

IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CRIMINAL NO. 07-CR-615 JEC

TOBY MARTINEZ,  
RAUL PARRA,  
MANNY ARAGON,  
SANDRA MARTINEZ,  
a/k/a "Sandra Mata", and  
MICHAEL MURPHY,

Defendants.

**NOTICE OF INTENTION TO INTRODUCE EVIDENCE**  
**PURSUANT TO FEDERAL RULE OF EVIDENCE 404(b)**

The United States, by and through Larry Gomez, United States Attorney for the District of New Mexico, and Paula G. Burnett and Jonathon M. Gerson, Assistant United States Attorneys for said District, hereby provides the Defendants with notice that the United States intends to adduce the evidence described in the following paragraphs during its case-in-chief at trial, or for use in impeachment, or in its case in rebuttal. The United States provides this notice pursuant to Fed. R. Crim. P. 12(b)(4) and as requested by the Defendants, and submits that all such evidence is relevant to the issues to be tried before the jury in this case, both as direct evidence of the charges in the indictment herein and, alternatively, admissible pursuant to the provisions of Fed. R. Evid. 401, 402, 403, and 404. Federal Rule of Evidence 404(b) specifically permits the introduction of evidence of a person's other crimes, wrongs or acts for such purposes as proving a defendant's motive, intent, preparation, common scheme or plan, knowledge and/or

the absence of a mistake or accident on the part of a defendant in connection with a charged crime. These acts occurred both prior, during, and subsequent to the offenses charged in the indictment.

1. The above-described testimony and evidence is offered to show that the Defendants knowingly engaged in acts to defraud the State of New Mexico by use of the United States Mail. They also acted to conceal those acts and the delivery of the proceeds of that fraud through the use of state records and banking facilities. Such evidence is believed to be direct evidence of the conspiracy charged in Count I, and admissible as relevant under Fed. R. Evid. 401, 402, and 403. Such evidence also is believed to be direct evidence regarding the elements of knowledge and intent, which must be proved as to the Defendants in all counts of the indictment. Finally, such evidence is admissible under Fed. R. Evid. 404(b) to show opportunity, knowledge, intent, identity, preparation and planning, and absence of mistake by the Defendants.

2. The evidence is sought to be admitted pursuant to the provisions of Fed. R. Evid. 401, 402, 403, and 404(b). Rule 404(b) allows the admission of evidence of crimes, wrongs or acts other than those specifically charged in the indictment if relevant to show proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

3. In order for evidence of other crimes, wrongs or acts to be admissible pursuant to Rule 404(b), the United States Supreme Court has held that: 1) the evidence must be offered for a proper purpose; 2) it must be relevant; 3) the probative value of the evidence is not substantially outweighed by its potential for unfair prejudice; and 4) upon request, the trial court must instruct the jury that the similar acts evidence is to be considered only for the proper

purpose for which it was admitted. *Huddleston v. United States*, 485 U.S. 681, 691-92 (1988).

4. In accordance with *Huddleston*, the Tenth Circuit requires that Rule 404(b) evidence meet the following criteria: 1) must tend to establish intent, knowledge, motive, identity, or absence of mistake or accident; 2) must also be so related to the charge that it serves to establish intent, knowledge, motive, identity, or absence of mistake or accident; 3) must have real probative value, not just possible worth; and 4) must be close in time to the crime charged. *United States v. Harrison*, 942 F.2d 751, 759 (10th Cir. 1991).

5. Similar acts may be introduced to support the intent element required in a criminal case. Proof that a defendant, who denies knowledge or criminal intent, has previously taken a similar action is evidence that the defendant acted knowingly or with a specific intent and is admissible. *See United States v. Moran*, \_\_\_ F.3d \_\_\_, 2007 WL 2775083, C.A.10 (N.M.), 2007 (evidence of a prior conviction for knowing possession of a firearm is admissible to prove knowing admission of a firearm in the instant case) (quoting *United States v. Queen*, 132 F.3d 991, 996 (4th Cir.1997)). Since the “similar act decreases the likelihood that the charged offense was committed with innocent intent,” the evidence is admissible. *Queen*, 132 F.3d at 996.

6. Evidence is not admissible as long as it proves only propensity, but in *Moran*, the Court reiterates that Rule 404(b) is an inclusive rule and the evidence is to be admitted as long as it proves something other than criminal propensity and bad character (citing *United States v. Cherry*, 433 F.3d 698,701 (10th Cir. 2005) and *United States v. Tan*, 254 F.3d 1204, 1208 (10th Cir. 2001)).

7. The proffered evidence is relevant to the knowledge and intent of each Defendant

which are at issue in this case. *United States vs. Record*, 873 F.2d 1363, 1373 (10th Cir. 1989) (citing *Kendall*, 766 F.2d at 1436). The proffered evidence is also relevant to the issue of planning. The conspiracy and the substantive offenses involved an ongoing scheme to defraud the State of New Mexico, and the uncharged acts listed below are other aspects of the Defendants' plan to obtain payment or benefit to which they had no legal right.

8. The uncharged acts have real probative value in showing the knowledge and intent of the Defendants to defraud the state and to establish a pool of funds from which they could acquire funds for their use and the use of others with political influence on construction projects managed by and funded by the state. They share this similarity with the charged acts because the uncharged acts show the same disregard for state requirements and plan to set up payment for services rendered in the charged acts, in which invoices are inflated to provide funds for payment to the Defendants for which no service was rendered. *Biswell*, 700 F.2d at 1317-18 (citing *United States v. Morales-Quinones*, 812 F.2d 604, 612 (10th Cir. 1987)).

9. There is no absolute rule regarding how much time can separate uncharged acts from charged acts. The Tenth Circuit applies a reasonableness standard, examining the facts and circumstances of each case. *United States v. Cuch*, 842 F.2d 1173, 1178 (10th Cir. 1988); *United States v. Franklin*, 704 F.2d 1183, 1189 (10th Cir. 1983), *cert. denied*, 464 U.S. 845 (1983).

10. The fact that some of the proffered evidence is of subsequent acts to those charged does not bar admission under Rule 404(b). Subsequent acts evidence has been admitted in the Tenth Circuit so long as the requirements of Rule 404(b) are met. *United States v. Hogue*, 827 F.2d 660, 663 (10th Cir. 1987).

11. Under Rule 403, the probative value of the proffered evidence must be weighed by this Court against its potential for unfair prejudice. *Record*, 873 F.2d at 1375. As stated above, the proffered evidence is highly probative on the issues of knowledge, intent, preparation and plan. The uncharged act evidence is prejudicial, but so is all relevant evidence adduced by the United States during the course of a criminal trial. The inquiry for the Court is whether the prejudice is unfair. The United States submits that the highly probative nature of the evidence, both as direct evidence of the charges in the indictment, and pursuant to Rule 404(b), far outweighs any possibly unfair prejudice.

12. The United States seeks to introduce such evidence against each Defendant as described below for precisely these permissible reasons in the instant case. The Defendants are being prosecuted for conspiring together and with others to defraud the State of New Mexico by use of the United States Mail, and to conceal those acts and the delivery of the proceeds of that fraud through the use of state records and banking facilities thereby participating in money laundering activities. To prove these charges, the United States must prove in its case-in-chief that the Defendants had knowledge of the conspiracy, the mail fraud and the money laundering for which they are being held criminally responsible.

***Specific Acts Admissible under Rule 404(b)***

13. The events that the United States intends to present pursuant to Federal Rule of Evidence 404(b) include the following:

a. The New Mexico Second Judicial District Courthouse was designed and built prior to the Bernalillo County Metropolitan Courthouse. Initially, the New Mexico Judicial Information Division (JID) was charged with designing the data network for that courthouse.

Design of courthouse data systems was one of the reasons JID existed. JID designed the system for the Second Judicial District Courthouse. Integrity Network Systems (INS) acquired the contract to install the network system. JID was replaced by Technologies West after the design of the system was completed. Technologies West, a company owned at least in part by Raul Parra, was paid to do the design despite the fact that the design was fully completed.

Technologies West, as a subcontractor of INS, was paid \$160,000.00 for the work on the Second Judicial District Courthouse, including \$10,000.00 for equipment. Payment was made to Technologies West and Defendant Parra despite the fact that the work was unnecessary. The replacement of JID was made in writing at the specific request of the Court. JID is a division of the State of New Mexico.

b. In late 2004 continuing into 2005, a lawsuit involving partners of P2RS, including Defendant Raul Parra, was litigated in the State of New Mexico District Court. A note handwritten by Defendant Parra detailing the payment of funds to various persons, including \$50,000 to “Manny”, was discovered in Technologies West documents during the lawsuit involving the partners of P2RS. This and other payments listed in the note were related to the building of the Second Judicial District Courthouse.

c. In 1998, Bernalillo County requested bids for the building of the Metropolitan Detention Center (MDC). A company named Custer Basarich Limited (CBL) joined with Design Collaborative Southwest (DCSW) and P2RS Group, Inc. (P2RS). P2RS was a company owned at least in part by Defendant Raul Parra. Defendant Parra insisted that the remainder of the team include Defendant Manny Aragon in the project. Defendant Parra told the other company representatives that Parra “takes care of Manny” and that “Manny gets him

work”. The representative of CBL had previously been told in other public projects by Defendant Michael Murphy that Murphy had to “take care of Manny”. Murphy was also involved in the MDC project as construction manager. At times, Defendant Murphy had offices in the CBL building. CBL/DCSW agreed with Defendant Parra that they would pay Defendant Aragon \$66,000.00 if they received the MDC job. Although CBL/DCSW were not the low bidders on the job, they ultimately received the contract and upon instruction from Defendant Parra these companies paid Defendant Aragon \$66,000.00 during the year 1999. CBL paid Defendant Aragon by check to Manny Aragon, Attorney at Law. CBL/DCSW paid an additional \$45,000.00 to Defendant Parra to provide to Defendant Aragon to insure that they would continue to be awarded work on public projects. An amount of \$54,000.00 was included in the contract for the payment of legal services to P2RS, an engineering company owned at least in part by Defendant Raul Parra.

d. Starting as early as 1994 or 1995, the company P2RS paid a retainer to Defendant Manny Aragon. Defendant Parra told his partners that this was a way to get money to Aragon. Defendant Parra convinced his partners that paying a retainer for the services of Manny Aragon gave the company access to Aragon in his position as Senator and said, “ It would be in our best interests to pay Manny to review documents,” and that they needed “to keep Manny on board.”

e. During the time that Defendant Michael Murphy was a board member of the Albuquerque Metropolitan Area Flood Control Authority (AMAFCA), he asked a lobbyist to deliver funds to two influential politicians. Defendant Murphy told the lobbyist that his payment from AMAFCA would be increased to pay for the funds that were to go to these two politicians.

The total amount of the funds that was to be paid to these two politicians was approximately \$30,000.00. The lobbyist refused to agree to this requested arrangement.

f. The building of the new Bernalillo County Metropolitan Courthouse included the installation of a large quantity of distinctive and expensive green and black marble. Around late 2003, shortly before the opening of the new Metropolitan Courthouse, approximately \$50,000.00 worth of this marble was loaded into a private vehicle at the Metropolitan Courthouse and delivered to a house co-owned by Defendants Michael Murphy and Manny Aragon. The marble was in approximately 4 X 4 foot slabs and 40-80 of them were taken from the Metropolitan Courthouse. The delivery to the house located at 7507 Santiago SW in Albuquerque took two to three trips. Defendant Michael Murphy was at the Metropolitan Courthouse to identify what was to be transported. Defendant Manny Aragon was at the site where the marble was delivered and paid the delivery persons for making the delivery.

**Evidence of Other Events That are Also Admissible**

14. The United States also intends to introduce the evidence which follows in its case-in-chief. However, the United States intends to introduce this evidence in its case-in-chief as direct evidence in support of the conspiracy charge in Count I of the indictment. The United States alleges that this evidence does not fall within the scope of Federal Rule of Evidence 404(b), however, it is disclosed in this notice from an abundance of caution:

a. The Metropolitan Courthouse Audio Visual Project was added to the Metropolitan Courthouse as completion of the courthouse neared. Defendant Parra asked the company INS to prepare a quote as the general contractor for the project. INS prepared an initial bid of \$2.8 million. Defendant Parra directed INS to add the company Datcom as a

subcontractor and to add \$1.4 million to the proposed quote, making the quote \$4.2 million. Defendant Parra explained that he intended to get his money from the A-V contract through Datcom. Defendant Parra also explained that the additional amount was to pay Defendant Parra for using his connections to get the contract. Defendant Parra included as his political contacts both Defendant Toby Martinez and Defendant Aragon. INS refused to include the additional \$1.4 million in the quote unless the Metropolitan Court made a written request for the addition. No representative of the Metropolitan Court provided the letter of request. Therefore, INS refused to increase the quoted cost of the A-V contract and notified Defendant Toby Martinez by e-mail that INS would do the job for \$2.8 million. INS did not receive a response from Defendant Toby Martinez. Shortly thereafter, Defendant Toby Martinez represented to two separate judicial representatives, who were overseeing the A-V contract, that INS had gone bankrupt but that a different company named Integrated Control Systems (ICS) would do the job for approximately \$4 million. Defendant Parra told the representative from ICS that the prior company could not obtain the necessary bond. INS had not gone bankrupt and was capable of providing required bonds.

b. DCSW paid funds in addition to the amounts alleged in the indictment to Defendant Toby Martinez for his use and to deliver to others in connection with the construction of the Metropolitan Courthouse. DCSW paid Ken Schultz. Schultz retained a portion of those funds. The remainder was delivered to Defendant Toby Martinez and others for the contracts received by DCSW for the work related to the Metropolitan Courthouse, the garage associated with that building, and for construction management. DCSW also paid Defendant Parra directly, related to Defendant Parra's participation in acquiring the contract for the building of the

Metropolitan Courthouse garage. The money went directly to Defendant Parra rather than his company, P2RS. This payment was not for actual work done on the garage. Both cash payments and checks made out to P2RS were delivered to Defendant Aragon related to the building of the garage for the Metropolitan Courthouse.

**CONCLUSION**

The United States respectfully requests this Court to allow the above-described evidence to be offered in the United States' case-in-chief at trial in this matter, or to be used as impeachment, or to be used by the United States in its rebuttal case. The United States will supplement this notice at such time as additional evidence that may qualify under Fed. R. Evid. 404(b) is available and known to the United States. For the foregoing reasons, the United States respectfully requests that the Court permit the United States to elicit from its witnesses at trial evidence that qualifies as admissible under Rules 401, 402, 403 and 404 and grant such other relief as may be appropriate.

Respectfully submitted,

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I HEREBY CERTIFY that a true and correct copy of the foregoing pleading was served on the following counsel via U.S. Mail on October 25, 2007:

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IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CRIMINAL NO. 07-CR-615

JEC

TOBY MARTINEZ,  
RAUL PARRA,  
MANNY ARAGON,  
SANDRA MARTINEZ,  
a/k/a "Sandra Mata", and  
MICHAEL MURPHY,

Defendants.

**GOVERNMENT'S NOTICE OF INTENT TO INTRODUCE  
CO-CONSPIRATOR STATEMENTS AS NON-HEARSAY  
PURSUANT TO FEDERAL RULE OF EVIDENCE 801(d)(2)(E)**

THE UNITED STATES OF AMERICA by and through Larry Gomez, United States Attorney for the District of New Mexico, Paula G. Burnett and Jonathon M. Gerson, Assistant United States Attorneys for said District, notifies the Court of its intention to elicit from its witnesses co-conspirator statements made in furtherance of the conspiracy charged herein. Co-conspirator statements made in furtherance of the conspiracy are non-hearsay under Rule 801(d)(2)(E) of the Federal Rules of Evidence. The Court should permit the government to elicit such statements because they are relevant, non-hearsay, and otherwise admissible. As further explained below, there is no need for a pre-trial evidentiary hearing on this notice, but admissibility can be determined at trial during the regular course of the proceeding.

***Factual Background***

1. The indictment in this case alleges that the Defendants conspired and joined

together to knowingly engage in acts to defraud the State of New Mexico by use of the United States Mail. They also acted in concert to conceal those acts and the delivery of the proceeds of that fraud through the use of state records and banking facilities thereby violating federal statutes of money laundering. The allegations the Defendants face are fully alleged in the Second Superseding Indictment filed in this case.

***The Rules of Evidence Permit the Admission of Co-Conspirator  
Statements Made in Furtherance of the Conspiracy***

2. The Federal Rules of Evidence prohibit the admission of hearsay "except as provided by these rules...." Fed. R. Evid. 802. The term "hearsay" is defined by the Federal Rules of Evidence. Fed. R. Evid. 801(c). The Federal Rules of Evidence specifically exclude from the definition of hearsay certain categories of declarations. Fed. R. Evid. 801. Specifically excluded from the definition of hearsay is "a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy." Fed. R. Evid. 801(d)(2)(E). The United States intends to elicit co-conspirator statements from its witnesses pursuant to this rule and as such these statements are admissible as evidence against each co-conspirator.

3. Out-of-court statements by co-conspirators are admissible as non-hearsay pursuant to Fed. R. Evid. 801(d)(2)(E), provided that the United States demonstrates by a preponderance of the evidence that: (1) a conspiracy existed, (2) the statement was made by a member of the conspiracy, and (3) the statements that the United States seeks to admit were made during the course and in furtherance of the conspiracy. *United States v. Urena*, 27 F.3d 1487, 1490 (10th Cir. 1994). In making its determination the Court may consider the co-conspirator statements themselves in determining whether the conspiracy existed. *United States v. Lopez-Gutierrez*, 83 F.3d 1235, 1242 (10th Cir. 1996).

4. This Court has discretion as to the process by which it determines that the preponderance standard has been met. *Urena*, 27 F.3d at 1491. The Court is permitted to make its determination based upon the available proof, or even upon statements of counsel, without holding a pretrial hearing. *United States v. Hernandez*, 829 F.2d 988, 994 (10th Cir. 1987) quoting *Weinstein on Evidence* ("At times, the court will be able to make its determination on the basis of proffers or even on the opening or what it knows of the available proof from the pretrial or suppression hearings").

5. A trial court can admit witness testimony at any time under the co-conspirator statement exception to the hearsay rule even prior to determining the existence of the conspiracy. *Urena*, 27 F.3d at 1491. The trial court can admit a co-conspirator's statement "with the caveat that the party offering it must prove the existence of the predicate conspiracy through trial testimony or other evidence." *United States v. Gonzalez-Montoya*, 161 F.3d 643, 648 (10th Cir. 1998).

6. The Court has wide discretion in determining when the United States may make the initial showing so that the Court can determine whether offered evidence is admissible against each of the co-conspirators. "A trial court has no obligation to determine admissibility of possible hearsay at the pretrial state," *United States v. Monaco*, 700 F.2d 577, 581 (10th Cir. 1983). *See also United States v. Peterson*, 611 F.2d 1313, 1330 (10th Cir. 1979), (procedure employed in admissibility determination contemplates presentation of requisite conspiracy evidence before *or during* the government's case-in-chief.)

***Notice of Statements and Categories of Statements that the United States  
Intends to Introduce into Evidence at Trial***

7. In an effort to promote a more efficient judicial proceeding, the United States notifies the Defendants and the Court that it intends to introduce into evidence the following testimony through witnesses that includes statements by Defendants and other co-conspirators. These statements are admissible because they are not hearsay by definition and are admissible to be considered by the jury against each and every member of the conspiracy as proof of the existence of the conspiracy. The United States provides this notice pursuant to Fed R.Crim. P. 12 (b)(4)(a) and as requested by the Defendants. The United States expects to introduce, among other evidence, non-hearsay co-conspirator statements of the following nature and from the following sources:

8. Marc Schiff, partner in Design Collaborative Southwest (DCSW) and a named co-conspirator in this case, has extensive knowledge of conversations between himself and Defendants and between Defendants in his presence during and in furtherance of the conspiracy. He has made statements to the agents in this case that reflect many of the statements made by co-conspirators. Mr. Schiff has pleaded guilty and is expected to testify to the activities and conversations of the Defendants in this case. Reports of interviews of Mr. Schiff by the agents assigned to this case and to his attorney have been provided in discovery to defense counsel. Those statements are numbered B 934-936 and MM 24-27, 29-37 and 40-62 and elsewhere. All statements made by each Defendant to Mr. Schiff or in Mr. Schiff's presence, related to the conspiracy, are not hearsay and therefore are admissible against all Defendants in the conspiracy described in Count I.

9. Kenneth Schultz is a named co-conspirator in this case and has extensive knowledge of conversations between himself and Defendants and between Defendants in his

presence. He has made statements to the agents in this case that reflect many of the statements made by co-conspirators in his presence during and in furtherance of the conspiracy. Mr. Schultz has pleaded guilty and is expected to testify to the activities and conversations of the Defendants in this case. Reports of interviews of Mr. Schultz by the agents assigned to this case have been provided in discovery to defense counsel numbered MM 63-79 and elsewhere. All statements made by each Defendant to Mr. Schultz or in Mr. Schultz's presence, related to the conspiracy, are not hearsay and are admissible against all Defendants in the conspiracy described in Count I.

10. Manuel Guara, the owner of Datcom and a named co-conspirator in this case, has extensive knowledge of conversations between himself and Defendants and between Defendants in his presence during and in furtherance of the conspiracy. He has made statements to the agents in this case that reflect many of the statements made by co-conspirators. Mr. Guara has pleaded guilty and is expected to testify to the activities and conversations of the Defendants in this case. Reports of interviews of Mr. Guara by the agents assigned to this case have been provided in discovery to defense counsel. Those statements are numbered MM 1-7, 80-81, 87-88 and EE1223 and elsewhere. All statements made by each Defendant to Mr. Guara or in Mr. Guara's presence, related to the conspiracy, are not hearsay and are therefore admissible against all Defendants in the conspiracy described in Count I.

11. During the installation of the A-V portion of the construction of the Metropolitan Courthouse, the A-V general contractor, Integrated Control Systems (ICS), collected documentation to support invoices that ICS would submit to the court for payment. ICS demanded additional documentation to support Datcom's invoice. Defendant Parra told co-

conspirator Manual Guara to refuse to supply any additional documentation and to claim that the information was proprietary. No additional documentation was provided and none was required to support the change orders. Statements made by Defendant Parra are admissible in that they were in furtherance of the scheme to insure that insufficient information was provided to ICS and the court to allow anyone reviewing the documents to determine that the invoices had been fraudulently inflated.

12. During the initial phases of the development of the building of the Metropolitan Courthouse and at other times, Defendant Martinez aggressively inserted himself into the building process and stated to several persons that he was handling the contract. As part of this process, he lobbied and made multiple statements and representations to members of the Metropolitan Court and others, who had decision-making authority regarding the building of the Metropolitan Courthouse, seeking to influence them to hire Defendant Michael Murphy, co-conspirator Ken Schultz and ICS. He used his influence to forward the conspiracy by seeking to hire Defendant Michael Murphy as the construction manager who would be responsible for monitoring the expenditure of funds. During the funding phase of the project, he sought to hire Ken Schultz “to help with the Republicans”. The statements of Defendant Martinez were in furtherance of the scheme in that they tended to encouraged the hiring of co-conspirators into job positions that would provide access to funds of the State of New Mexico that could be delivered to the members of the conspiracy.

13. During the 2003 legislative session, Defendant Aragon told a legislative staff member to redirect funds that had been allocated in 1999 to two other projects to the Metropolitan Courthouse for use as additional funding on that project. Defendant Aragon’s

statements, which caused the redirection of the funds, made additional funds accessible to the members of the conspiracy related to the building of the Metropolitan Courthouse.

14. In late 2004 continuing into 2005, a lawsuit involving partners of P2RS Group, Inc. (P2RS), including Defendant Raul Parra, was litigated in the State of New Mexico District Court. As part of that proceeding, Defendant Parra claimed that the funds paid to him by Datcom in the sum of approximately \$1.6 million in relation to the Metropolitan Courthouse was for marketing. He admitted that he had no contract with Datcom and no invoices supported the payment from Datcom. He maintained that the payments were legitimate. Defendant Parra's statements were during the course of the conspiracy and in furtherance of the conspiracy in that the statements were intended to prevent the questioner from identifying the actual basis for the payment of the funds which were fraudulently inflated invoices from Datcom to ICS.

15. After Defendant Toby Martinez was released from his position as Court Administrator by the Metropolitan Court, he sought employment from the New Mexico Department of Transportation (NMDOT). Defendant Parra recommended Defendant Toby Martinez for the job of overseeing the development of land held by NMDOT and related building projects. Defendant Parra sought to further the conspiracy by identifying another construction project through which to defraud the State of New Mexico. Defendant Aragon acted as a job reference for Defendant Toby Martinez. Defendant Toby Martinez was hired to this position in November 2004. After Defendant Toby Martinez was hired by NMDOT, he was named project manager on the development of a NMDOT construction project related to the building of a District 5 building. Defendant Martinez worked with one of the developers and recommended that the developer hire Defendant Parra. The developer began to work with

Defendant Parra although he would not have otherwise done so. In explanation for the large percentage of the building costs that Defendant Parra demanded as a fee for his services, he told the developer that he would be sharing the money with several other people. Defendant Toby Martinez' and Defendant Parra's statements were intended to further the conspiracy in that they would tend to convince a developer that the only way to acquire the work was to insert the conspirators into the development contract. The Defendants' sole task was to use their political power, job assignment and influence to acquire the award of a bid that was legally required to be competitive.

16. The NMDOT began to investigate another project related to a headquarters building known as GOTOD. Another developer began to investigate whether it would bid on the project. During the discussion phase, Defendant Parra contacted the developer and told the developer that Defendant Parra wanted to partner with the developer for the project. Defendant Parra asked for five percent of the construction development costs for his participation with the developer in the project. The \$300 million dollar construction development cost would yield a fee to Defendant Parra of approximately \$15 million. When asked what services Defendant Parra would perform for that large sum, Defendant Parra explained that the developer, with Defendant Parra on board, "would get the contract". Defendant Parra said that to accomplish that, Defendant Parra had to share the funds with several other people. He told the developer that he had the inside track on the bid through political connections. When asked how there was enough money to do this, Defendant Parra said you just know where to look and not to worry, the money would come. Defendant Parra said the developer did not want to get left behind on the project. When the developer later discussed the project with Defendant Martinez, Martinez agreed that

someone might already have the inside track on getting the project. These statements were made before the bids for the project were completed or due. Defendants Martinez' and Parra's statements were intended to further the conspiracy in that they would tend to convince a developer that the only way to acquire the bid on the project was to include the conspirators in the development contract for a large fee. The Defendants' sole task was to use their political power, job assignment and influence to acquire the award of a bid that was required to be competitive.

17. The Metropolitan Courthouse Audio Visual Project was added to the Metropolitan Courthouse as completion of the courthouse neared. Defendant Parra asked the company Integrated Network Systems (INS) to prepare a quote as the general contractor for the project. The quote was not required to be a competitive bid. INS prepared an initial bid of \$2.8 million. Defendant Parra told INS to add the company Datcom as a subcontractor and to add \$1.4 million to the proposed quote, making the quote \$4.2 million. Defendant Parra said that he intended to get his money from the A-V contract through Datcom. Defendant Parra also explained that the additional amount was to pay Defendant Parra for using his connections to get the contract. Defendant Parra included as his political contacts both Defendant Toby Martinez, Metropolitan Court Administrator, and Defendant Aragon, a State Senator. INS refused to include the additional \$1.4 million in the quote unless the Metropolitan Court made a written request for the addition. No request was provided to INS. INS notified Defendant Toby Martinez by e-mail that INS would do the job for \$2.8 million. INS received no response. Shortly thereafter, Defendant Toby Martinez represented to two separate judicial representatives, who were involved in overseeing the A-V contract, that INS had gone bankrupt but that a

different company named Integrated Control Systems (ICS) would do the job for approximately \$4.2 million. Defendant Aragon contacted one of those judicial officers in an attempt to influence that judicial officer to lose confidence in the other judicial officer to insure that the contract moved forward. Defendant Parra told the representative from ICS that the prior company could not obtain the necessary bond. The statements by the Defendants were in furtherance of the conspiracy in that the change in primary contractor was necessary to the conspiracy so that fraudulently inflated invoices could be provided to the state and payment for those fraudulent sums would be processed through the U.S. Mails and ultimately be delivered to the Defendants.

### ***CONCLUSION***

The United States will supplement this notice at such time as additional co-conspirators' statements are available and known to the United States. For the foregoing reasons, the United States respectfully requests that the Court permit testimony at trial of co-conspirator statements made in furtherance of the conspiracy charged herein, and grant such other relief as may be appropriate.

Respectfully submitted,

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