

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:06-CR-00074-1 Britt**

UNITED STATES OF AMERICA,) )  
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 Prosecution ) )  
 )  
 vs. ) )  
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 HOWELL WAY WOLTZ, ) )  
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 Defendant ) )  
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**DEFENDANT HOWELL WOLTZ’S SENTENCING MEMORANDUM**

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COMES NOW, Mr. Howell Way Woltz (hereinafter “Defendant”), by and through his undersigned counsel of record, Tolly A. Kennon, III, Esq., respectfully submitting to this Honorable United States District Court for the Western District of North Carolina (hereinafter “Court”) his Sentencing Memorandum to utilize while ascertaining the appropriate active incarceration sentence that it shall impose against the Defendant at the conclusion of the July 9, 2007 sentencing hearing.

**Introduction:**

On page eight of the Defendant’s January 29, 2007 Plea Agreement is ¶ 24(a). In ¶ 24(a), the Government specifically stated that it “...[had] *determined that the assistance provided by the defendant and his wife to date has been substantial.*” (Doc. 165; emphasis added.) What comes to mind in the listener when the Plea Agreement states that the Defendant’s assistance has been “substantial”? In fact, what does the word “substantial” mean? To put into context just how important it is to determine what we are trying to convey when the word “substantial” is used in connection with the Defendant’s assistance, consider the following fact. On page twenty

of the Plea Agreement, the Government asserted that it could not prove that the crime of money laundering had been committed. Therefore, what does "substantial assistance" really mean?

### **Pertinent Definitions:**

The first and most obvious definition that comes to mind when using the word "substantial" is that whatever it is that we are speaking about, it is in a considerable and more than ample amount.<sup>1</sup> However, the word "substantial" means more than just the concept or idea that something is in a considerable and more than ample amount. Rather, the word "substantial" also means that whatever it is that a person is speaking about, it is of solid character or quality.<sup>2</sup> The word "substantial" also conveys the idea that this something has importance and significance.<sup>3</sup>

The second definition that we must address is the word "assistance". Of course, the word "assistance" literally means the act of assisting.<sup>4</sup> However, this quick and dirty definition leaves us wanting in our larger effort of determining what is "substantial assistance". What we need is a definition that allows us to tangibly understand just how important the Defendant is the Government's continual effort to promote justice and enforce federal law. The most apropos definition for "assistance" is the activity of contributing to the fulfillment of a need or the furtherance of an effort or purpose.<sup>5</sup>

If we were to combine the separate definitions for both "substantial" and "assistance" into one workable and tangible definition that serves our purpose today, that definition will be as

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<sup>1</sup> "substantial." *Dictionary.com Unabridged (v 1.1)*. Random House, Inc. 02 Jul. 2007; "substantial." *The American Heritage® Dictionary of the English Language, Fourth Edition*. Houghton Mifflin Company, 2004. 02 Jul. 2007; and "substantial." *Merriam-Webster's Dictionary of Law*. Merriam-Webster, Inc. 02 Jul. 2007.

<sup>2</sup> "substantial." *Dictionary.com Unabridged (v 1.1)*. Random House, Inc. 02 Jul. 2007; and "substantial." *The American Heritage® Dictionary of the English Language, Fourth Edition*. Houghton Mifflin Company, 2004. 02 Jul. 2007.

<sup>3</sup> "substantial." *Merriam-Webster's Dictionary of Law*. Merriam-Webster, Inc. 02 Jul. 2007.

<sup>4</sup> "assistance." *Dictionary.com Unabridged (v 1.1)*. Random House, Inc. 02 Jul. 2007

<sup>5</sup> "assistance." *WordNet® 3.0*. Princeton University. 02 Jul. 2007.

follows: *“the solid activity of character and quality that contributes to the fulfillment of a prosecutorial need or the important and significant furtherance of the prosecutorial purpose of promoting justice to all persons residing on American soil by enforcing federal criminal law.”* Now, that we have a workable and tangible definition of “substantial assistance”, we can turn our attention to understanding just how the Defendant demonstrated the tenets of this new definition.

**Application of Definition through Demonstration of Cooperation:**

One of the Mr. Woltz’s co-defendants specifically charged with violating federal criminal law in the Indictment is Samuel Thomas Currin. A former United States Attorney and a former judicial hopeful, Mr. Currin was one of the masterminds behind a conspiracy determined to defraud innocent persons out their money by the use and manipulation of securities and trust companies. It was the Defendant that first made governmental officials, both in the United States and the British Caribbean, that Mr. Currin as well as his co-leader, Mr. Jeremy Jaynes – or as the Government has identified him, “Mr. Jö”, was violating law and engaging in activities to steal millions of dollars belonging to other persons and/or entities. Sometime during July 2004, the Defendant contacted Mr. John D. K. Lawrence, a British regulator charged with enforcing English law regarding trusts, and Mr. Carlyle Rogers, a deputy director of the Central Bank of Bahamas, to advise them that Mr. Currin and Mr. Jaynes were engaged in a “pump & dump” scam along Mr. Steven Kirsch with the intent to illegally gain possession of restricted trust property. The Defendant also contacted federal authorities in Raleigh, North Carolina but as far as the Defendant is aware, these federal authorities took no action in regards to the information of possible criminal activity that he was trying to share with them.

In September 2004, the Defendant, pursuant to subpoena, appeared before the Miami Office of the Security Exchange Commission (hereinafter "SEC") to give deposition testimony regarding criminal activity that he suspected Mr. Currin and Mr. Jaynes were committing. Shortly after giving such testimony to the SEC, the Defendant began receiving threats of professional retribution and/or physical violence from Mr. Currin and persons under Mr. Currin's direction designed with the sole purpose of intimidating the Defendant from cooperating further with any governmental authority regarding his and Mr. Jaynes' criminal activities. In spite of these threats, the Defendant continued to press forward in sharing with governmental authorities about evidence and/or other information regarding this continuing criminal misconduct.

During May 2005, the Defendant forwarded Suspicious Activity Reports (hereinafter "SAR") to the Bahamian authorities disclosing with his regulators evidence of criminal activity transpiring between Mr. Currin and Mr. Jaynes and involving certain trust property. In the fall of 2005, the Defendant forwarded to the SEC documentary evidence that demonstrated additional and/or further scams that Mr. Currin and Mr. Jaynes were involved in. This time, the Defendant not only provided the SEC with evidence regarding Mr. Currin's and Mr. Jaynes' criminal activities, but also provided the SEC with evidence regarding the criminal activities of unindicted conspirators, David and Annelda Hagen who the Government has identified as "Mr. DH" and "Mrs. AH" as well as Mr. Mark Brecher.<sup>6</sup> The Defendant's actions were somewhat thwarted due to circumstances beyond his control.<sup>7</sup> In October 2005, the Defendant sent an identical copy

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<sup>6</sup> The reason why the Defendant waited approximately twelve (12) months to provide further assistance to the SEC regarding suspected criminal activities of other persons is because until September 2005, the Defendant was in a legal and fiduciary relation as trustee to multiple trusts that prevented him legally, under the British legal system, from sharing any information with any third party other than trust and securities regulators with the Defendant.

<sup>7</sup> Mr. Chi Pin Liu, the head of the Miami Office of the SEC, had been replaced by Ms. Julie Russo; however, Ms. Russo failed to maintain any open lines of communication or professional relationship

of the documentary evidence to Ms. Russo that he had originally forwarded to Mr. Liu during September 2005.

By February 2006, the Defendant had not received a response from the SEC or Ms. Russo. The Defendant contacted Mr. David Levinson, the former head of the Washington Office of the SEC. He shared with Mr. Levinson his efforts to inform the SEC about criminal activity and/or suspicious conduct that Mr. Currin and Mr. Jaynes were committing in an effort to voluntarily cooperate with the SEC. Mr. Levinson then learned, utilizing connections that he still had in the SEC, that a federal criminal investigation had been initiated regarding the very evidence that the Defendant had provided to the SEC and that it was being led by an assistant United States attorney named Matthew Martens. The Defendant then attempted to contact AUSA Martens with negative results.

In the spring of 2006, AUSA Martens subpoenaed the Defendant to appear before the United States Grand Jury in Charlotte. Through Attorney Marty Russo, the Defendant contacted Special Agent Doug Curran. S.A. Curran was unable to provide the Defendant with any information other than the Defendant's presence before the Grand Jury was required. While Attorney Russo was communicating with S.A. Curran, co-defendant Currin was attempting to intimidate the Defendant from actually appearing before the Grand Jury. Eventually, S.A. Curran informed the Defendant, through Attorney Russo, that he need not appear before the Grand Jury.

During this time, the Defendant also retained the legal assistance of Attorney Doug Hanna for the purpose of contacting AUSA Martens to share with the federal government information that the Defendant had acquired about a \$170 million dollar scam involving stocks. Attorney Hanna was able to schedule a meeting between AUSA Martens and the Defendant for

April 11, 2006. AUSA Martens provided the Defendant, through Attorney Hanna, his first non-attribution agreement which the Defendant immediately signed. Operating pursuant to this non-attribution agreement, the Defendant began immediately faxing documents to AUSA Martens with the specific intent to aid the federal government in investigating the criminal conspiracy between Mr. Currin, Mr. Jaynes, Mr. and Mrs. Hagen and Mr. Brecher.

The Government contacted the Defendant, through Attorney Hanna, and requested that the Defendant meet with it on April 18, 2006. Again, seeking to provide total voluntary cooperation, the Defendant agreed to the request and made arrangements to be present at the April 18<sup>th</sup> meeting. The Government then immediately traveled to the Middle District of North Carolina where it arrested the Defendant and his wife, Mrs. Vernice Woltz.

Even after arresting the Defendant, he still engaged in voluntary cooperation with the Government. The Defendant's expressed intent was to assist the Government in prosecuting Mr. Currin along with other persons involved in the suspected criminal conspiracy. On April 26, 2006, the Defendant participated in his first debriefing with the Government. Present at this meeting were AUSA Martens, AUSA Kurt Meyers, S.A. Curran, I.R.S. Special Agent Scott Schiller and I.R.S. Special Agent Michael Attard<sup>8</sup>. At the beginning of the meeting, AUSA Martens asked the Defendant: ***"How would you like to get off of this merry go-round?"*** (Emphasis added.) Again believing that his actions were designed only to assist the Government, the Defendant shared during this meeting all the information he had regarding any and all criminal activities involving off-shore trusts and securities, both domestically and internationally. The Defendant even tried to share with these government officials information he possessed regarding the \$170 million dollar criminal conspiracy involving North Carolina

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<sup>8</sup> At this point, the Defendant had retained criminal attorney David Freeman to represent him in the instant federal criminal prosecution. Attorney Freedman initially was there for this first debriefing but left after the first twenty minutes thereof to meet with other clients or so he told the Defendant.

corporation, Gatelinx, Mr. Currin, Mr. Jaynes and other individuals. The Government, however, did not wish to receive from the Defendant this information at this time.

At one point during this meeting, the Defendant was advised that if he would help the Government get Samuel Currin, then the Government would basically allow the Defendant to go home. AUSA Martens even proclaimed : ***“God [explicative], this boy is going to keep me busy for three (3) years!!!”*** (Emphasis added.) Shortly after this first debriefing, Attorney Freedman informed the Defendant that AUSA Martens had shared with him the just-mentioned statement. Towards the end of this debriefing session, S.A. Schiller pulled the Defendant to the side and admitted to the Defendant that ***“...neither [he] nor [his] wife had broken any laws; rather, the Government wanted the Defendant out of business.”*** (Emphasis added.)

On May 17, 2006, the Defendant participated in his second debriefing with the Government. Present at this meeting were AUSA Martens, S.A. Curran and S.A. Schiller. Opening this second meeting, S.A. Curran told the Defendant:

***“Mr. Woltz, before we get started, I just want to tell you that since our last meeting, I’ve been busy following up and corroborating the information you gave us in April. I just want to tell you that you have been the most honest and forthcoming witness I have ever dealt with in my career.”*** (Emphasis added.)<sup>9</sup>

AUSA Martens followed S.A. Curran by informing the Defendant that:

***“Freedman left word to go ahead and fully cooperate with the Government. Everything is finalized, your deal is set<sup>10</sup> and your wife is going home. We just want to ask you a few follow up questions from the other day.”*** (Emphasis added.)

The Defendant remembers asking AUSA Martens about the procedure that the Government would use to effectuate this agreed-upon deal. He specifically remembers AUSA

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<sup>9</sup> It is interesting to note that S.A. Curran never attended another debriefing session involving the Defendant after attending and participating in the May 2006 debriefing session.

<sup>10</sup> This “deal” that AUSA Martens alluded to and Attorney Freedman had conveyed to the Defendant as being set between the Government and he involved the arrangements of (1) that the Defendant would receive little to no time in prison, (2) no forfeit of trust assets, (3) no new charges and (4) that Mrs. Woltz would go free.

Martens responding that “...*nobody leaves [i.e. the federal criminal justice system] without accepting a charge,*” and that it was up to the Defendant “...*to pick a charge to plead to.*”

When the Defendant appeared not to understand, AUSA Martens suggested that the Defendant “...*plead to a conspiracy charge.*”

The Defendant remembers this second debriefing as being a relatively short meeting. He remembers these governmental agencies asking questions designed to clarify some unresolved issues that had arisen since the Government last met with the Defendant. As this second debriefing was concluding and everyone was getting ready to leave, S.A. Curran approaches the Defendant and tells him: “*Mr. Woltz, I just want to tell you that I am very sorry for what we have done to your family. I hope you can appreciate this. That’s all I can say at this time.*” (Emphasis added.) S.A. Attard also told the Defendant that “...*I do not have a reason why you are here.*” (Emphasis added.)

During June 2006, the Defendant participated in his third debriefing with the Government. The Defendant recalls that the meeting was supposed to occur during the morning time but he was not called down to a debriefing room at the local jail until exactly 4:25 p.m. When he got downstairs, he was informed that the purpose of the meeting was to have him sign a Consent to Search waiver form authorizing the Government to search his Bahamian offices.<sup>11</sup> AUSA Martens shared with the Defendant that Attorney Freedman had drafted and/or read through the waiver form and consented to the Defendant signing it.

Also present during this meeting was Attorney Bernard Tisdale, counsel for Mrs. Woltz. As the Defendant was reading the waiver form, Attorney Tisdale told the Defendant: “*Sign it so that I can get Vernice out of here tomorrow.*” (Emphasis added.) The Defendant signed the

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<sup>11</sup> A copy of this consent to search form has been attached to this Sentencing Memorandum as Defendant’s Exhibit # 1.



form thinking that by signing the form he was providing the Government with unadulterated cooperation and that Attorney Freedman was looking out for his best interests. This meeting lasted all of five (5) minutes and the Defendant was escorted back upstairs to his cell. As he was being led out, AUSA Martens provided the Defendant with a written plea agreement.<sup>12</sup>

It is clear that the Defendant's definition and understanding of "substantial assistance" involved helping the Government prosecuting those persons who had actually violated the law. And to that end, the Defendant went above and beyond the call of duty to provide the Government with assistance in bringing those nefarious derelicts to justice.

**Governmental Admission of the Quality & Degree  
of "Substantial Assistance" from the Defendant:**

In permitting the Defendant to enter into plea agreement with it, the Government required the Defendant to agree to the inclusion within such written agreement two specific exhibits of admissions. Exhibit One<sup>13</sup> spans nine (9) pages of the Plea Agreement from page 12 to page 21 and this first exhibit is a stipulation agreement articulating the particular facts that the Government believed were the essential facts proving the criminal misconduct charged against the Defendant in this prosecution. (Doc. 165.) Page 20 of the Defendant's Plea Agreement contains ¶ 51 of Exhibit One. This particular paragraph is extremely important to the present considerations because in this paragraph, the Government required the Defendant to admit that he knowingly laundered or caused to be laundered more than \$7 million dollars worth of funds transferred to off-shore bank accounts by Mr. Jaynes and other individuals. (Doc. 165.)

However, the Government also indicated, in the same paragraph, that ***it was unable to prove any***

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<sup>12</sup> The Defendant believes that it is important to note that this written plea agreement did not conform in any fashion with the deal that both AUSA Martens and Attorney Freedman had led him to believe had been finalized between the parties.

<sup>13</sup> It is important to note that for the Government, Exhibit One apparently contains the greatest importance and significance toward any law enforcement goal that the Government has been seeking or may ever seek to accomplish.

**significant criminal misconduct** in relation to the money laundering conspiracy without the assistance of the Defendant. (Doc. 165; emphasis added.)

To fully grasp just how significant the Defendant's "substantial assistance" has been to the Government and its prosecutorial efforts, the Defendant believes that the word "prove" needs defining. When one states that he or she is "proving" something, we automatically understand that person to mean that he or she is in the act or process of offering factual, technical and/or scientific proof that establishes the existence or nonexistence of something. However, when a person uses the word "prove", that person is also purposefully establishing the truth or genuineness of a thing, or a lack thereof. This person is also purposefully subjecting whatever that thing is to test, experimentation, comparison or analysis with the specific intent to determine the quality, amount, acceptability and characteristics of that thing.<sup>14</sup>

The Defendant's assistance to the Government was so substantial that it admitted that it could not purposefully test, compare and/or analyze the criminal misconduct of other persons. Basically, the Government asserted that without the Defendant's assistance, it could not determine the amount, quality and characteristics of the criminal liability of Mr. Currin, Mr. Jaynes and number of other persons engaged in laundering money as well as a host of other criminal actions. And finally, the Government admitted in Paragraph 51 that without the Defendant, it could not prove the truth of its allegations of criminal misconduct against other persons. Is this not what the essence of "substantial assistance" is?

#### **Additional Incidents of Assistance:**

On Pages 7 & 8 of Mrs. Vernice Woltz's Plea Agreement, the Government made an unique agreement directly with Mrs. Woltz and indirectly with the Defendant. Paragraph 27(a) states:

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<sup>14</sup> "prove." *Dictionary.com Unabridged (v 1.1)*. Random House, Inc. 02 Jul. 2007.

***“The Government has determined that the assistance provided by the Defendant and his wife to date has been substantial. Furthermore, to the extent provided by law, the defendant’s [i.e. Vernice Woltz] substantial assistance to the Government, if any, may be considered in the sentencing of her husband, H. Woltz.”*** (Doc. 164; emphasis added.)

This Plea Agreement between the Government and Mrs. Woltz was filed with the United States Clerk of Court for the Western District of North Carolina (hereinafter “Clerk”) on January 29, 2007.<sup>15</sup>

Mrs. Woltz has been involved in the following cooperation/debriefing sessions: (1) May 17, 2006 debriefing session at the Mecklenburg County Jail with AUSA Martens, S.A. Schiller and S.A. Currin; (2) May 24, 2006 or May 25, 2006 debriefing session at the Mecklenburg County Jail with AUSA Martens, S.A. Curran and S.A. Attard; (3) June 1, 2006 debriefing session at the Mecklenburg County Jail with AUSA Martens and S.A. Curran; (4) June 6, 2006 debriefing session at the Charlotte Office of the F.B.I. with S.A. Attard; (5) June 7, 2006 debriefing session at the Mecklenburg County Jail with AUSA Martens, AUSA Meyers and S.A. Attard; and (6) August 24, 2006 debriefing session at the United States Attorney’s Office for the Western District of North Carolina with S.A. Attard and a female agent.

After filing her Plea Agreement on January 29, 2007 and entering her guilty plea before this Honorable Court on February 6, 2007, Mrs. Woltz has been involved in the following cooperation/debriefing sessions: (1) February 12, 2007 debriefing session at the United States Attorney’s Office for the Western District of North Carolina with AUSA Martens, S.A. Schiller and a female agent; (2) March 21, 2007 debriefing session at the United States Attorney’s Office for the Western District of North Carolina with AUSA Martens, AUSA Meyers and S.A. Schiller and (3) March 30, 2007 debriefing session by telephone with AUSA Martens.

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<sup>15</sup> The Defendant requests that this Honorable Court take judicial notice of Mrs. Woltz’s Plea Agreement.

From April 2, 2007 to April 4, 2007, Mrs. Woltz appeared at the federal courthouse in Charlotte, North Carolina to give testimony as one of the Government's witnesses in its trial against Ricky Graves. On April 4, 2007, Mrs. Woltz actually testified at this trial. On May 4, 2007 or May 5, 2007, Mrs. Woltz responded in writing to a list of questions that I.R.S. Special Agent Chris Delong sent to her attorney. On June 25, 2007, Mrs. Woltz attended a debriefing session at her attorney's office with S.A. Delong and another I.R.S. agent. On June 28, 2007 or June 29, 2007, Mrs. Woltz provided, through her attorney, the I.R.S. with copies of documents that it was seeking from her.

Mrs. Woltz's assistance, especially her assistance to the Government after entering her guilty plea, is important for the following reason. Paragraph 24(a) of the Defendant's Plea Agreement states the following:

*“Accordingly, if both the defendant and his wife, V. Woltz, continue to provide full cooperation as provided for in this Plea Agreement, the Government agrees to recommend (a) a reduction in the defendant’s offense level of no less than four (4) levels, resulting in a recommended offense level of 29, which carried an imprisonment range of 87-108 months, and (b) that no fine be imposed on the defendant.”* (Doc. 165, emphasis added.)

It would appear through the efforts of the Defendant's wife, the triggering event necessary for any additional reduction in the recommended guideline range has been met. This means that it is imperative upon the Government to honor its written promises and make the appropriate motion for downward departure during the Defendant's sentencing hearing. The Defendant respectfully requests that this Honorable Court receive this sentencing reduction motion from the Government and sentence the Defendant at a total offense level no greater than 29.

**Defendant’s Substantial Assistance & Imposition  
of an Active Incarceration Sentence pursuant to 18 U.S.C. § 3553(a):**

It would appear from the combination of the Defendant's cooperative efforts and Mrs. Woltz's cooperative efforts that the assistance that the Defendant has provided to the Government has gone way beyond being merely "substantial". Rather, it appears that the Defendant's assistance has been "monumental". The Defendant believes that any active incarceration sentence that this Honorable Court imposes should reflect this monumental amount of assistance that the Defendant has provided to the Government.

18 U.S.C. § 3553(a)(1) requires this Honorable Court to consider the nature and circumstances of the offense and the history and characteristics of the defendant. 18 U.S.C. § 3553(a)(2)(B) requires this Honorable Court to consider an active incarceration sentence that affords adequate deterrence to criminal conduct. The Defendant believes that his "monumental assistance" achieves both purposes because it permits this Court to recognize that the Defendant is no harden, career criminal in need of a lengthy active incarceration sentence to protect the American society and/or prevent the Defendant from committing further criminal acts. The Defendant also believes that his "monumental assistance" achieves both purposes because it recognizes the Defendant's valuable contributions to the enforcement of federal law and apprehension & conviction of other persons more criminal culpable than he was in a much wider range of criminal activity.

The Defendant's monumental assistance permits this Honorable Court achieve the expressed purposes of 18 U.S.C. § 3553(a). 18 U.S.C. § 3553(a) requires this Honorable Court to impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in this statute. An active incarceration sentence that is imposed pursuant to a downward departure motion satisfies this requirement. Therefore, the Defendant requests that this Honorable Court impose an active incarceration sentence that utilizes both the exceptional

amount and quality of the substantial assistance that the Government has received from the Defendant.

Respectfully submitted this the 3<sup>rd</sup> day of July, 2007.

**/s/ Tolly A. Kennon, III, Esq.—Bar #: 27268**  
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**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this date served the Defendant's Sentencing Memorandum to the following party in the above entitled action by either (1) hand-delivering a copy with an agent of or (2) electronic transmission addressed as follows:

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This the 3<sup>rd</sup> day of **July, 2007**.

**/s/ Tolly A. Kennon, III, Esq.—Bar #: 27268**  
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