects					building & design clients' records
	Cumming Veterinary Clinic					building & design clients' records
	Stone Age Designs					building & design clients' records
	Iron Works International					building & design clients' records
	Spacemakers					building & design clients' records
	Crawford Landscaping					building & design clients' records
	Shamrock Door Co.					building & design clients' records
	New Earth Moving & Excavating					building & design clients' records
	Specialty Fountain					building & design clients' records
	American Landmark Fence					building & design clients' records
	Modern Industries					building & design clients' records
	Custom Tubs					building & design clients' records
	Ferguson Enterprises					building & design clients' records
	Progressive Lighting					building & design clients' records
	Penco Electrical Contractors					building & design clients' records
	Bartlett Heating & Cooling					building & design clients' records
	Mulchman					building & design clients' records
	Cat Rental Store					building & design clients' records
	Allgreen Landscaping					building & design clients' records
	All About Vacuums					building & design clients' records
	Invisible Fence					building & design clients' records
	Interior Design Atlanta					building & design clients' records
	Precision Sprinkler					building & design clients' records
	Perimeter Bobcat					building & design clients' records
	Alpharetta Police Department					incident report at Marchellettas' home
	Marble Creations by Testa					building & design clients' records
	Gilmore Drywall					building & design clients' records
	Hong Kong Tailors					building & design clients' records
	LDI Reproprinting Center					building & design clients' records
	L.B. Hydroseed					building & design clients' records
	Exclusive Floor Supply					building & design clients' records
12 of 45	Nastasi & Associates	yes	yes			checks Circle Group LLC consulting fees records K-1 shareholders for Circle/Nastasi
	Wilson, Brock & Irby LLC		(Box 11)			
	Circle/Parke					financial statements, personal statements for John Bowe, Frank nastasi accounts receivable Parke v. Circle arbitration records
	Jill Elliott LLC					

Box #	Contents	Grand jury	Discovery at indictment	Made available to review	Trial Subpoena	Content Details
	North American Mortgage Washington Mutual Bank First Colony Bank					loans and lending for Marchelletta Jr. loans and lending for Gerard Marchelletta
13 of 45	Records from Circle	yes		yes		Circle Industries deposits '99
14 of 45	Bank of America Circle checks	yes	yes (Box 8)			
15 of 45	CPA Randy Brown	yes	yes (Box 12)			Circle Industries financials J. Marchelletta Sr. 1040's Circle Industries 2003, returns, ledgers, financial reports J. Marchelletta Jr. 1040's Circle Group LLC financials
16 of 45	Records from Circle	yes		yes		Circle Industries cash receipts '01 & operating statements
17 of 45	Records from Circle	yes		yes		Circle Industries financials
18 of 45	Records from Circle	yes		yes		Circle Industries Purchases Journals '99, general ledgers, cash receipts summaries
19 of 45	Records from Circle	yes		yes		Circle Industries construction contracts & financials
20 of 45	Records from Circle	yes		yes		Circle Industries disbursement journals, cash receipts summaries
21 of 45	Records from Circle	yes		yes		Circle Group Bahamas docs Turks & Caicos Banking Co Limited checks, statements ScotiaBank account statements
22 of 45	Records from Circle	yes		yes		Circle Industries general ledgers, statements, check copies NationsBank account statements
23 of 45	Records from Circle	yes		yes		Circle Industries general ledgers, statements, check copies
24 of 45	Records from Circle	yes		yes		Circle Industries general ledgers '99-02 Circle Bahamas applications for payments Circle Industries & Circle Group project descriptions & payment info
25 of 45	Records from Circle	yes		yes		Circle Group LLC subpoena to testify before grand jury BoA acct statements payroll reconciliation '00
26 of 45	Records from Circle	yes		yes		Circle Industries statements, check copies, deposits for BoA & NationsBank credit/debit accounts

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Box #	Contents	Grand jury	Discovery at indictment	Made available to review	Trial Subpoena	Content Details
27 of 45	Records from Circle	yes		yes		Tax Returns Business Licenses Circle Group yearly check register organization docs for Circle Group LLC corp records 941's, workers comp records, leases Circle Industries life insurance records, general ledgers, purchases journals
28 of 45	Records from Circle	yes		yes		Circle Group Bahamas check copies '02
29 of 45	Records from Circle	yes		yes		Circle Industries BoA Statements Bank South operating statements payroll reconciliations '99 NationsBank check copies
30 of 45	ScotiaBank Records Received from Circle	yes		yes		Circle Industries Ltd. Scotiabank checking acct records, check copies
31 of 45	Records from Circle	yes		yes		general ledgers, purchase journals, sales journals
32 of 45	Records from Circle	yes		yes		Circle Industries Bank South operating acct check copies '98
33 of 45	NationsBank - Circle checks (duplicates)	yes		yes		Circle Industries BoA statements, incoming checks
34 of 45	Fulton County Public Records	yes	yes			Courthouse records Fulton Co. deeds Civil suit records for Seay v. Marchelletta
	Seay Construction Records		(Box 3)			Seay Construction invoices, bank statements, mortgage records
35 of 45	Trial Exhibits Not Used	yes				Seay v. Marchelletta depositions: Susan McKay (5/20/02), Randy Kottwitz (5/22/02)  Docs prepared as trial exhibits, not entered as evidence: Chavis sales order, credit card statements, Circle Group accounts payable clients request amounts owed, quarterly reports, duplicate Circle Industries business records, Gerald and Margaret Marchelletta additional income items, personal income tax returns  Construction security deed - Grantor GM Jr. North American Mortgage Deed of GM Jr. Quit Claim Deed of Gift Jerry Marchelletta Sr & Margaret Joint Tenants Business Record Certificate for Marchelletta purchase of property at Wilson, Brook & Irby LLC G&C Board Minutes, Incorporation Certificate C&G Scotiabank deposits, exchange control reports Jerry Marchelletta note to pay G&C (4/10/99) Gorman/Marchelletta payments & loans Circle Industries payroll for Jerry Marchelletta

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Box #	Contents	Grand jury	Discovery at indictment	Made available to review	Trial Subpoena	Content Details
36 of 45	Documents received from Trial Subpoenas	no	no		yes	These documents were removed and provided to Deborah Lambert-Dean of IRS Counsel.  US v. Sharpe depo of Ted Robertson (12/15/04) JP Morgan account records, deposit slips, checks, checking acct overview - Jerry/Margaret Marchelletta BoA records Jerry Marchelletta Jr '03/04 Nations Bank savings records Jerry & Sandy Marchelletta BoA signature cards - Margaret Marchelletta Astoria Federal Savings and Loan BoA signature cards - Jerry, Margaret, & Sandy Marchelletta Certified Records: 1040, 1120, RTVU NationsBank of GA signature cards and acct summaries - Jerry & Sandy Marchelletta
	Turned Over to Defense Before or During Trial					
37 of 45	SunInternational @Harborside Records City National Bank	yes		yes		check copies '98-'02 check copies '98-'02
38 of 45	Circle Parke company records	yes		yes		TPI/Parke Construction Group Inc. IRS Notices of Levy on Income Nov 95 - Carlton & Brenda J Hill Parke Construction Bank statements '95 Parke Payroll summary '95 Job Estimates '95, time sheets, operations/employee info, billings, faxes, company notes, invoices United Health Care correspondence and billing Steve McManus checks from Parke Distributions Estimate '95 workers compensation info docs re: Steve McManus separation from Circle Park Construction subcontractor completed insurance '95 cash received, voided checks Parke Insurance forms & correspondence '95/'96 '95 corporate taxes '96 legal correspondence Parke/Circle Park payroll to be entered Circle USA/Parke Construction accounts details Capitol Materials receipts Parke Construction IRS notices '93 corp. tax Var. creditors invoices, Phone Bills, Client Billing, Blank checks, envelopes
39 of 45	Circle Parke company records	yes		yes		employee termination forms and layoff sheets, personnel list, payroll binders 1st, 2nd quarters '94
40 of 45	Circle Parke company records	yes		yes		Terminations and layoffs cont'd Parke Construction '93 general ledger, accts payable Parke 940's & 941's, payroll taxes worksheets'93 '93 Parke paid bills, bank statements, state withholdings, cash receipts, void checks, W-2's, W-3's Dan Harris checks from Parke Gregg Luborty Expense
41 of 45	Circle Parke company records	yes		yes		Circle industries v Parke Construction litigation Business records, financials for Parke

Box #	Contents	Grand jury	Discovery or indictment	Made available to review	Trial Subpoena	Content Details
42 of 45	Circle Parke company records	yes		yes		Circle USA/Parke United Health Care payment table checking worksheets, unused shipping tickets, General Ledger chart of accounts, expense vouchers ('94), accounts payable, additional expenses incurred '94, handwritten deposit lists, varying cash receipts, petty cash check copies, office contributions, requisitions for payment, time sheets ('94), void checks, bank statements, faxes of billings, wire transfers to bank, communication re: IRS notice
43 of 45	Circle Parke company records	yes		yes		Circle USA/ Parke financials: new hires, to pay/paid checklists, '94 general ledgers, job costs, audit reports
44 of 45	Circle Parke company records	yes		yes		misc. invoices & receipts, bank statements, '94 W-2's, W-3's, GA Dept of Revenue form G-3 Marine Midland 941's & 940's, '94 payroll tax worksheets, correspondence
45 of 45	Circle Parke company records	yes		yes		Parke Construction '95 financials accounts receivable, general ledgers, accounts payable, job costs, cash distributions

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