

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 07-CR-30193-JPG
	)	
TARA PRINCE,	)	
	)	
Defendant.	)	

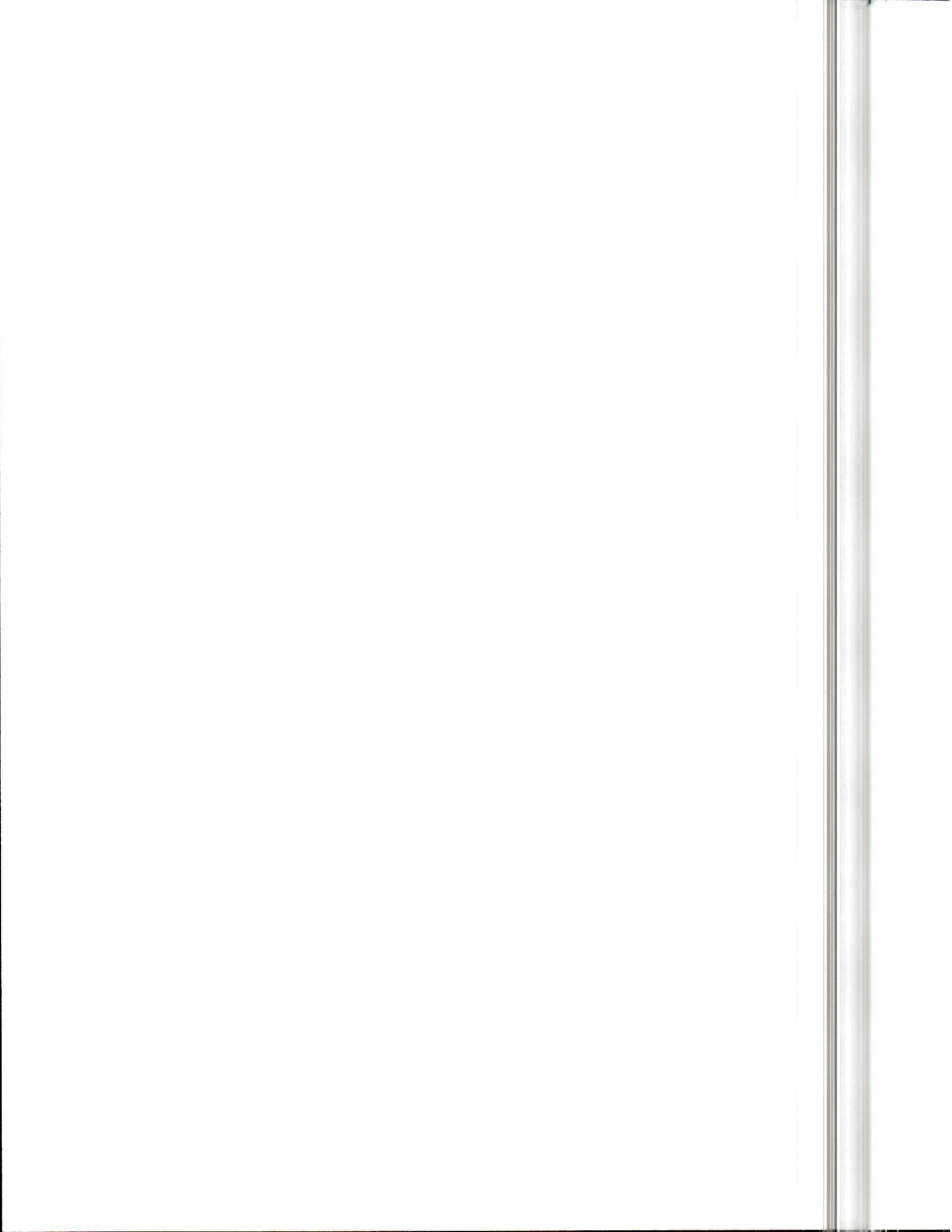
**DEFENDANT’S MOTION TO DISMISS INDICTMENT ON GROUNDS OF  
DUPLICITY, OR IN THE ALTERNATIVE TO REDACT PARAGRAPHS  
1-65, 70-73,79, 80, 83, 84, and 85 AND MEMORANDUM IN SUPPORT**

Comes now Defendant, Tara Prince, by her attorneys John Stobbs and Grant Shostak and for her Motion to Dismiss Indictment on Grounds of Duplicity or in the Alternative To Redact Paragraphs 1-65, 70-73, 79, 80, 83, 84 and 85 states:

1. Count I of the Indictment alleges that “From on or about January 17, 2002, and continuing to on or about May 16, 2006 ... Defendant herein [along with codefendants] did unlawfully and knowingly conspire, combine, confederate and agree [with each other and with others] to devise a scheme and artifice to defraud and to obtain money for private gain ... by false and fraudulent pretenses, representations, and material omissions ... through the use of the United States postal service, private and commercial interstate carriers, and through the use of interstate wire communications, all in violation of Title 18, United States Code, Sections 2, 1341, 1343, 1349.

2. The Indictment goes on to allege at least 10 specific instances of alleged fraudulent use of the United States Postal Service and use of wire communications service in support of this allegedly fraudulent scheme.

3. Count one of the Indictment alleges at the very least two separate offenses and at the most over 40, depending how one reads it. The alleged violated statutes carry the



following legal meanings: 18 U.S.C. §2 charges that one is a principal in an offense; 18 U.S.C. §1341 charges mail fraud; 18 U.S.C. §1343 charges wire fraud; 18 U.S.C. §1349 indicates that one is subject to same penalties if one is found guilty of having conspired to commit any crime within the chapter. At the very least, the Indictment appears to charge the two separate offenses of conspiracy to commit mail fraud under §1341 and conspiracy to commit wire fraud under §1343. An alternative reading of the Indictment would seem to allege that the Defendant both conspired to commit and committed each of the named offenses.

4. Because the Indictment therefore joins two or more distinct and separate offenses in one count, it is duplicitous and should be dismissed.

5. Additionally, paragraphs 1- 65, 70-73,79, 80, 83, 84, and 85 of the Indictment contain information which is extraneous, prejudicial, will confuse a jury as to the role and purpose of the Indictment and violative of Federal Rules of Criminal Procedure 7(c)'s command that an Indictment be a "plain, concise, and definite written statement of the essential facts constituting the offense charged."

### *Memorandum in Support of Motion*

#### **I. Introduction**

The issue at hand is the perfect example of the refrain, "the less said the better," or "less is more." Here, the Government has globbed into a turgid 32 page Superseding Indictment 10 pages of "background information" which is repetitive, prejudicial and duplicative. The Government should not be allowed to present to a prospective jury an Indictment that is violative of Ms. Prince's Constitutional rights and Federal Rule of Criminal Procedure 7.

#### **II. Count I of The Indictment Is Duplicitous, And Therefore Ought To Be Dismissed**

A duplicitous Count joins two or more distinct and separate offenses in the same count. *United States v. Marshall*, 75 F.3d 1097, 1111 (7th Cir. 1996); *Gerberding v. United States*, 471 F.2d 55 (8th Cir. 1973). However, a Count may not be duplicitous if it is simply





stating different instances as alternative means by which the Defendant committed the same offense. *United States v. Berardi*, 675 F.2d 894, 897 (7<sup>th</sup> Cir. 1982)(citing *United States v. Pavloski*, 574 F.2d 933, 936 (7<sup>th</sup> Cir. 1978); *United States v. Tanner*, 471 F.2d 128, 138 (7<sup>th</sup> Cir.), cert. denied, 409 U.S. 949, 93 S.Ct. 269, 34 L.Ed.2d 220 (1972)).

There are two reasons that the allegations of Count I cannot be considered as merely stating alternative means by which Ms. Prince committed the same offense. First, Count I alleges a violation of four different statutes with conflicting statutory elements. See *United States v. Zeidman*, 540 F.2d 314, 317 (7<sup>th</sup> Cir. 1976)(“Any analysis of whether the acts alleged in an indictment charge more than one offense must start with the statute.”). Specifically, §1341 requires a use of the United States Postal Services, but does not indicate that use of “wire, radio, or television communications” would violate the statute. For a statutory violation under §1343 to have occurred, one must be found to have “[transmitted or caused to be transmitted something] by means of wire, radio, or television communication in interstate or foreign commerce.” 18 U.S.C. §1343. Section 1343 does not require a use of the U.S. Postal Service.

The Indictment at issue alleges a number of different misrepresentations. Certain paragraphs — 74, 75, 76, 78, 79, 80, 81, 82, and 86— indicate that Ms. Prince used the U.S. Postal Service. Other paragraphs – 75, 77, 83 – specifically allege use of wire, radio or television communications. Still other paragraphs – 70, 71, 72, 73, 84, 85 – allege no use of or intent to use either the U.S. Postal Service or wire, radio or television communications<sup>1</sup>. The various paragraphs are therefore not uniform in supporting the violation any one offense. Therefore, they cannot be interpreted as merely expressing various means by which one offense was committed.

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<sup>1</sup> These paragraphs would seem to vaguely refer back to paragraph 67, which specifically alleges that the “Co-Conspirators caused forms and correspondence to be sent to the insurance companies and their representatives by United States Mail, by private and commercial carrier, and by telephone facsimile in interstate commerce.” However, they are entirely unclear as to what statutory violation these misrepresentations are alleged to have been a part of. Therefore, in light of Fed. Rule Crim. Pro. 7(c)’s command that an indictment be a “plain, concise, and definite written statement of the essential facts constituting the offense charged,” these paragraphs ought to be redacted in any case.





Second, even if the various actions by Ms. Prince could be said to uniformly express the violation of one offense under one statute, the actions nonetheless cannot be interpreted as doing so because they do not bear a sufficient nexus to one another that they could be said to constitute one continuous scheme. When evaluating whether a specific count alleges distinct and separate offenses or merely states different means by which one continuous offense has been committed, courts have looked to the period of time that elapsed between the various offenses and whether the offenses alleged were all part of one continuous scheme sharing a common motivation or purpose. *United States v. Klatt*, 156 F.3d 1258 (D.C. Cir. 1998)(citing *United States v. Alsobrook*, 620 F.2d 139, 142 (6th Cir.1980) for the proposition that, “Several acts may be charged in a single count if the acts ‘represent a single, continuing scheme that occurred within a short period of time and that involved the same Defendant,’” and finding that where the Defendant’s acts all occurred within 6 months of one another and were motivated by the same triggering event, the count was not duplicitous). The Seventh Circuit has stated the question as whether the acts bear a “sufficiently close nexus with one another” such that they could be “characterized as one scheme.” *Zeidman*, 540 F.2d at 317 The various acts alleged in this case do not bear this sufficient nexus. First, the acts themselves took place over too long a period of time to be considered part of one continuous scheme. The Indictment alleges that these acts took place over a four-year period. This is too long a period to be considered one continuous act. Additionally, the alleged acts constituted separate communications with separate recipients, separate purposes, and separate alleged “victims.” Paragraph 74 alleges that the recipient was the National Council on Compensation Insurance, Inc., and was regarding L.T. Consulting’s own workers compensation policy. Paragraph 77 alleges communication with a specific insurance company and had to do with workers compensation policies for various clients of L.T. Consulting. Paragraph 79 involves an alleged communication with L.T. Consulting to an employee of the 7<sup>th</sup> Street Café. These acts were not sufficiently connected to be part of one continuous scheme.





Moreover, for purposes of the mail and wire fraud statutes, each separate mailing or wire communication is a separate offense. *United States v. Hammen*, 977 F.2d 379, 382 (7<sup>th</sup> Cir. 1992). The Seventh Circuit has clearly acknowledged that combining multiple mailings into one Count can constitute a duplicitous Indictment. *Id.* at 383 (holding that while the fact that separate offenses were encompassed in one Count did not automatically mean it was duplicitous, the avoidance of duplicity under these circumstances required “careful crafting.”) Here, the “careful crafting” has been thrown by the wayside in favor of a 32 page Superseding Indictment.

Duplicitous Counts in an Indictment violate Ms. Prince’s Sixth Amendment right to know the charges against her. The prohibition against duplicity also guards against the possibility of later confusion as to the basis of a conviction by ensuring that the Defendant is not subjected to subsequent prosecutions for the same offense. *United States v. Tanner*, 471 F.2d 128, 139 (7th Cir. 1972). Duplicity can also lead to prejudice in the shaping of evidentiary rulings. *United States v. Marshall*, 75 F.3d at 1111. Further, a general verdict on a duplicitous Count brings with it the risk that the jury did not unanimously agree on the basis for conviction. *United States v. Starks*, 515 F.2d 112, 116-17 (3d Cir. 1975). In other words, it creates the risk that some members of the jury will find the Defendant guilty as to one offense, and some members will find her guilty as to the other, but all twelve will not agree as to a single offense. *United States v. Marshall*, 75 F.3d at 1111. This type of confusion should be avoided.

All of these concerns are fully at play in this case. It is entirely unclear from the Indictment whether Ms. Prince is being charged with mail fraud, wire fraud, conspiracy to commit mail fraud, conspiracy to commit wire fraud, or multiple offenses of each of the foregoing. The jury will be left with the impression that “there has to be something somewhere that she did in this 32 page tome.” Going forward with this case in light of this duplicitous count would cause be a serious offense against Ms. Prince’s due process rights. As such, the Indictment should be dismissed.





**III. In The Alternative, This Court Ought to Redact Paragraphs 1 -65, 70-73,79, 80, 83, 84, and 85 Of The Indictment Because They Are Extraneous, Confusing, Highly Prejudicial, And Fail to Comport With Rule 7(c)'s Command That An Indictment Be A "[P]lain, concise, and definite written statement of the essential facts constituting the offense charged."**

Rule 7(c) of the Federal Rules of Criminal Procedure commands that an Indictment be a "[P]lain, concise, and definite written statement of the essential facts constituting the offense charged." "Surplusages may be stricken from the Indictment if the court finds the language to be immaterial, irrelevant, or prejudicial." *United States v. Marshall*, 985 F.2d 901 (7<sup>th</sup> Cir. 1992) (citing *United States v. Andrews*, 749 F.Supp. 1517, 1518 (N.D.Ill.1990); *United States v. Reliable Sheet Metal Workers*, 705 F.2d 461 (7th Cir.), cert. denied, 462 U.S. 1134. An Indictment which fails to meet the command of 7(c) runs the risk of "improperly placing before the jury extrinsic material the jury should not consider." *U.S. v. Klein*, 93 F.3d 698, 703 (10<sup>th</sup> Cir. 1996). "[W]hen the unredacted information relates to prejudicial unproven facts . . . the risk of biasing the jury is great enough to require redaction." 93 F.3d at 703 (citing *United States v. England*, 966 F.2d 403, 408 (8th Cir.), cert. denied, 506 U.S. 1025, 113 S.Ct. 668, 121 L.Ed.2d 592 (1992)).

Specifically, the following paragraphs should be redacted for the stated reasons:

1. Paragraphs 1 -18 constitute purely extraneous background information, the essential elements of which are sufficiently stated in paragraphs 66-85 of the indictment. This background information is unnecessarily detailed and will mislead the jury into believing that the purpose of the Indictment is to educate the jury as to the law or facts rather than merely stating a charge. Moreover, none of these paragraphs mention Ms. Prince by name, or describe any alleged acts in which she took part. The level of detail in these paragraphs will allow the jury to use the Indictment to fill in gaps in the case which the Government fails to explain through witnesses and other properly admitted evidence. It thus unnecessarily and





prejudicially encourages the jury to misuse the Indictment not as a mere charge, but as evidence in the case against Ms. Prince. *See U.S. v. Peters*, 435 F.3d 746 (7th Cir., 2006) *United States v. Mastrandrea*, 942 F.2d 1291, 1293 (8th Cir.1991) ("Allegations in an Indictment that are not necessary to establish a violation of the statute in issue are mere surplusage and may be disregarded if the remaining allegations are sufficient to charge a crime.")

2. Paragraph 19, 22, 23, 24, 27 and 28 contain details into the business relationship between the co-conspirators and various corporate entities which are not essential to the charges in this case. This is prejudicial because it will focus the jury on the development of the various business relationships rather than the essential nature of the charges being brought. This information will confuse the jury as to what exactly is being charged such that a jury could believe that it could find Ms. Prince guilty solely based on its finding that a business relationship existed between Ms. Prince and the other persons named in this count. The level of detail in these paragraphs will allow the jury to use the indictment to fill in gaps in the case which the Government fails to explain through witnesses and other properly admitted evidence. It thus unnecessarily and prejudicially encourages the jury to misuse the Indictment not as a mere charge, but as evidence in the case against Ms. Prince.
3. Paragraphs 20, 25, and 26 are irrelevant, extraneous, and highly prejudicial. The details of Laura Krpan's previous Indictment, guilty plea, and incarceration are irrelevant to the current charges against Ms. Prince. They are nothing more than a "red herring" which will be used to poison the venire panel against Ms. Prince. Admission of this in the context of the Indictment or the otherwise violates Rule 404(b) of the Federal Rules of Evidence and is highly prejudicial because it encourages the jury to judge Ms. Prince on the basis of her co-conspirator's prior bad acts, in violation of her due process rights. *See U.S. v. Torres-Gonzalez*, 526





F. Supp. 2d 210 (D.P.R. 2007)(reference to details of previous conviction in an Indictment was prejudicial and should be redacted).

4. Paragraphs 29, 30, 31, 32, 33, and 34 set forth the Government's general theory of the case and are generally repetitive of the actual allegations described in paragraphs 66 -85. They are highly prejudicial because they unnecessarily and unfairly repeat and reinforce the government's theory of the case. The level of detail in these paragraphs will allow the jury to use the Indictment to fill in gaps in the case which the Government fails to explain through witnesses and other properly admitted evidence. It thus unnecessarily and prejudicially encourages the jury to misuse the Indictment not as a mere charge, but as evidence in the case against Ms. Prince.
5. Paragraphs 35, 36, and 37 set forth the Government's general theory of the case with regard to 7<sup>th</sup> Street Café, and are extraneous and repetitive of paragraphs 79 and 80, which set forth the essential elements of the offense as related to these transactions. These two paragraphs are prejudicial in that they utilize the Indictment to unfairly bolster the Government's case. The needless level of detail in these paragraphs will allow the jury to use the Indictment to fill in gaps in the case which the government fails to explain through witnesses and other properly admitted evidence. It thus unnecessarily and prejudicially encourages the jury to misuse the Indictment not as a mere charge, but as evidence in the case against Ms. Prince. Moreover, paragraphs 79 and 80 themselves and reference to the specific transactions involved ought to be struck because they do not allege actions in furtherance of a fraud from which Ms. Prince allegedly sought pecuniary gain, but rather they allege attempts to cover up an alleged previous fraud. *See, e.g., United States v. DiDomenico*, 78 F.3d 294, 303 (7th Cir. 1996) (“[A] conspiracy, and a conspiracy to conceal an earlier, completed conspiracy, are two different conspiracies”).



6. Paragraphs 38 – 47 set forth the Government’s general theory of the case with regard to the transactions concerning MLB Consulting, and are extraneous and repetitive of paragraphs 70 – 73 of the Indictment, which set forth the essential elements of the offense as related to these transactions. Specifically, mention of the alleged audit and its allegations constitutes specific evidence in the case, which itself would be inadmissible under the hearsay rules absent a proper testifying witness. The audit is not a fact establishing the charge. These paragraphs are prejudicial in that they utilize the Indictment to unfairly bolster the Government’s case. The level of detail in these paragraphs will allow the jury to use the Indictment to fill in gaps in the case which the Government fails to explain through witnesses and other properly admitted evidence. It thus unnecessarily and prejudicially encourages the jury to misuse the Indictment not as a mere charge, but as evidence in the case against Ms. Prince.
7. Paragraphs 48 -52 set forth the Government’s general theory of the case and cite to evidence regarding alleged misrepresentations made by representatives of L.T. Consulting concerning classification codes of employees to be covered by the workers compensation programs. These paragraphs and are extraneous and repetitive of paragraph 68, which sets forth the essential elements of the offense as related to these transactions. Specifically, mention of the Audit which purportedly establish these misrepresentations is specific evidence in the case, and is not a fact establishing an element of the charge. These paragraphs are prejudicial in that they utilize the Indictment to unfairly bolster the Government’s case. The level of detail in these paragraphs will allow the jury to use the Indictment to fill in gaps in the case which the Government fails to explain through witnesses and other properly admitted evidence. It thus unnecessarily and prejudicially encourages the jury to misuse the Indictment not as a mere charge, but as evidence in the case against Ms. Prince.





8. Paragraphs 53-65 (through the statement of count 1) set out the Government's general theory of the case with regard to misrepresentations allegedly made to NCCI and client companies allegedly in order to obtain lower workers compensation premiums and maintain a solid customer base. These paragraphs are extraneous and repetitive of paragraphs 67-73, which set forth the essential elements of the offense relating to these transactions. They are prejudicial in that they utilize the Indictment to unfairly bolster the government's case. The level of detail in these paragraphs will allow the jury to use the Indictment to fill in gaps in the case which the Government fails to explain through witnesses and other properly admitted evidence. It thus unnecessarily and prejudicially encourages the jury to misuse the Indictment not as a mere charge, but as evidence in the case against Ms. Prince.
9. Paragraphs 70, 71, 72, 73, 84, 85 ought to be struck from the Indictment because they allege no specific use of or intent to use either mails or wire, radio or television communications. They are therefore irrelevant to any charge of mail or wire fraud and highly prejudicial because they constitute evidence of unproven bad acts and are inadmissible character evidence.
10. Paragraphs 79, 80, 83, and 84 ought to be struck because they are not part of an alleged plan to commit mail or wire fraud for the purpose of pecuniary gain, but rather allege acts in cover-up of a plan already allegedly committed. *See, e.g., U.S. v. DiDomenico*, 78 F.3d 294, 303 (“[A] conspiracy, and a conspiracy to conceal an earlier, completed conspiracy, are two different conspiracies”). They are therefore irrelevant to the charges in the indictment and highly prejudicial because they constitute evidence of unproven bad acts and are inadmissible character evidence.





#### IV. Conclusion

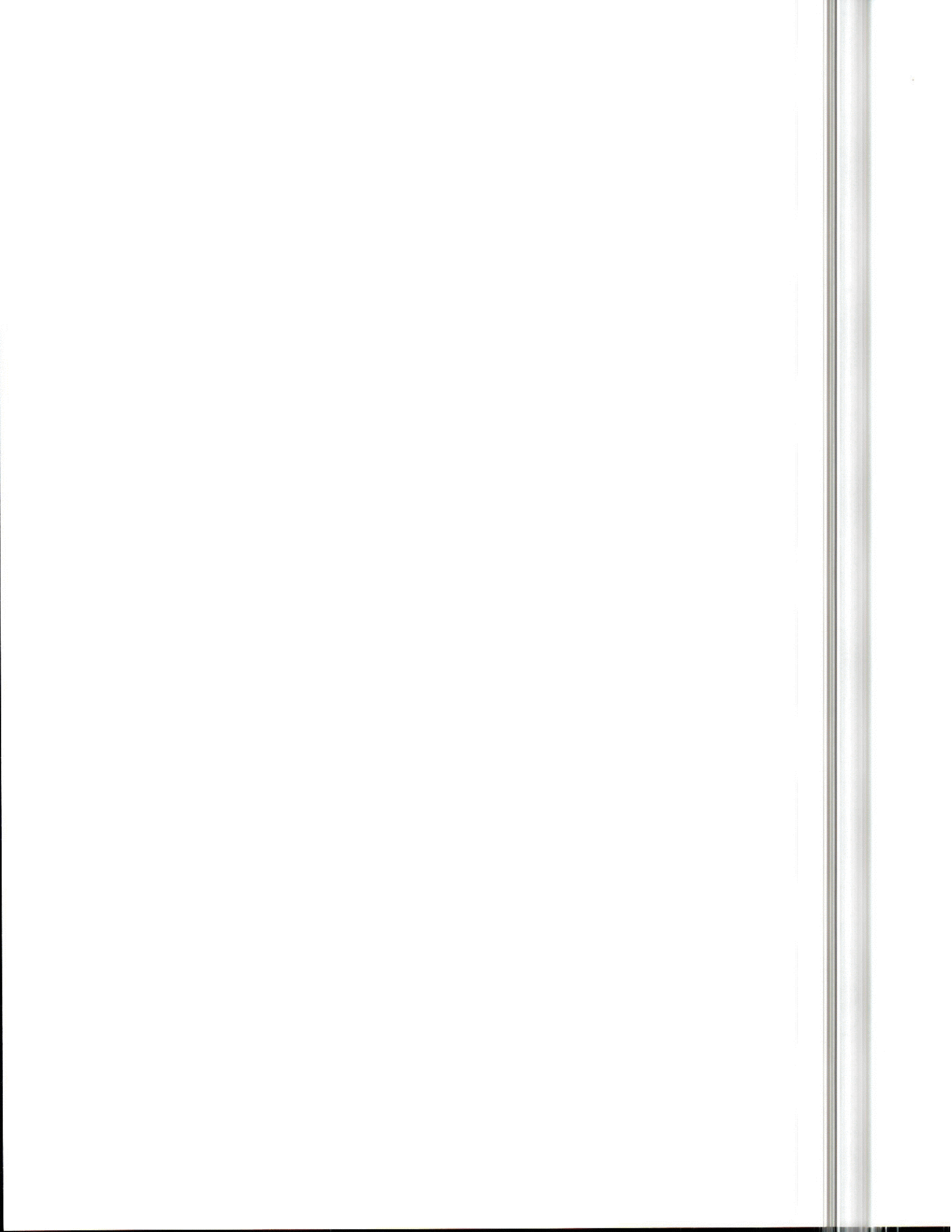
For the foregoing reasons, Defendant respectfully requests that this Court dismiss the entire Superseding Indictment, or in the alternative, redact the paragraphs as requested.

TARA PRINCE

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 16, 2009 a copy of the attached *Motion to Dismiss Indictment on Grounds of Duplicity or in the Alternative To Redact Paragraphs 1-65, 70-73, 79, 80, 83, 84 and 85* states was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

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