



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

WK:SCJ/PTH/MEB
F. #2013R01203

*271 Cadman Plaza East
Brooklyn, New York 11201*

January 9, 2018

By Hand and ECF

The Honorable Eric N. Vitaliano
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Discala, et al.
Criminal Docket No. 14-399 (S-1) (ENV)

Dear Judge Vitaliano:

The government respectfully submits this letter in response to defendant Abraxas Discala's letter dated January 8, 2018 (ECF Nos. 440 ("Cont. Ltr. 3"). In his letter, Discala again reiterates his request for a 45-day continuance of the January 22, 2018 trial date, and also requests that the Court preclude the government from offering at trial any additional exhibits or correcting any draft transcripts or summary charts unless notice is provided 30 days in advance of the trial date. Cont. Ltr. 3 at 1-2. Defendants Kyleen Cane and Craig Josephberg join the request. Id.

The government remains prepared to proceed to trial on January 22, 2018, against Discala, Cane and Josephberg, and none of the additional arguments raised by Discala in support of the motion for a continuance have merit. Furthermore, the defendants' request that the government's case, with respect to all exhibits, be frozen in time 30 days in advance of any trial date is without precedent, not consistent with local practice and not supported by any case law.

A. Exhibits

In this case, the government agreed to and did provide an exhibit list and exhibits to the defendants 30 days in advance of trial, despite two weeks being the standard practice in complex cases in this district. All of the marked exhibits were previously produced in discovery, in most cases years ago. Discala's additional complaints about the government's exhibit list are without merit. For example, Discala claims that there is "no theory" for admitting the documents seized from OmniView's office marked GX 127-34 as a set (Cont. Ltr. 3 at 1), but the very first page of the exhibit is the front of a folder file, indicating that these documents were filed together in a folder. Likewise, the exhibits marked GX 128-1 through 128-5 are each copies of documents, originally organized in binders that were seized from Discala's home, with the cover page of each collection of documents entitled as follows: Regenicin (GX 128-1); The Safety

Group (GX 128-2); Iroquois Master Fund (GX 128-3); Clearing Account Statements (GX 128-4) and The CodeSmart Group (GX 128-5). Discala's claim that he cannot figure out why these documents were marked together as an exhibit when they were organized that way either by him or by someone working under his direction, illustrates the lack of merit of his position.¹

Discala argues that the government should be precluded from offering into evidence any exhibit that Discala deems "deficient," which includes all the documents seized from Discala's home and many of the hard copy sets of documents that the government seized from OmniView's office. Cont. Ltr. 3 at 1-2. The defendant further argues that the government also should be precluded from offering at trial any exhibit that has not been marked or finalized 30 days in advance of trial. *Id.* at 2. There is no basis for this request and no legal support for the argument.

B. Transcripts and Summary Charts

Discala also argues that the government should not be permitted to correct any government exhibit marked as a "draft," particularly transcripts of wiretap recordings or summary charts. *Id.* The government has provided good-faith drafts of the transcripts, and for more than three years the defendants' have been in possession of the recordings of the calls, which are in English, as well as "line sheets."² It is in the best interest of all the parties that the transcripts be as accurate as possible; accordingly, if a mistake in the transcript is caught, it should be corrected. Also, if the government determines that a summary chart it has provided to the defendants should be edited or corrected prior to its introduction into evidence, it should have the ability to do so. The government will, of course, inform the defendants of any material changes that are made to any previously marked exhibit.

C. Reciprocal Discovery

Finally, the government notes that Rule 16 discovery obligations apply to both the government and the defense. Despite demanding reciprocal discovery from the defendants over several dozen times over the last three years, to date the defendants have not produced one document in discovery or identified any evidence they intend to admit at trial, except for the wiretap recordings and text messages identified in Kyleen Cane's first motion in limine regarding the government's wiretap. The government herein reiterates its request that the defendants provide reciprocal discovery.

¹ The particular exhibits identified by Discala as deficient were from either the six boxes of hard copies of documents seized from OmniView's office, or from the fifteen boxes of binders seized from Discala's home. Discala's attorneys reviewed these before they were produced to all defendants in discovery approximately three years ago.

² The linesheets are written summaries of the pertinent recorded calls that are prepared at the time of interception.

Conclusion

For the reasons set forth above, the government respectfully submits that there is no merit to the Discala's further arguments regarding continuance of a trial date and that his requests regarding the government exhibits be denied. The government remains prepared to proceed on January 22, 2018 should the Court determine that trial will begin on that date.

Respectfully submitted,

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