IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
v.	:	CRIMINAL NO. 09-00496-01
ANTHONY STAINO, JR.	:	

THE UNITED STATES' SENTENCING MEMORANDUM

ZANE DAVID MEMEGER
United States Attorney

FRANK A. LABOR III
SUZANNE B. ERCOLE
Assistant United States Attorneys

JOHN S. HAN
Trial Attorney
Organized Crime and Gang Section
Criminal Division
U.S. Department of Justice

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The United States of America respectfully submits this memorandum in connection with the sentencing hearing scheduled for July 17, 2013.

I. INTRODUCTION

On January 5, 2011, the grand jury returned a superseding indictment charging Anthony Staino, Jr., with racketeering conspiracy, in violation of 18 U.S.C. § 1962(d) (Count One). The indictment also charged Staino with: eleven counts of racketeering through the collection of unlawful debt, in violation 18 U.S.C. § 1962(c) (Counts Two through Twelve); eleven counts of collecting and attempting to collect extensions of credit by extortionate means, in violation of 18 U.S.C. § 894(a)(1) (Counts 13 through 23); two counts of conspiracy to make an extortionate extension of credit, in violation of 18 U.S.C. § 892(a) (Counts 24 and 39); one count of conspiracy to collect an extension of credit by extortionate means, in violation of 18 U.S.C. § 894(a)(1) (Count 25); and three counts of conducting illegal gambling businesses, in violation of 18 U.S.C. §§ 371 and 1955 (Counts 43, 44 and 49). A third superseding indictment was unsealed on July 25, 2012, charging Staino with the same violations.

On February 5, 2013, following a four month trial, a jury convicted Staino of conspiracy to make an extortionate extension of credit (Count 24) and conspiracy to collect an extension of credit by extortionate means (Count 25). The jury acquitted Staino of Counts Two through 23, 39 and 49. The jury was unable to reach unanimous verdicts on the racketeering conspiracy charge and two of the gambling counts.

On April 18, 2013, Staino pled guilty to racketeering conspiracy as charged in Count One, and two counts of conducting an illegal gambling business (Counts 43 and 44).

The racketeering conviction arises from Staino's agreement to associate with and participate in the affairs of the criminal enterprise known as the Philadelphia La Cosa Nostra

("LCN") Family through a pattern of racketeering activity, which included extortion, loansharking, and gambling. The trial evidence established Staino was a "made" member of the Philadelphia LCN Family and held a leadership position in the Philadelphia LCN Family as a "caporegime."

The Probation Office has determined that Staino's total offense level is 29, and his criminal history Category is I, which results in an advisory Sentencing Guidelines range of 87 to 108 months imprisonment. The government agrees with the Sentencing Guideline calculation by the Probation Office. However, the government will seek an upward departure under the Sentencing Guidelines, or in the alternative, an upward variance under the sentencing factors of 18 U.S.C. § 3553(e), to account for Staino's lengthy association with an entrenched and violent organized crime enterprise, factors which are not adequately taken into account by the Sentencing Guidelines. In the government's view, the appropriate Guidelines range would be level 31 in criminal history Category I, which results in an advisory range of 108 to 135 months imprisonment. As set forth more fully below, imposition of a sentence at the upper end of that range is both reasonable and necessary to implement the objectives of 18 U.S.C. § 3553(a), particularly deterrence, protection of the community, promotion of respect for the law, and just punishment.

II. MAXIMUM PENALTIES

The maximum penalties for the offenses for which the defendant has been convicted are as follows:

Count One: a term of imprisonment of 20 years, a fine of $250,000, a period of supervised release of up to three years, restitution, forfeiture, and a $100 special assessment.

Counts 24 & 25: a term of imprisonment of 20 years, a fine of $250,000, a term of supervised release of up to three years, restitution, forfeiture, and a $100 special assessment, for each count.

Counts 43 & 44: a term of imprisonment of five years, a fine of $250,000, a period of supervised release of up to three years, restitution, forfeiture, and a $100 special assessment, for each count.

Total Maximum Sentence: a term of imprisonment of up to 70 years, a fine of $1,250,000, a period of supervised release of up to 15 years, restitution, forfeiture, and a $500 special assessment.

III. SENTENCING GUIDELINES CALCULATION

The Probation Office has found under U.S.S.G. § 2E1.1(a) that Staino is responsible for the following underlying racketeering activity:

(1) conspiracy to make and to collect an extortionate extension of credit involving "Dino," who was actually FBI Special Agent David Sebastiani, acting in an undercover capacity posing as a criminal businessman, see Pre-Sentence Investigation Report ("PSR"), ¶¶ 96-102,162-166;

(2) operating the illegal video gambling device business known as JMA Industries, see PSR, ¶¶ 103-113, 150-155;

(3) extortion of the owners of M&P Vending, see PSR, ¶¶ 114-131, 156-161; and

(4) laundering the proceeds of illegal gambling and other criminal activities, see PSR, ¶¶132-138, 168-173.

The Probation Office found, based upon the trial evidence and Staino's admission, that Staino was a "caporegime" in the Philadelphia LCN Family. See PSR, ¶ 143. Accordingly, the Probation Office increased Staino's offense level three levels under U.S.S.G. § 3B1.1(b)

because of his leadership role in the enterprise. See PSR, ¶¶ 153, 159, 165, & 171.

The highest offense level applicable to Staino's underlying racketeering activity was level 25. The Probation Office increased Staino's offense conduct four levels under U.S.S.G. §3D1.4 because the underlying racketeering activity comprised four groups, resulting in an total offense level of 29. See PSR, ¶ 185. The Probation Office found Staino has no prior convictions, which results in a criminal history Category I.

The government agrees the relevant conduct findings by the Probation Office are supported by the trial evidence, and therefore are correct. In the government's view, Staino's relevant conduct findings are conservative. As set forth below, under the relevant conduct guidelines Staino is accountable for both the underlying racketeering activity he personally participated in, and jointly undertaken racketeering activity committed by other members of the Philadelphia LCN Family that was within the scope of Staino's conspiratorial agreement and reasonably foreseeable to Staino. The defendant was a "made" member of the Philadelphia LCN Family. The scope of Staino's conspiratorial agreement was unconditional support for all criminal activities committed in furtherance of the Philadelphia LCN Family enterprise. The crimes committed by members and associates of the Philadelphia LCN Family were foreseeable to Staino because the purpose of the enterprise was to make money through the joint commission of crimes. Staino also held the leadership position of "caporegime" in the enterprise. The LCN rules mandated that subordinates report their criminal activities to the mob leaders. Thus, all of the racketeering activity committed by other members and associates of the Philadelphia LCN Family supervised by Staino can be attributed to Staino under the relevant offense Guidelines. See United States v. Yannotti, 541 F.3d 112, 122 (2d Cir. 2008) ("made" member's agreement to

join Gambino LCN Family "was by no means limited to his own loansharking."); but see United States v. Patriarca, 912 F. Supp. 596 (D. Mass. 1995) (relevant conduct for boss of New England LCN Family did not include murders committed without approval of boss, and drug crimes committed in violation of LCN rules). However, the government does not object to the relevant conduct findings of the Probation Office here, because Staino's direct participation in the affairs of the Philadelphia LCN Family largely encompasses the racketeering activity of the subordinates he supervised.[1]

In addition, Staino can also be held accountable for offense conduct relating to the acquitted counts. See infra at 37-39. The government's trial evidence established that Staino participated in extortionate credit transactions with Henry Scipione (Counts 13-23), see PSR, ¶¶ 87-95, and Frank DiGiacomo (Count 39). See PSR, ¶¶ 92-95. If this underlying racketeering activity is included as part of Staino's relevant offense conduct, then two additional groups of underlying racketeering activity are added to Staino's offense computation pursuant to U.S.S.G. § 3D1.2. Staino's offense level would then increase one additional level pursuant to U.S.S.G. § 3D1.4, resulting in a total offense level of 30, and an advisory Sentencing Guidelines range of 97 to 121 months imprisonment.

The Probation Office has taken a conservative approach and not included Staino's acquitted conduct as part of his relevant conduct. See PSR, ¶ 149, n. 13. The government agrees with the Probation Office that, even if the acquitted conduct is not included as part of Staino's relevant conduct, the Court may nevertheless consider that conduct in determining the

[1] For example, Robert Ranieri was an associate who worked for Staino in carrying out the extortionate credit transactions involving "Dino." Curt Arbitman was an associate who assisted Staino in operating the JMA video gambling device business.

appropriate sentence within the applicable Guidelines range. See id.

IV. THE DEFENDANT'S OFFENSE CONDUCT

A. The Philadelphia LCN Family

The Philadelphia LCN Family has been in substantially continuous operation for decades. The Philadelphia LCN Family existed to generate money for its members and associates through the commission of various criminal acts including, but not limited to, extortion, illegal gambling, loansharking, and the collection of unlawful debts. The Philadelphia LCN Family had an initiation ritual, known as a "making ceremony," and persons formally initiated into the enterprise were known as "made" members. The Philadelphia LCN Family had a distinct structure and chain-of-command. It was headed by a boss. During the racketeering conspiracy charged in Count One, Joseph Ligambi was the acting boss. The enterprise had an underboss, a "made" member who is second in command under the boss. The enterprise had leaders known as "caporegimes," also referred to as "capos," "captains" or "skippers." Capos typically supervised a crew consisting of "soldiers" and associates. "Soldiers" were also "made" members of the Philadelphia LCN Family.

The defining characteristic of the Philadelphia LCN Family was the use of violence, threats of violence, and intimidation, to achieve its illegal objectives. The Philadelphia LCN Family functioned as a continuing unit for the common purposes of: (a) generating money through criminal acts, including extortion, loansharking, illegal gambling, and the collection of unlawful debt; and (b) protecting the enterprise's territory and promoting its interests through violence, actual and implied threats of violence, and the cultivation and exploitation of the enterprise's reputation for violence. Members and associates of the Philadelphia LCN Family

were required to report their criminal activities to their leaders and share a portion of their criminal proceeds with the leadership.

B. Staino's Role in the Philadelphia LCN Family

Staino has admitted to the Probation Office that he was a "caporegime" in the Philadelphia LCN Family. The government's trial evidence supports Staino's admission.

On May 19, 2010, members of the Philadelphia LCN Family met with members of the New York Gambino LCN Family at the La Griglia restaurant in Kenilworth, New Jersey. Staino, Ligambi, Joseph Licata, and Louis Fazzini represented the Philadelphia LCN Family. During the meeting, the LCN members discussed the status of various members of the organized crime families, historical and current activities of the LCN families, and other matters of mutual interest. The La Griglia meeting was secretly recorded by Nicholas Stefanelli, who unbeknownst to the other participants was cooperating with the FBI. At the trial, the government played portions of the recorded conversations. At the beginning of the meeting, Licata introduced Staino to the leaders and members of the Gambino LCN Family as a "caporegime" of the Philadelphia LCN Family. See Government Exhibit 1-16, Segment 1. Later on in the meeting, Staino reported on the current status, whereabouts, and prison release dates, of several made members of the Philadelphia LCN Family, including Eric Esposito, George Borgesi, Joseph Merlino, Joseph Grande, Charles Iannece, a/k/a "Charlie White," Frank Narducci, Jr., and Joseph Pungitore. Id. Segment 2.

Louis Monacello testified that he knew Staino to be "made" member and "capo" in the Philadelphia LCN Family.

On March 17, 2004, Staino, Ranieri and agent Sebastiani, acting in his undercover

capacity as "Dino," met for dinner at the Chop House restaurant in Gibbsboro, New Jersey. During this meeting, Staino and agent Sebastiani discussed a 60 Minutes television broadcast involving former Philadelphia LCN member Vincent Filipelli, who was present in the restaurant. While referring to "Vince," Staino said: "The guy there? Yeah, he's with me. He's with me. (UI) John Stanfa." Thereafter, Staino described in cryptic language the history of the mob war between the Merlino and Stanfa factions of the Philadelphia LCN Family. Staino compared the two factions to IBM and GE, stating "I'm IBM and IBM took over GE." Staino then stated that "Joey" (who agent Sebastiani understood to be convicted former Philadelphia LCN Family Boss Joey Merlino) was IBM. Agent Sebastiani then asked "What about Vince, was he IBM or GE?" To which, Staino replied "He was with GE." Staino further stated: "Two different companies. Here's our company, here's the bad company. The bad company gets taken over. He (Vince) was with the bad company.... So now the new company takes over.... I'm with the good company. I'm on the Board of Directors and therefore I absorb him (Vince)." Staino further stated that "Vince .... can't do anything without checking with the Board.... I'm on the Board of Directors of the company.... I'm like the CFO. CFO. So not the Chairman of the Board. I'm the CFO."

C. The Pattern of Racketeering Activity

The government's trial evidence established that Staino agreed with Ligambi, Massimino, and others, that the following racketeering acts would be committed by members and associates of the Philadelphia LCN Family:

(i) violations of 18 U.S.C. §§ 892(a) and 894(a)(1) involving the conspiracy to make an extortionate extension of credit and the conspiracy to collect an extension of credit by

extortionate means involving "Dino," as charged in Count One, ¶ 26E, and Counts 24 and 25, of the Third Superseding Indictment;

(ii) violations of 18 U.S.C. § 1955 involving the operation of an illegal gambling business known as JMA Industries, as charged in Count One, ¶ 23A;

(iii) violations of 18 U.S.C. § 1951(a) involving the extortion in interstate commerce of the owners of the M&P Vending Company, as charged in Count One, ¶¶ 23A.4 and 31;

(iv) violations of 18 U.S.C. § 1952 involving interstate travel and transportation with the intent to distribute proceeds of unlawful activity and to promote and facilitate the promotion of unlawful activity, as charged in Count One, ¶ 23A.3;

(v) violations of 18 U.S.C. § 1956 involving financial transactions to distribute illegal proceeds from the JMA gambling business to the wife of Joseph Ligambi, with the intent to conceal the source and nature of the illegal proceeds, as charged in Count One, ¶ 23.A.5;

(vi) violations of 18 U.S.C. §§ 892(a) and 894(a)(1) involving making extortionate extensions of credit and the collection of extensions of credit by extortionate means involving the Henry Scipione, as charged in Count One, ¶ 26C, and Frank DiGiacomo, as charged in Count One, ¶ 28, and Count 39.

1. Staino's Loansharking Activities

Henry Scipione

Beginning in 2001, Henry Scipione obtained a series of extortionate "street loans" from Staino. Staino lent money for a 13-week period and charged a usurious rate of interest of 30%, which would be equivalent to an annual rate in excess of 120%. Scipione was required to

pay Staino weekly payments of principal and interest accumulated on the loans.

Scipione represented to Staino that he was using the money from Staino to make "street loans" with a group of fictitious individuals. By the spring of 2003, Scipione was heavily indebted to Staino for the repayment of these extortionate "street loans," but was unable to repay the loans. In April 2003, when Staino came to collect a weekly loan payment, Scipione told Staino that he could not repay him. Staino responded by threatening Scipione with physical violence and stating, "I ought to put a bullet in your head." Fearing for his personal safety, Scipione agreed to cooperate with the FBI in the investigation of Staino in exchange for protection and relief from his debt to Staino.

Scipione frequently observed Staino in the company of Ligambi. Scipione knew Ligambi to be the boss of the Philadelphia LCN Family. From his observations, Scipione believed that Staino was connected to the mob and was working for Ligambi in the loansharking business.

Beginning on May 17, 2003, Scipione met with Staino to make periodic debt payments in cash with funds supplied by the FBI. Scipione recorded his conversations with Staino. At the FBI's direction, Scipione told Staino that a large portion of the money he owed to Staino was owed to Scipione by a sports bookmaker/loanshark named "Vinny." (In fact, "Vinny" was FBI Special Agent Joseph Stone acting in an undercover capacity.) Agent Stone met with Staino on several occasions and gave him cash payments to repay Scipione's debt to Staino. Agent Stone in turn introduced Staino to agent Sebastiani, who was acting in an undercover capacity as "Dino," a business man who had run up sports bets with "Vinny."

During a recorded conversation on June 27, 2003, Scipione told Staino that he

could not make a payment because "Vinny" had failed to make his payment to Scipione. Staino told Scipione: "He's using my fucking money.... There's 48 fucking thousand dollars out there, plus nothing coming in.... He's flipping out, you understand…. I'm going to kill him…. I got fucking two gorillas, fucking chop him up…. He knows who the fuck I am.... It's reaching a dangerous point." Scipione understood Staino to be referring to the Ligambi when Staino said "he's flipping out."

On July 3, 2003, Scipione recorded a conversation with Staino during which they discussed another late payment, and Staino stated: "I haven't brought this to his attention, okay? Because if I did, there would be major, major problems." Scipione understood Staino to be referring to Ligambi when Staino said he hadn't brought it to "his" attention.

"Dino"

After his introduction to Staino, agent Sebastiani, posing as "Dino," developed a business and a social relationship with Staino. From the latter half of 2003 to mid-2005, agent Sebastiani and Staino met for dinner, drinks, sports betting and introducing each other to various friends. One of the individuals agent Sebastiani met was Robert Ranieri, who was introduced to agent Sebastiani as an associate of Staino who could provide "muscle."

During the summer of 2004, Staino and agent Sebastiani discussed conducting business together including various proposals wherein Staino would lend "Dino" approximately $20,000 to $50,000 with the requirement "Dino" pay Staino approximately $2,000 to $5,000 a month in interest. On August 4, 2004, Staino agreed that he would lend $25,000 to agent Sebastiani, who would pay Staino $3,000 a month for the loan. During a conversation recorded in the basement bathroom of the Chop House restaurant, Staino threatened to "hurt" agent

Sebastiani if he did not abide by the terms of the loan:

STAINO: Where's my man Dino? Is he here?

DINO: I'm in here.

***

STAINO: No disrespect... but you fuck with me! You know what's gonna happen right?

DINO: I know....

STAINO: I love you, but I just wanted to put it on the table.

***

STAINO: Don't fuck with me.

DINO: I would never do that.

STAINO: (UI)

RANIERI: Yeah, do me a favor. Don't fuck with him.

***

STAINO: I want three thousand plus the principal. Where you tomorrow?

DINO: Where do you want me to be?

STAINO: Don't fuck with me.

DINO: I won't.

STAINO: Please on my life. I like you. I don't want to fucking have to hurt you.

DINO: (UI)

STAINO: I swear to God, I swear to God man, it's stupid. Don't be stupid.

DINO: No.

STAINO: (UI) Tomorrow. You're going to see him tomorrow.

RANIERI: (UI) Tomorrow.

STAINO: Yeah.

On August 6, 2004, agent Sebastiani obtained the $25,000 from Staino, through Ranieri. Agent Sebastiani met Ranieri in Ranieri's car in the parking lot of the Adelphia Restaurant in Deptford, New Jersey. Ranieri delivered $25,000 in cash to agent Sebastiani in a cereal box. Some of the money was enclosed in money wrappers. FBI Fingerprint Specialist Lynda Strong found latent fingerprints on the cereal box, plastic cereal box liner, and money wraps. Strong found Staino's fingerprints on the cereal box, the cereal box liner, and two money wrappers, and found Ranieri's fingerprint on the cereal box.

On August 30, 2004, agent Sebastiani paid Ranieri $3,000 cash as the first monthly interest payment to Staino for the $25,000 loan.

On September 10, 2004, agent Sebastiani returned the $25,000 to Staino through Ranieri. Pursuant to Staino's instructions, agent Sebastiani gave Ranieri the money in two bundles of $10,000 cash and a check for $5,000 made out to Staino. The $5,000 check to Staino was written using the checking account of agent Sebastiani's covert business, Elite Financial Services. During the meeting, Ranieri reminded agent Sebastiani to send Staino an IRS Form 1099, specifically stating: "Make sure you 1099 him at the end of the year."

On January 13, 2005, agent Sebastiani and Staino met in person in the vicinity of 13th and Oregon in South Philadelphia. During this meeting, the two discussed where agent Sebastiani should send Staino the IRS Form 1099 for the $5,000 check that agent Sebastiani wrote Staino when returning the $25,000. Staino provided agent Sebastiani with a piece of paper

with the information needed to complete and send the IRS Form 1099. Sometime between January 13, 2005 and February 4, 2005, agent Sebastiani created a fictitious IRS Form 1099 from Elite Financial Services to Staino in the amount of $5,000 and mailed it to Staino at the above post office box in Philadelphia, PA.

Bank records reflect that on September 11, 2004, Staino deposited into his Wachovia Bank account the $5,000 check from agent Sebastiani. This check was drawn on a Commerce Bank account. Thereafter, Wachovia Bank processed the payment of the check through its processing center in Philadelphia.

Frank DiGiacomo

In 2007, Philadelphia LCN Family associate Frank DiGiacomo obtained several usurious loans from Pat Colacicco. When DiGiacomo failed to repay a $25,000 debt, Colacicco began threatening DiGiacomo. DiGiacomo asked Ligambi to intercede on his behalf. In a conversation recorded on May 13, 2008, Ligambi told DiGiacomo that he did not have to repay Colacicco. However, Ligambi told DiGiacomo to talk to Staino about the debt. According to DiGiacomo, Staino told DiGiacamo that he owed Ligambi and Staino $10,000 for Ligambi's assistance in dealing with Colacicco. See PSR, ¶¶ 92-95.

2. The Illegal Video Gambling Device Business

The testimony of Curt Arbitman established the participation of Staino, Ligambi, Massimino in an illegal video gambling device business.

In the late 1990s, Arbitman began operating a business known as ACE Vending. The business sold, supplied, and serviced vending machines, including video gaming devices. ACE provided its customers with vending machines, juke boxes, pool tables, and video games at

stops located in South Philadelphia. ACE sold and placed video poker and video slot machines. Arbitman sold and serviced Dodge City video poker machines, and Cherry Master slot machines. Arbitman knew that the stop owners used the video poker machines and video slot machines for gambling purposes. The stop owners would make "payouts" to customers who won credits on the machines.

Sometime in 1999, Marty Angelina contacted Arbitman. Angelina told Arbitman he expected to go to prison shortly, and asked Arbitman to help his father-in-law run Angelina's video gambling machines route. Arbitman agreed to help Angelina, and advised his father-in-law how to run the video gambling business and keep the machines operating. In or about November of 2000, Staino came to the ACE Vending warehouse and told Arbitman that he was taking over Angelina's video gambling device route. Staino asked Arbitman if he would continue to service the video machines. Arbitman agreed to service the video gambling machines for Staino. Arbitman did not charge Staino for his labor. Staino would reimburse Arbitman for the cost of parts he had to purchase to keep the machines operating. Arbitman would speak with both Staino and Massimino about the video gambling machines.

The government introduced numerous telephone conversations of Staino intercepted during the period January 2001 through May 2001. These calls established that Staino spoke with Arbitman on a regular, often daily basis, regarding the operation of the video gambling machines. Staino gave Arbitman directions about what machines to fix and where to place machines at stops. Staino and Arbitman also discussed meter readings and cash collections. Arbitman and Staino also discussed Massimino's involvement in the gambling business.

At 7:08 p.m. on April 5, 2001, the government intercepted a telephone conversation between Staino and Arbitman, during which Staino instructed Arbitman to go see the "Greaser" because he was complaining about the machines. (Greaser was a reference to Pasquale DiGuilio who operated a video gambling stop at Café Napoli.) Arbitman told Staino he was out to dinner celebrating his sister's birthday, but would check with the Greaser later on. A few minutes later, a conversation was intercepted among Staino, Ligambi and Massimino. During the conversation (Exhibit 1-175), Ligambi complained to Massimino about "the Curt" not responding immediately to Staino's request to fix the Greaser's machine. Ligambi stated to Massimino: "He's out, he's out eating with his sister. I mean, what the fuck is it? How long does it take .... Anthony will tell you, but that's one of fucking, one of the best things 'cause last month we blew it." Ligambi was upset the Philadelphia LCN Family was losing gambling proceeds because Arbitman was slow in repairing the machine.

Arbitman serviced video poker stops for Staino and Massimino at the following locations: Matteo's Cucina; JM Variety; Vic's; Bay's; Café Napoli; Whiskey Dick's; Terry's Variety Store; and the Santa Fe Club, also known as Blues. Each stop had video gambling machines, either Dodge City video poker machines or Cherry Master slot machines. Arbitman serviced the machines for Staino and Massimino, free of charge. The machines were used for gambling purposes. Staino collected money from the machines.

On April 9, 2001, the FBI executed search warrants at the ACE Vending warehouse and many of the "stops" where the Philadelphia LCN Family had video gambling devices. Government agents seized approximately 34 Dodge City poker machines and Cherry Master slot machines. After the search of the ACE Vending warehouse, Arbitman spoke with

Staino and Massimino. Massimino asked Arbitman if he was going to the get the machines back, and Arbitman told Massimino that they were not going to get the machines back.

Shortly after the FBI raided the ACE Vending warehouse, Arbitman was at the Lou's Crab Bar. He was summoned outside by Massimino. Outside of the bar, Arbitman encountered Massimino, Ligambi, and Staino. During this meeting, Staino told Arbitman that they were going to buy a new route. Arbitman understood Staino to be referring to a video gambling machine route. Staino asked Arbitman if he would like to service their new machines. Arbitman agreed to continue to service the video machines on the new route. Arbitman agreed to service the new route free of charge.

After Arbitman agreed to service the new route for Ligambi, Massimino, and Staino, Arbitman told Staino to operate the new route as a "regular business." Arbitman told Staino to get a business privilege license, a checking account, and a company name. Arbitman advised Staino to set up a "regular business" so that law enforcement would not bother them. Arbitman believed law enforcement would not bother them if they set up a regular business, because even though the FBI had raided the ACE Vending warehouse and seized video machines, the government did not seize all of his machines because he was operating as a company. Staino told Arbitman that he had set up the company and called it "JMA." The name was an acronym for Joseph Ligambi ("J"), Joseph Massimino ("M"), and Anthony Staino ("A").

After Staino set up JMA, Arbitman continued to service their video machines. Arbitman did not charge for his labor for servicing JMA video machines. Arbitman continued to discuss the machines and take instructions about what to do with them from Staino and Massimino. Arbitman continued to service JMA video machines from 2001 until September

2009, when the ACE Vending warehouse was raided a second time. Stops serviced by Arbitman for JMA included: the AZ Club; Blue Suede; Coley's; Grumpy's; Bella Rosa; and a coffee shop located at 9th and Moore Streets. All of these locations had video machines that were being used for gambling purposes. Arbitman serviced the machines, and Staino collected the money from the machines.

Rhoda Burke testified she has been the owner of Coley's Bar located at 2500 South Third Street in South Philadelphia for 25 years. A Dodge City video poker machine was put in the bar about 20 years ago. The machine was serviced by M&P Vending, which was owned by "Tony" (referring to Anthony Milicia). M&P paid Burke a certain percentage of the gross receipts for operating the machine at her bar. When "Tony" passed, his son-in-law "Paulie" (referring to Paul Drzal) and "Joe" (referring to Joseph Procaccini) took over the business. Later, Paulie and Joe told Burke that the poker machine was sold to Staino. Staino took over the poker machine, changed the two padlocks, and gave Burke a number to call if she had problems with the machine. Staino came by once every three weeks and took money from the poker machine. Staino gave Burke a commission of $200 in cash every time he came to collect money from the poker machine.

3. Extortion of the Owners of M&P Vending

After the FBI seized the video gambling machines operated by Staino, Ligambi and Massimino, the leaders of the Philadelphia LCN Family resumed their illegal gambling business by obtaining video machines and stops from M&P Vending through extortion. The testimony of Joseph Procaccini established this racketeering activity. (12/4/12 Tr. at 173-252).

Joseph Procaccini testified he began working for M&P in 1981 and worked

continuously for the company since then. M&P was founded by his father, Louis Procaccini, and Anthony Milicia. M&P supplied and serviced vending machines. M&P placed vending machines and video games at "stops" or locations, and entered into sharing agreements with the location owners. A portion of M&P's business operation included Dodge City video poker machines. Procaccini and M&P knew that the stop owners used the video poker machines for gambling purposes and made "payouts." The only reason M&P's location customers wanted Dodge City video poker machines was to use them for gambling. Making "payouts" increased the volume of use of the machines by the customers, and increased the amount of money earned by M&P and the location owners. M&P made a profit from the video poker gambling portion of its business operation.

Anthony Milicia died in August 2000. Louis Procaccini died on May 16, 2001. Joseph Procaccini and Paul Drzal intended to continue to operate M&P. Procaccini and Drzal had no intention of selling the M&P business or any portion of its assets. The M&P business was Joseph Procaccini's livelihood and primary source of income.

Joseph Procaccini returned to work at M&P on May 23, 2001, the day after his father's funeral. On that date, Procaccini and Drzal were contacted by Joseph Malone. Malone was a bar owner and a customer of M&P. Procaccini knew Malone to be the father-in-law of Steven Mazzone. Malone told Procaccini and Drzal that "these guys" wanted to talk to them about "the machines." Procaccini understood "these guys" to be a reference to Ligambi and Massimino. Procaccini understood "the machines" to be a reference to M&P's video poker stops and machines. Malone communicated a threat to Procaccini and Drzal, warning them that "these people are very dangerous."

The next day, Malone took Procaccini and Drzal to Lou's Crab Bar. Inside the bar, Malone introduced Procaccini and Drzal, to Ligambi and Massimino. Malone remained at the bar, and the others went to the rear of bar. There, Massimino told Procaccini and Drzal that they were going to "take over the machines." Procaccini understood Massimino to be referring to M&P's video poker machines and stops. Procaccini was surprised by Massimino's statement, because he and Drzal assumed that Ligambi and Massimino were going to demand that M&P pay them "tribute," that is, a portion of the money the business was making. Procaccini and Drzal had no intention of selling the M&P business or its video poker operation, and wanted to continue to operate the video poker portion of their business. Procaccini made a counter-offer to Massimino and Ligambi: M&P would make "tribute" payments if they would let M&P keep the video poker machines and stops, and continue to operate the business. Procaccini believed that making "tribute" payments to Ligambi and Massimino would be better than allowing them to take over the video poker stops and machines, because M&P would continue to make money from the operation and no one would bother M&P.

In response to Procaccini's counter-offer, Ligambi shook his head to indicate he refused the counter-offer. Massimino then told Procaccini and Drzal that they would not accept payments, and repeated that they were going to take over the machines. Procaccini knew M&P was going to lose the video poker stops and machines, because if Ligambi and Massimino wanted the business they were just going take it. Procaccini knew he had no choice in the matter, and that Ligambi and Massimino were going to take over M&P's video poker operation. Ligambi and Massimino then took Procaccini and Drzal outside of Lou's Crab Bar and did a "walk and talk." Ligambi told Procaccini that the only reason he didn't take over M&P's video

poker business earlier was out of respect for Procaccini's father. At the end of the meeting, Massimino instructed Procaccini and Drzal to prepare a list of M&P's video poker locations.

Based upon years of working in the South Philadelphia neighborhood, Procaccini was familiar with the Philadelphia LCN Family, which he also knew as the mafia or the Philly mob. Procaccini knew that Philly mob committed crimes, that it "took what was yours," and that it "took whatever it wanted." Procaccini knew that the Philadelphia LCN Family had a reputation for violence, and that the mob would use violence when necessary to achieve its goals. Procaccini knew that Anthony Milicia, his former business partner, had been shot sometime in the 1990s. Procaccini understood that Milicia was shot because he would not make "tribute payments" from M&P to Ralph Natale, who was the boss of the Philadelphia LCN Family at the time. Procaccini knew that "tribute payments" or "street tax" meant the money you had to pay to the Philadelphia LCN Family to be left alone by the mob so you could continue to operate your business. After the Milicia shooting, M&P began making tribute payments to the Philadelphia LCN Family.

Procaccini understood Ligambi to be the boss of the Philadelphia LCN Family. Procaccini knew Massimino to be a member of the Philadelphia LCN Family, although he did not know his exact position in the organization. Procaccini was concerned that the mob would take over or interfere with M&P's entire business operation if he and Drzal did not allow them to take over the video poker business. Procaccini was also concerned for his personal safety. Procaccini was afraid that he would be beat up or hurt if they did not allow Ligambi and Massimino to take over M&P's video poker locations and machines. Having just buried his father, Procaccini did not want to put his family through anything like that. Procaccini's

knowledge that Milicia had been shot because he had resisted the mob's demands for tribute payments from M&P, influenced his decision to allow Ligambi and Massimino to take over M&P's video poker business.

Procaccini and Drzal returned to Lou's Crab Bar a few days later and provided Ligambi and Massimino with a list of M&P's video poker stops. The list had approximately 21 stops, and 34 video poker machines, all of which were located in South Philadelphia. Procaccini and Drzal told Ligambi and Massimino they wanted $3,000 per stop. Procaccini and Drzal decided to ask for $3,000 per stop because they knew that the mob was going to take over M&P's video poker business operation, so anything collected would be better than getting nothing. After giving Ligambi and Massimino the list, Procaccini and Drzal returned to Lou's Crab Bar a third time, where they were introduced to Staino. Thereafter, Procaccini and Drzal took Staino to each of the locations identified on the list. At the locations, Procaccini and Drzal removed M&P's locks from the video poker machines and Staino placed his locks on the machines. After changing the locks, the video poker machines belonged to Ligambi, Massimino and Staino. After the locks were changed, M&P did not collect any money from the machines. M&P continued to service other machines at the locations, and Procaccini would see Staino collecting money from the video poker machines that Ligambi, Massimino, and Staino had taken over from M&P.

After the first meeting at Lou's Crab Bar, Procaccini was contacted by an FBI agent, who told Procaccini that the FBI was aware something was going on. Procaccini told the FBI that Ligambi and Massimino were taking over M&P's video poker locations and machines. Procaccini then told Staino that the FBI was watching what was going on. After Procaccini

informed Staino that he FBI was watching, Staino presented Procaccini and Drzal a one page "Agreement" and told them to sign it. (Government Exhibit 3.L.5.) The "Agreement" purported to document an agreement between Staino, doing business and JMA Industries, Inc., and M&P Vending, Inc., for the sale of 40 arcade machines for $40,000. Procaccini and Drzal refused to sign the "Agreement." Procaccini and Drzal refused to sign the agreement because M&P had not agreed to sell JMA 40 arcade machines. M&P had not agreed to sell Staino or JMA anything. Procaccini believed that even though he was powerless to prevent the mob from taking over M&P's business, he could refuse to sign the "Agreement" that the mob wanted.

On July 2, 2001, Procaccini and Drzal met with Massimino and Staino at the AZ Club in South Philadelphia, to change locks on video poker machines. (Procaccini identified surveillance videotapes admitted into evidence as Government Exhibits 3.L.1 and 3.L.2 as depictions of the meetings at the AZ Club.) Massimino confronted Procaccini and Drzal about the "Agreement" and became agitated when they told Massimino that they would not sign it.

Procaccini estimated that M&P was making $7,000 to $10,000 a month from the video poker portion of his business operation in 2001, or $84,000 to $120,000 per year. Procaccini testified the customer list was a valuable asset of the M&P business. M&P lost 34 video poker machines, the cash flow from the machines, and its customer locations, as the result of the mob takeover. Procaccini described getting $63,000 for these assets was a "bad deal," and that the economic loss to M&P was "substantial."

4. Laundering Gambling Proceeds of the JMA Gambling Business

At trial, of IRS Special Agent Scott Fitzpatrick testified regarding his analysis of the financial records of the JMA corporate entity. A fictitious name application filed with

Commonwealth of Pennsylvania for "JMA Industries, Inc." on June 28, 2001 identified the company's business purpose was to "buy, sell, lease and service arcade games." Staino was identified as the "interested" party with the business address of 831 Mountain Street, Philadelphia, Pennsylvania. (That address is a row home which Curt Arbitman testified had nothing to do with the JMA business.)

Agent Fitzpatrick testified that between July 2002 and June 2009, $684,073 in cash was deposited into JMA business accounts, with Staino as the signatory and President. Agent Armstrong's analysis of disbursements from the account reflects that between 2004 and 2009, JMA issued "payroll checks" to Olivia Ligambi totaling $107,977.

Arbitman testified that JMA did not have a business office. JMA did not have any employees, other than Staino, Massimino and Ligambi. Arbitman never encountered a person known as Olivia Ligambi during the ten years that he serviced video machines for JMA. Arbitman was not aware of any one named Olivia Ligambi working for JMA.

5. Delivering Racketeering Proceeds to Ligambi

Members and associates of the Philadelphia LCN made regular payments of cash proceeds from the sports bookmaking business to Ligambi. Staino assisted in the collection and delivery of illegal proceeds to the boss, Ligambi.

In March 2006, investigative agents intercepted telephone conversations during which Damion Canalichio made arrangements with Louis Barretta to pay Ligambi $300 that Canalichio owed to Ligambi for a trash dumpster. Canalichio was renovating a house at the time and Ligambi had obtained a trash dumpster from Top Job Disposal for Canalichio. During the intercepted telephone conversations between Canalichio and Barretta, Barretta agreed to put an

extra $300 in the envelope of cash that Barretta gave to Staino every week for delivery to Ligambi. On March 21, 2006, Canalichio and Barretta had the following discussion:

DC: Is there any way, I wanted to ask ya, is there any way you can, you gonna be seein' Joe?

LB: Ah, I don't know, why?

DC: 'Cause I have to give him 300 for this fuckin' dumpster for the house, I forgot (UI) the guy. I called him last night, he said, oh don't worry about it, I'll see ya when I see ya. But I'd just like to give it to him, get it out of the way, and I ain't gonna be down because ...

LB: All right, if I do, I'll give it to him. I mean, I'm not goin' out of my way, but if I run into him I'll give it to him and then we'll work it out later.

DC: Right.

LB: I mean, I mean I don't know, I'm not really supposed to see him this week. He asked me to come 7 o'clock in the morning on Thursdays, I'm usually sleepin'.

(....)

LB: All right, what if Thursday I do it then? Ah, Thursday I'll, I'll leave an extra 300 say it's from Damion. In the envelope for Anthony.

DC: Yeah, that's good.

LB: Is that all right?

DC: Yeah, if you can do that, I mean...

(...)

LB: That's what I'll do then. This way he gets his. All right? And if I see him before that, I'll give it to him but, schedule for Thursday. I'll leave my money what I gotta give him that week, and then I'll leave a little envelope, envelope for

> you, a little note from, ya know, for the dumpster for Joe, you know.

(Government Exhibit 1-133A, at 3-5)

On Thursday, March 23, 2006, surveillance agents observed Staino in the vicinity of the residences of Barretta and Ligambi. Later that day, Barretta told Canalichio that he had left an envelope for "Damion's dumpster," and said "Anthony" was "like, yeah, I know about it."

FBI surveillance agents conducted surveillance of Staino on Thursday mornings in April and May 2006. Surveillance showed Staino routinely left his residence in New Jersey on Thursday morning, made several stops in South Philadelphia, including Barretta's residence, and then went to Ligambi's residence. On Thursday, June 1, 2006, agents executed an anticipatory search warrant on Staino and his automobile in South Philadelphia after he was observed leaving Barretta's residence. After stopping Staino's vehicle but before executing the search, agents observed Staino throw something under his car. The agents found an envelope with the notation "Anthony" underneath Staino's vehicle. Agents seized $8,000 in cash from Staino.[2]

V. SENTENCING ISSUES

A. UNDER THE SENTENCING GUIDELINES, STAINO'S RELEVANT OFFENSE CONDUCT FOR HIS RACKETEERING CONSPIRACY CONVICTION IS BASED UPON THE UNDERLYING RACKETEERING ACTIVITY WHICH THE COURT DETERMINES UNDER THE PREPONDERANCE OF THE EVIDENCE STANDARD.

The Probation Office has determined Staino's relevant offense conduct based upon the underlying racketeering activity, in accordance with U.S.S.G. §§ 2E1.1(a) and 1B1.3(a). The Probation Office found that Staino is responsible for four groups of underlying racketeering

[2] Agents also seized a slip of paper from Staino that contained handwritten instructions by Arbitman for setting the "payout" percentages on Cherrymaster slot machines.

activity: the extortionate credit transactions with "Dino;" operation of the JMA illegal gambling business; extortion of M&P Vending; and money laundering. Staino objects to the Probation Office's findings, asserting he can only be held accountable for the offense conduct underlying Counts 24 and 25, the "Dino" transactions, and Counts 43 and 44, the JMA illegal gambling business. See Correspondence to Alex Posey, dated July 2, 2013, at 5.

As set forth more fully below, the Probation Office has correctly determined Staino's relevant conduct under the applicable Sentencing Guidelines, and Staino's objection is unfounded. The Sentencing Guidelines require that the defendant be held accountable for the underlying racketeering activity involved in the racketeering conspiracy, which may include both uncharged conduct and acquitted conduct. As with other factual findings relevant to the Sentencing Guidelines calculation, the Court determines the underlying racketeering activity for which Staino is accountable under the relevant conduct Guidelines, based upon the Court's analysis of the trial evidence and other information, under the preponderance of the evidence standard.

1. The Applicable Sentencing Law

(a) The Relevant Conduct Guidelines Applicable to Racketeering Conspiracy

The base offense guideline applicable to a violation of 18 U.S.C. § 1962 is U.S.S.G. § 2E1.1. See U.S.S.G. § 1B1.2(a); id. App. A. Section 2E1.1 provides two base offense levels for a racketeering violation: (1) level 19; or (2) the offense level applicable to the underlying racketeering activity. The applicable base offense level is the greater of the two.

When the racketeering activity involves more than one offense, the Application Notes direct the Court to treat each underlying offense as if it were contained in a separate count

of conviction, and then apply the grouping rules of Chapter Three, Part A, to determine whether § 2E1.1(a)(1) or § 2E1.1(a)(2) results in the greater offense level. See U.S.S.G. § 2E1.1, comment (n. 1). When the racketeering activity involves a violation of state law, the Court applies the guideline corresponding to the most analogous federal offense. See id. comment (n. 2).

Once the Court selects the applicable offense Guideline, the Court must then calculate the defendant's relevant conduct to determine the offense level under that Guideline. See U.S.S.G. § 1B1.2(b). Because § 2E1.1 specifies more than one base offense level, the Court must apply U.S.S.G. § 1B1.3(a) to determine the defendant's relevant conduct for a racketeering conviction. See U.S.S.G. § 1B1.3(a); United States v. Carrozza, 4 F.3d 70, 74-75 (1st Cir. 1993).

> Under § 1B1.3(a)(1), relevant conduct has two components:
>
> (A) all acts and omissions, committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant, and
>
> (B) in the case of jointly undertaken criminal activity (a criminal plan, scheme, endeavor, or enterprise undertaken by the defendant in concert with others, whether or not charged as a conspiracy), all reasonably foreseeable acts and omissions in furtherance of the jointly undertaken criminal activity.

Section 1B1.3(a)(1) is a "rule of construction" that specifies "the range of conduct that is relevant to determining the applicable offense level ...." U.S.S.G. § 1B1.3, comment (backg'd). The commentary to § 1B1.3 expressly states that relevant conduct includes "conduct that is not formally charged or is not an element of the offense of conviction...." Id.; Carrozza, 4 F.3d at 77.

2. "Underlying Racketeering Activity"

By definition, racketeering offenses involve an enterprise and typically involve

jointly undertaken criminal activity. Accordingly, for the purpose of determining the defendant's relevant offense conduct under § 2E1.1(a)(2), "underlying racketeering activity" means any conduct that constitutes racketeering activity within the meaning of 18 U.S.C. § 1961 and which qualifies as relevant conduct under § 1B1.3(a)(1). See Carrozza, 4 F.3d at 76-77.

In Carrozza, the boss of the Patriarca LCN Family in New England, pled guilty to racketeering conspiracy in violation of 18 U.S.C. § 1962(d), substantive racketeering in violation of § 1962(c), and four counts of interstate transportation in aid of racketeering ("ITAR"), in violation of 18 U.S.C. § 1952. The indictment charged the Patriarca LCN Family participated in racketeering acts of extortion, drug trafficking, loansharking, gambling, and murder. However, the indictment charged Patriarca personally participated in only five ITAR racketeering acts. At sentencing, the government sought to include seven uncharged racketeering acts, including drug trafficking, murder, attempted murder, and harboring fugitives, as part of Patriarca's relevant conduct under the Sentencing Guidelines. The government asserted that, although Patriarca was not personally involved in all of these racketeering acts, "all seven activities were reasonably foreseeable to Patriarca and were committed during, and in furtherance of, the RICO conspiracy after Patriarca had joined it as its chief." Carrozza, 4 F.3d at 73. The sentencing court rejected the government's position, holding that "relevant conduct in a RICO case was, as a matter of law, limited to the specific predicate acts charged against the defendant (here, as to Patriarca, the Travel Act violations) and conduct related to the charged predicates." Id.

The First Circuit reversed, holding the sentencing court "erred when it limited relevant conduct to conduct in furtherance of the predicate acts charged against Patriarca." Id. at 74. The First Circuit held that in a RICO case, relevant conduct includes "all conduct reasonably

foreseeable to the particular defendant in furtherance of the RICO enterprise to which he belongs." Id. The First Circuit, based upon the unambiguous language of the Sentencing Guidelines and the nature of racketeering offenses, concluded that "underlying racketeering activity" within the meaning of § 2E1.1 is equivalent to relevant conduct under § 1B1.3, rejecting the contention that relevant conduct is limited to specific predicate acts charged against the defendant and proven by the government:

> Section 2E1.1 - specifically the term "underlying racketeering activity" - contains no explicit instructions displacing the general rule in § 1B1.3 that relevant conduct includes uncharged conduct. In a RICO case, there is no justification for limiting "underlying racketeering activity" just to predicate acts specifically charged against one defendant.[FN4]
>
> > FN4. Aside from its departure from the relevant conduct guideline, the district court's interpretation could raise other problems. For example, in some circuits the government need not allege specific predicate acts when it charges a defendant with RICO conspiracy. *See United States v. Glecier,* 923 F.2d 496, 501 (7th Cir.), *cert. denied,* 502 U.S. 810, 112 S.Ct. 54, 116 L.Ed.2d 31 (1991); *United States v. Phillips,* 874 F.2d 123, 127-28 (3d Cir.1989). A court sentencing a defendant in such a case would be put in a difficult position if forced to apply literally the district court's analysis. Because such cases do not identify and charge the "underlying racketeering activity," a court following the district court's approach might be limited to the base offense level of 19 as specified in § 2E1.1(a)(1), even though the real offense conduct underlying the conspiracy is considerably more serious than other level 19 offenses.
>
> We, therefore, agree with the government that the term "underlying racketeering activity" in § 2E1.1(a)(2) means simply any act, whether or not charged against defendant personally, that qualifies as a RICO predicate act under 18 U.S.C. § 1961(1) [FN5] and is otherwise relevant conduct under § 1B1.3.

Carrozza, 4 F.3d at 76 -77 (footnote omitted).

The First Circuit reasoned that the defendant, by virtue of his membership in an enterprise, can be accountable for racketeering acts committed in furtherance of the enterprise, even though the defendant did not personally participate in those racketeering acts:

> Here, the RICO enterprise - the Patriarca Family - was a "jointly undertaken activity." Thus, Patriarca is potentially liable for the foreseeable criminal acts of others in furtherance of that enterprise even though he did not personally participate in them.

Id. at 75.

The First Circuit rejected the contention, raised by Staino, see Objections, at 2, that U.S.S.G. § 1B1.2(d), applies to and limits the determination of the defendant's relevant conduct for a racketeering conspiracy. When a defendant is convicted of a multi-object conspiracy, § 1B1.2(d) provides that relevant conduct is limited to conduct for which the sentencing court would have convicted the defendant on a separate count of conspiracy. The First Circuit reasoned that because a racketeering conspiracy is a single object conspiracy to violate the racketeering statute, and not a multiple object conspiracy to commit racketeering acts, the multiple conspiracy analysis of § 1B1.2(d) does not apply to racketeering conspiracy:

> A RICO conspiracy, however, is considered a single object conspiracy with that object being the violation of RICO. *United States v. Ashman,* 979 F.2d 469, 485 (7th Cir.1992) ("The goal of a RICO conspiracy is a violation of RICO.") (quoting *United States v. Neapolitan,* 791 F.2d 489, 496 (7th Cir.), *cert. denied,* 479 U.S. 940, 107 S.Ct. 422, 93 L.Ed.2d 372 (1986)), *petition for cert. filed sub nom. Barcal v. United States,* 61 U.S.L.W. 3857 (U.S. April 6, 1993) (No. 92-1804). In enacting RICO, Congress intended that " 'a series of agreements that under pre-RICO law would constitute multiple conspiracies could under RICO be tried as a single enterprise conspiracy' if the defendants have agreed to commit a substantive RICO offense." [FN8] *United States v. Riccobene,* 709 F.2d 214, 224-25 (3d Cir.) (quoting *United States v. Sutherland,* 656 F.2d 1181, 1192 (5th Cir.1981), *cert. denied,* 455 U.S. 949, 102

> S.Ct. 1451, 71 L.Ed.2d 663 (1982) (internal citation omitted)), *cert. denied sub nom. Ciancaglini v. United States,* 464 U.S. 849, 104 S.Ct. 157, 78 L.Ed.2d 145 (1983).
>
> Application notes 1 and 5 to § 1B1.2 are not, therefore, material to determining whether relevant conduct must be limited to predicate acts charged against a defendant. Instead, § 1B1.3 determines the range of conduct that is relevant to cross references such as the term "underlying racketeering activity" in § 2E1.1(a)(2), and the background commentary to § 1B1.3 makes clear that "[c]onduct that is not formally charged ... may enter into the determination of the applicable guideline sentencing range."

Carrozza, 4 F.3d at 79 -80 (footnotes omitted).

The Second Circuit and the Sixth Circuit have followed Carrozza. See United States v. Yannotti, 541 F.3d 112, 127-130 (2d Cir. 2008) ("a sentencing court may consider predicate acts as relevant conduct under U.S.S.G. § 1 because their commission need not be proven beyond a reasonable doubt."); United States v. Corrado, 227 F.3d 528, 542 (6th Cir. 2000). While the Third Circuit has not expressly defined "underlying racketeering activity" as used in § 2E1.1(a)(2), its precedents are in agreement with the Carrozza analysis. The Third Circuit reached the same conclusion as the First Circuit in Carrozza, in deciding the scope of a defendant's relevant conduct in drug conspiracy cases. See United States v. Collado, 975 F.2d 985, 922 (3d Cir. 1992), cited with approval in Carrozza, 4 F.3d at 76. Similar to Carrozza, the Third Circuit has consistently held that racketeering conspiracy is a single object conspiracy, in which the defendants agree to violate the racketeering statute, and not a multiple object conspiracy in which the defendants agree to commit predicate racketeering acts. See United States v. Riccobene, 709 F.2d 214, 224-25 (3d Cir. 1983) cited with approval in Carrozza, 4 F.3d at 79; United States v. Pungitore, 910 F.2d 1084, 1135 (3d Cir. 1984); United States v. Irizarry, 341 F.3d

273, 292 n. 7 (3d Cir. 2003). Moreover, the Third Circuit agrees with Carrozza that a racketeering conspiracy conviction is not limited to the specific acts of racketeering activity charged in the indictment, but may include any acts of racketeering activity that occurred within the time frame of the charged conspiracy. See United States v. Phillips, 874 F.3d 123, 127-28 (3d Cir. 1989) cited with approval in Carrozza, 4 F.3d at 77 n. 4; cf. United States v. Glecier, 923 F.2d 496 (7th Cir. 1991). Accordingly, the Third Circuit precedents lead to the same conclusion reached by the First Circuit in Carrozza: for the purpose of determining the defendant's offense conduct under § 2E1.1(a)(2), the "underlying racketeering activity" is determined in accordance with § 1B1.3(a).

3. Factual Findings for Sentencing Purposes

Under the Sentencing Guidelines, the sentencing court determines the facts to apply the sentencing factors, under the preponderance of the evidence standard. Sentencing courts have always been empowered to make factual findings to determine the defendant's sentence within the statutory range. See Apprendi v. New Jersey, 530 U.S. 466, 481 (2000); United States v. Grier, 475 F.3d 556, 562 (3d Cir. 2007). The sentencing court may base its factual findings upon the trial evidence heard by the jury. See United States v. Grayson, 438 U.S. 41 (1978).

Judicial fact finding for sentencing purposes is permissible, even when the sentencing factor constitutes a separate offense. See Grayson, 438 U.S. at 50; United States v. Grier, 475 F.3d at 566-68 (3d Cir. 2007).

The standard of proof applicable to judicial fact finding for sentencing factors, including the determination of the defendant's relevant offense conduct, is the preponderance of evidence standard. See Grier, 475 F.3d at 566-67; United States v. Fisher, 502 F.3d 293, 304-06 (3d Cir. 2007).

As the Third Circuit has succinctly explained, the Supreme Court's decisions in Apprendi v. New Jersey, 530 U.S. 466 (2000), and United States v. Booker, 543 U.S. 220 (2005), did not change the propriety of judicial fact-finding of sentencing factors under the preponderance of evidence standard:

> There can be no question, in light of the holding of *Booker* and the reasoning of *Apprendi,* that the right to proof beyond a reasonable doubt does not apply to facts relevant to enhancements under an advisory Guidelines regime. Like the right to a jury trial, the right to proof beyond a reasonable doubt attaches only when the facts at issue have the effect of increasing the maximum punishment to which the defendant is exposed. *Apprendi,* 530 U.S. at 489-94, 120 S.Ct. 2348. The advisory Guidelines do not have this effect. They require the district judge to make findings of fact, but none of these alters the judge's final sentencing authority. *Booker,* 543 U.S. at 233, 125 S.Ct. 738. They merely inform the judge's broad discretion. *Id.*

Grier, 475 F.3d at 562, 565.

The sentencing court makes factual findings that determine the defendant's actual sentence within the statutory maximum range, under the preponderance of evidence standard, even when those findings significantly increase the defendant's actual sentence within the permissible statutory range. See United States v. Fisher, 502 F.3d 293, 304-08 (3d Cir. 2007). In Fisher, the Third Circuit overruled an earlier panel decision, United States v. Kikumura, 918 F.2d 1084 (3d Cir. 1990), which had held that a higher standard of proof applied to judicial fact finding at sentencing when those facts resulted in a significant upward departure from the applicable Sentencing Guidelines range. The Third Circuit recognized that Booker eliminated any argument that sentencing factors must be determined by the jury or under a reasonable doubt standard, provided the Sentencing Guidelines are not mandatory and the sentence does not exceed the statutory maximum penalty:

> As *Grier II* made plain, under an advisory system "[f]acts relevant to enhancements under the Guidelines would no longer increase the maximum punishment to which the defendant is exposed, but would simply inform the judge's discretion as to the appropriate sentence." *Grier II,* 475 F.3d at 564. Accordingly, sentencing judges are free to find facts by a preponderance of the evidence, provided that the sentence actually imposed is within the statutory range, and is reasonable. *Id.* at 568-71; *see also Rita v. United States,* 551 U.S. 338, 127 S.Ct. 2456, 2462, 168 L.Ed.2d 203 (2007). (...)
>
> After *Booker* and *Grier II,* however, it is clear that sentencing on facts found by a preponderance of the evidence does not infringe upon a defendant's rights, whether those rights are derived from the Guidelines or the Constitution.

Fisher, 502 F.3d 305-306.

Thus, for the purpose of determining the defendant's relevant offense conduct and the offense level under the Sentencing Guidelines when the defendant has been convicted of racketeering conspiracy, the sentencing court determines the underlying racketeering activity under the preponderance of the evidence standard. See United States v. Yannotti, 541 F.3d 112, 127-130 (2d Cir. 2008); United States v. Corrado, 227 F.3d 528, 541 (6th Cir. 2000).[3]

4. Uncharged and Acquitted Conduct

The Court may make factual findings in determining the underlying racketeering activity based upon the trial evidence when the jury does not return a conviction, or returns a not

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[3] The Eleventh Circuit has held that the reasonable doubt standard applies to the calculation of relevant offense conduct for a racketeering conspiracy conviction. See United States v. Farese, 248 F.2d 1056 (11th Cir. 2001); United States v. Nguyen, 255 F.3d 1335, 1341-42 (11th Cir. 2001). The Eleventh Circuit reasoned that U.S.S.G. § 1B1.2(d) applies to racketeering conspiracies when the jury returns a general verdict because the verdict is analogous to a multiple object conspiracy. However, as noted above, the Third Circuit has rejected the notion that a racketeering conspiracy is a multiple object conspiracy. Thus, the reasoning of the Eleventh Circuit is contrary to Carrozza and the Third Circuit cases following the Carrozza reasoning.

guilty verdict, on a count charging that conduct. The background commentary to § 1B1.3 states: "Conduct that is not formally charged or is not an element of the offense of conviction may enter into the determination of the applicable guideline range." U.S.S.G. § 1B1.3, comment (backg'd). Section 2E1.1 contains no limitation on the general rule in § 1B1.3 that relevant conduct includes uncharged conduct. Accordingly, the sentencing court may rely upon evidence of uncharged conduct in determining the underlying racketeering activity for which a defendant can be held accountable under § 2E1.1(a)(2). See Carrozza, 4 F.3d at 77; United States v. Thai, 29 F.3d 785, 819-20 (2d Cir. 1994) (court properly considered violent crimes not charged as predicate acts as relevant conduct in furtherance of the RICO conspiracy); United States v. Hurley, 374 F.3d 38, 39 (1st Cir. 2004) (court properly applied money laundering guideline in sentencing defendants on RICO conspiracy count, as the cross reference in § 2E1.1 encompasses relevant conduct for which a defendant had not been convicted); United States v. Ruggiero, 100 F.3d 284 (2d Cir. 1996) (court properly used the preponderance standard in finding uncharged acts of kidnaping relevant conduct).

For the same reason, the Court may base relevant conduct findings on evidence relating to counts for which the defendant has been acquitted. See United States v. Ciavarella, 2013 WL 2278162, slip op. at 54-55 (3d Cir. May 24, 2013); Yannotti, 541 F.2d at 127-130 (relevant conduct for RICO conspiracy included attempted murder which jury found not proven); United States v. Mercado, 474 F.3d 654, 655-57 (9th Cir. 2007) (RICO conspiracy sentences properly based on criminal conduct found not proved beyond a reasonable doubt, even after Booker); United States v. Campbell, 491 F.3d 1306, 1314-15 (11th Cir. 2007) (sentencing court may consider conduct underlying RICO and bribery charges on which defendant was acquitted).

In Ciavarella, the Third Circuit held the sentencing court in a racketeering case properly included acquitted conduct as part of the defendant's relevant conduct because the findings were supported by a preponderance of the evidence, noting that:

> "[A] jury's verdict of acquittal does not prevent the sentencing court from considering conduct underlying the acquitted charge, so long as that conduct has been proved by a preponderance of the evidence." United States v. Watts, 519 U.S. 148, 157 (1997).

Ciavarella, Id. at 54.

2. Staino's Relevant Conduct

Under § 2E1.1(a), Staino's relevant offense conduct includes, at a minimum, the underlying racketeering activity which the Probation Office found Staino directly participated in, to further the Philadelphia LCN Family enterprise. The trial evidence amply supports all of these findings. Accordingly, based upon the trial introduced at trial, the Court should adopt the following findings of the Probation Office as the facts establishing Staino's relevant offense conduct:

(1) PSR ¶¶ 22-49: the existence, nature, and operation of the Philadelphia LCN Family enterprise;

(2) PSR ¶¶ 50-57: the roles of the co-conspirators;

(3) PSR ¶¶ 58-83: the manner and means of the racketeering conspiracy; and

(4) PSR ¶¶ 86-137: underlying racketeering activity committed by Staino.

B. STAINO'S LONG TERM ASSOCIATION WITH A VIOLENT, ENTRENCHED ORGANIZED CRIME ENTERPRISE WARRANTS AN UPWARD DEPARTURE UNDER THE SENTENCING GUIDELINES, OR IN THE ALTERNATIVE, AN UPWARD VARIANCE UNDER THE STATUTORY SENTENCING FACTORS.

Staino's long-time membership in the Philadelphia LCN Family criminal enterprise warrants an upward departure of his offense conduct under the Sentencing Guidelines. The government submits a three-level upward departure in Staino's offense level based upon his association with organized crime would be appropriate in this case. With an upward departure of three levels, Staino's total offense level, as a career offender, would be level 31, in a criminal history Category of I. Staino's advisory Sentencing Guidelines range would increase to 108 to 135 months imprisonment.

Sentencing courts may choose to impose an upward departure based upon the defendant's ties to organized crime. In United States v. Schweihs, 971 F.2d 1302 (7th Cir.1992), the Seventh Circuit affirmed the sentencing judge's seven-level upward departure because the Sentencing Guidelines had not taken into account the defendant's use of organized crime connections in determining the sentencing range for violations of the Hobbs Act. See id., 971 F.2d at 1316-17. The sentencing court analogized the use of organized crime to the discharging of a firearm, which would result in a five-level increase, but considered the defendant's organized crime connections to be worse because of its "widespread societal implications." Id.; see also United States v. Aleman, No. 90 CR 87-12, 1992 WL 390912 (N.D. Ill. Dec. 16, 1992) (affirming a six-level upward departure for defendant's involvement in organized crime).

Courts have recognized that LCN organized crime families hold a special place among RICO enterprises. In United States v. Rainone, 32 F.3d 1203, 1208-09 (7th Cir. 1994), the

Seventh Circuit affirmed a two-level upward departure for the defendant's involvement with an LCN organized crime family. The Court found that the base offense level assigned to RICO convictions by U.S.S.G. § 2E1.1(a)(1), did not adequately reflect involvement in organized crime, because a RICO "enterprise" encompassed a wide range of associations, such as minor gangs or corrupt unions. Id. at 1208-09. crime. See also United States v. Damico, 99 F.3d 1431, 1439 (7th Cir. 1996) (affirming a two-level upward departure for defendant sentenced for a predicate act under U.S.S.G. § 2E1.1(a)(2) who was also involved in organized crime: "[A] defendant's involvement in organized crime is not reflected in the base offense level assigned to him . . . regardless of whether the base offense level is established under subsection (a)(1) or (a)(2) of the RICO guideline ...."); United States v. Zizzo, 120 F.3d 1338, 1360-61 (7th Cir. 1997). The Sixth Circuit has also approved of sentence enhancements for organized crime. In United States v. Chance, 306 F.3d 356 (6th Cir. 2002), the Sixth Circuit ruled that the district court properly considered the defendant's acceptance of bribes from organized crime figures in determining whether to upwardly depart from his base sentence for a RICO conviction. Id. at 395.

These principles apply to the instant case. The Philadelphia LCN Family has been in substantially continuous operation for decades. As one of several LCN families based in cities throughout the United States and connected to a larger national and international criminal organization, the Philadelphia LCN Family has left an indelible mark on the community through its persistent and notorious criminal activities. The Philadelphia LCN Family exists to generate money for its members and associates through the commission of crime, including, extortion, illegal gambling, extortionate credit transactions, and the collection of unlawful debts. Similar to other mob families, the Philadelphia LCN Family follows an established business model:

criminals working together to make money by exploiting the mob's well-earned reputation for violence, to instill fear in its victims and to discourage any resistance to the mob's demands. As several witnesses testified at trial, the mob could not exist without violence, threats of violence, and the exploitation of its reputation for violence. The Philadelphia LCN Family has a notorious reputation for achieving its objectives through violence. As the government's LCN expert testified, members of New York's Gambino LCN Family viewed the Philadelphia LCN Family as the "wild, wild west" of the mafia underworld because of its frequent use of violence.

Staino chose to join and remain a member of the Philadelphia LCN Family enterprise knowing full well its criminal purposes and methods of operation. He has never renounced his membership. He made money through these crimes by leveraging the participation of other members of the racketeering conspiracy and the mob's well-earned reputation for violence. Staino's status as a "made" member of the Philadelphia LCN Family accorded him an elevated status in the criminal underworld, and provided him with the benefit of having his criminal endeavors protected by the collective strength and power of the LCN. Staino's LCN membership enhanced and ensured the success of his criminal livelihood.

Although its leadership and membership has changed over the years due to internal conflicts and successful law enforcement prosecutions, the Philadelphia LCN Family has demonstrated a remarkable resiliency to re-organize and re-invigorate itself. The Sentencing Guidelines simply do not take into account the continuing danger posed by such a persistent, highly structured, and effective criminal enterprise. An upward departure from the Sentencing Guidelines and an upward variance is warranted here to reflect the fact that Staino's criminal acts were committed in the service of this particularly dangerous racketeering enterprise.

Alternatively, an upward variance under the statutory sentencing factors of 18 U.S.C. § 3553(a) would be appropriate for the same reasons set forth above. The sentencing goals of general deterrence, respect for the law, and protection of the community more than justify a greater sentence to address the pernicious threat posed by a defendant's association with an entrenched, violent organized crime enterprise.

III. THE PROBATION OFFICE CORRECTLY DETERMINED THAT STAINO HAS NOT ACCEPTED RESPONSIBILITY FOR HIS OFFENSE CONDUCT.

The Probation Office has found that, even though Staino ultimately pled guilty to Counts One, 43 and 44 after completion of the four month trial, he is not entitled to a downward adjustment for acceptance of responsibility under U.S.S.G. § 3E1.1. The Probation Office's finding is correct.

Whether a defendant qualifies for the downward adjustment of § 3E1.1 depends upon the totality of the circumstances. See United States v. Cohen, 171 F3d 796, 806 (3d Cir. 1999). Among other factors, the Sentencing Guidelines provide that in determining whether the defendant has accepted responsibility for his offense, the Court should consider whether the defendant has truthfully admitted the conduct comprising the offenses, and truthfully admitted or not falsely denied additional relevant conduct for which the defendant is accountable under U.S.S.G. § 1B1.3. See U.S.S.G. § 3E1.1, comment (n. 1). The Sentencing Guidelines further provide that the downward adjustment for acceptance of responsibility should not apply to a defendant such as Staino, who admits his guilt only after putting the government to its burden at trial:

> This adjustment is not intended to apply to a defendant who puts the Government to its burden of proof at trial by denying essential

> elements of guilt, is convicted, and only then admits guilt and expresses remorse.

Id., comment (n. 2).

In assessing the totality of the circumstances, the Court must consider that the defendant chose to plead guilty to some counts only after being convicted at trial on other counts of the indictment. See Cohen, 171 F.2d at 806. The adjustment for acceptance of responsibility applies only after multiple counts of conviction are grouped under Section 3.D. See Cohen, 171 F.2d at 806. When multiple counts are grouped to determine the defendant's sentence, the defendant must accept responsibility for all counts of conviction. See id.

In Cohen, the indictment charged the defendant with mail fraud and tax evasion. The district court severed the tax evasion counts, and the defendant proceeded to trial on the mail fraud counts. After the jury convicted the defendant of the mail fraud counts, the defendant pled guilty to the tax evasion counts. The district court granted the defendant a three level downward adjustment under § 3E1.1, based upon the defendant's expression of remorse at the sentencing hearing. The Third Circuit held the district court erred in awarding the defendant credit for acceptance of responsibility, notwithstanding the defendant's post-trial expression of remorse, because the defendant went to trial on the mail fraud counts:

> Were this simply a matter of determining a defendant's credibility, we would defer entirely to the District Court because we cannot claim to have an equal ability to perceive and judge the defendant's demeanor. That is to say, the words "I am sorry," uttered by a defiant defendant, mean nothing. The same words from a contrite defendant mean everything. Here, however, because the sentencing guidelines need to be consistently interpreted to serve their purpose, and because the comments to the various sections provide an avenue to consistent interpretation, we must see that they are applied by a sentencing court. We will vacate and remand for

> further consideration.
>
> We recognize that this case presents the unusual situation in which the defendant has pleaded guilty to some of the charges against him (the tax counts) while going to trial on others. The sentencing guidelines do not specifically address this situation, noting only that "truthfully admitting the conduct comprising the offense(s) of conviction" is a factor for the judge to consider. U.S.S.G. § 3E1.1 application note 1(a). In cases such as this, the trial judge "has the obligation to assess the totality of the situation in determining whether the defendant accepted responsibility." *McDowell,* 888 F.2d at 293 n. 2. Were the District Court able to grant a credit for Cohen's guilty plea to the three tax charges separately, then we would see no error. However, the guidelines do not allow for this because multiple counts of conviction must be grouped before an adjustment can be made for acceptance of responsibility under Part E of Chapter 3 of the guidelines. *See* U.S.S.G. § 1B1.1. As a result, the "totality" assessment must include the fact that Cohen originally pleaded not guilty to all the counts and put the Government to its proof on the majority of the charges, pleading guilty to the tax counts only after being convicted on the bribery charges.

Cohen, 171 F.3d at 805-806.

Here, Staino pled not guilty to all counts and put the government to its burden of proving the entirety of Staino's offense conduct at trial beyond a reasonable doubt. The jury convicted Staino of Counts 24 and 25, but was unable to reach a verdict on Counts One, 43 and 44. Staino did not plead guilty to Counts One, 43 and 44, until after trial, and after the jury had convicted him of two counts of loansharking included in the underlying racketeering activity comprising Count One. Similar to the defendant in Cohen, Staino's belated acknowledgment of his guilt is both untimely and incomplete. The Sentencing Guidelines require that all of Staino's underlying racketeering activity be combined to determine his offense level and relevant conduct. Accordingly, the fact that Staino eventually pled guilty to some counts of the indictment, after being convicted of other counts at trial, does not establish that Staino has accepted responsibility

for all of his offense conduct.

In any event, Staino has clearly not accepted responsibility for his participation in the racketeering conspiracy. At the guilty plea hearing, Staino disputed many of the facts proffered by the government to show his agreement to associate with and participate in the affairs of the Philadelphia LCN Family enterprise. Staino's acknowledgment that the government could prove the elements of Count One was begrudging at best. According to the Probation Office, Staino continues to deny significant portions of the offense conduct comprising the racketeering conspiracy. See PSR, ¶¶ 143-44. Specifically, Staino denies his offense conduct relating to money laundering and interstate travel in aid of racketeering. Finally, Staino's objections to the PSR confirm that he continues to deny, rather than accept responsibility for his racketeering offense conduct. See Correspondence to Alex Posey, dated July 2, 2013. In his objections, Staino denies any involvement in money laundering, id. at 4-5, and interstate transportation in aid of racketeering. Id. at 5. Staino denies that he or the other co-conspirators extorted M&P. Id. at 2-3. Rather, Staino mis-characterizes this offense as a "cordial" business transaction. Staino attempts to minimize his extortionate credit transactions with "Dino" by referring to the jury's guilty verdicts on Counts 24 and 25 as "technical violations." Id. at 6. As he did at trial, Staino attempts to characterize the transaction as an "investment," id. at 4, and attribute his threats to "Dino" to intoxication rather than criminal intent. Id. The jury rejected these contentions in finding Staino guilty of Counts 24 and 25. Finally, Staino attempts to minimize his admitted leadership role in the Philadelphia LCN Family, characterizing his statement to "Dino" that he was the CFO as "drunken bravado." Id.

Staino's letter to the government dated October 8, 2012, confirms that he was not

willing to accept responsibility for his offense conduct before trial. See id., Exhibit 5. In that letter, counsel for Staino confirmed that the defendant would not plead guilty to any extortion charges. Staino elected to go to trial on all counts, and the jury convicted him of two counts involving extortionate credit transactions. Accordingly, Staino's refusal to plead guilty before trial is part and parcel of his refusal to accept responsibility for his offense conduct.

The finding by the Probation Office that Staino has not accepted responsibility for his racketeering conspiracy offense conduct is correct. Therefore, Staino is not entitled to a downward adjustment under § 3E1.1 for acceptance of responsibility.

VI. ANALYSIS OF THE SENTENCING FACTORS

When imposing sentence, the Court must follow a three-step process in compliance with the Supreme Court's ruling in United States v. Booker, 543 U.S. 220 (2005):

> (1) the Court must calculate the defendant's Guidelines sentence precisely as it would have before Booker;
>
> (2) the Court must rule on the motions of both parties and state on the record whether it is granting a departure and how that departure affects the Guidelines calculation, taking into account the Third Circuit's pre-Booker case law, which continues to have advisory force; and
>
> (3) the Court must exercise its discretion by considering the relevant § 3553(a) factors in determining the sentence, and whether it varies from the sentence calculated under the Guidelines.

United States v. Gunter, 462 F.3d 237, 247 (3d Cir. 2006) (quotation marks, brackets, and citations omitted) (citing United States v. King, 454 F.3d 187, 194, 196 (3d Cir. 2006); United States v. Cooper, 437 F.3d 324, 329-30 (3d Cir. 2006)). In calculating the Guidelines range, the Court must make findings by applying the preponderance of the evidence standard. See United

States v. Ali, 508 F.3d 136, 144-46 (3d Cir. 2007).

At the third step, the Court must consider the advisory Guidelines range along with all the pertinent factors of 18 U.S.C. § 3553(a) to determine the sentence. "The record must demonstrate the trial court gave meaningful consideration to the § 3553(a) factors ...." Cooper, 437 F.3d at 329. See also Rita v. United States, 551 U.S. 338 (2007) ("The sentencing judge should set forth enough to satisfy the appellate court that he has considered the parties' arguments and has a reasoned basis for exercising his own legal decision making authority.").

The sentencing factors under § 3553(a) include:

> (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
>
> (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
>
> (3) the need to afford adequate deterrence to criminal conduct, and to protect the public from further crimes of the defendant;
>
> (4) the need to provide the defendant with educational or vocational training, medical care, or other correctional treatment in the most effective manner;
>
> (5) the guidelines and policy statements issued by the Sentencing Commission;
>
> (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
>
> (7) the need to provide restitution to any victims of the offense.

As determined by the Probation Office, the Sentencing Guidelines call for the imposition of a substantial period of incarceration based upon Staino's offense conduct.

Consideration of the foregoing sentencing factors confirms that a substantial period of incarceration is necessary to implement the sentencing goals of § 3553(a).

1. The Defendant's History and Characteristics

Staino acknowledges he joined the Philadelphia LCN Family while in his forties. Before joining the mob, Staino had graduated high school, attended college, joined a union and held legitimate employment.[4] Staino did not need the mob: he could have supported himself and led a productive life without becoming a gangster. However, Staino chose to associate with the Philadelphia LCN Family criminal enterprise. Staino's career choice was not the product of youthful indiscretion or impulse. Rather, he deliberately chose to join a violent, entrenched criminal organization, fully aware of its criminal purposes and well-earned reputation for violence. As reflected by the government's recordings, Staino fully endorsed the mob's methods of operation. When Scipione informed Staino that he was unable to pay his loanshark debt because "Vinny" was shirking Staino, Staino cooly responded that he had "two fucking gorillas" that would "fucking chop him up." Staino's character was well-suited to succeed in the mob. As Staino related to "Dino" while discussing the Stanfa/Merlino mob war of the 1990s, his faction won and Staino rose in the mob ranks to become its chief financial officer.

Staino does not have a criminal history. However, the government submits that Staino's lack of prior convictions is more a reflection of talents and capabilities as a gangster, than his compliance with the law.

[4] Staino reports he was active in Local 54 of the Bartenders Union during the 1980s. At that time, Local 54 was under the influence of Nicky Scarfo, Sr., the former boss of the Philadelphia LCN Family.

2. Deterrence and Safety of the Community

The goal of specific deterrence in this case requires the imposition of a substantial period of incarceration. Staino's loyalty to the Philadelphia LCN Family, and the length of his participation in its criminal affairs, suggest a poor prognosis for rehabilitation. Accordingly, incapacitation is required to minimize Staino's further criminal endeavors on behalf of the Philadelphia LCN Family.

A substantial prison sentence in this case is necessary to serve goal of general deterrence. The government's trial evidence revealed the allure of life in the mob: Orlando, Monacello, and DiGiacomo all testified how they were infatuated with membership in the Philadelphia LCN Family. The government's LCN expert described how criminals can increase their stature and influence in the criminal underworld through membership in the LCN. The continuity of the enterprise requires the recruitment and initiation of new members. Offenders, attracted by the perceived benefits of associating with organized crime, may consider joining the Philadelphia LCN Family and filling vacancies in its ranks. The sentence here must send the message that membership in the mob has a significant cost in terms of the offender's liberty.

Protection of the community warrants a substantial prison sentence. Staino's commitment and loyalty to the Philadelphia LCN Family confirm that the community will be at risk for further racketeering activity when Staino is free. The ongoing racketeering activities of the Philadelphia LCN Family will continue to have a negative impact on the community. The fact that some forms of gambling have been legalized in some jurisdictions may create a public perception that gambling is a victimless crime that has minimal impact on the community, and that the mob is benign. The facts of this case demonstrate that such a perception is misguided.

Mob controlled gambling is far different from state regulated gambling. The pitfalls of dealing with mob-run gambling businesses were demonstrated by the trial evidence: "Vinny," "Dino," Peter Albo, and other gamblers certainly could not view their encounters with the Philadelphia LCN Family gambling operation as comparable to a vacation in Atlantic City. The sentence in this case should make clear that the community need not tolerate racketeering activity. So too, the sentence must assure the community that the criminal justice system is capable of protecting it from criminal enterprises such as the Philadelphia LCN Family.

3. Nature and Circumstance of the Offense

As the Court has noted in detention proceedings in this case, racketeering conspiracy is an extremely serious offense. Members and associates of the Philadelphia LCN leveraged their loyalty to one another to increase the power and influence of the criminal enterprise, and the harm it inflicted. The members and associates of the enterprise exploited the well-earned reputation of the Philadelphia LCN Family for violence to carry out their illegal money-making ventures. The community was subjected to a continuous pattern of racketeering activity, including illegal gambling, extortion, loansharking, and attempts to obstruct justice.

Illegal gambling drove racketeering enterprise in this case. The Philadelphia LCN Family garnered cash proceeds from sports bookmakers, which it used to finance other criminal activities such as loansharking. Illegal gambling provides a ready market for loanshark victims: once a gambler becomes indebted to the Philadelphia LCN Family, the enterprise is ready, willing and able to extend credit through a "street loan." The losing bettor becomes the equivalent of an ATM machine, from which the Philadelphia LCN can withdraw cash "juice" payments every week. Faced with the threat of violence if such payments are not made, the gambler must

continue to generate cash from some source, such as looting family savings, the assets of a legitimate business, or from other criminal activity. Gambling sets in motion the cycle of criminality which enables the racketeering enterprise to continue profiteering from crime.

4. Sentencing Guidelines and Unwarranted Disparities

The government is not aware of any factors that would warrant a downward departure or variance from the applicable Sentencing Guidelines range.

Several co-conspirators in this case pled guilty before trial and received Guidelines sentences of imprisonment that are lower than Staino's advisory range. However, this fact does not constitute an unwarranted disparity, as several factors warrant a lower Guidelines calculation for the other defendants. First, none of the other defendants went to trial on any of the charges. Second, by pleading guilty well in advance of trial, the other defendants not only saved resources for both the Court and the government, those defendants affirmatively acknowledged their wrongdoing and accepted responsibility for their offense conduct. Third, as part of the negotiated plea bargain, the government agreed to limit relevant conduct of those defendants to the racketeering activities that they directly participated in. Finally, as part of the negotiated plea bargain, the government agreed not to seek an upward departure or variance based upon the violent nature and continuity of the organized crime enterprise involved in this conspiracy. In short, Staino's advisory Sentencing Guidelines range is higher than the ranges for other defendants who pled guilty, because Staino is not similarly situated to those defendants.

VII. RECOMMENDATION

Based upon the relevant offense conduct and the sentencing goals of § 3553(a), the government recommends the Court sentence Staino to a substantial term of imprisonment in the

advisory Sentencing Guidelines. If the Court were to grant the government's request for an upward departure, then Staino's advisory Guidelines range would be 108 to 135 months imprisonment. A sentence in the upper portion of that range would promote the sentencing goals of deterrence, just punishment, protection of the community.

The government requests that the Court recommend that Staino be designated to an institution outside of the Northeastern United States, to limit the defendant's ability to continue his involvement in the affairs of the Philadelphia LCN Family. The government also requests that the sentence include a term of supervised release, with the special condition that Staino not associate with other known members and associates of the Philadelphia LCN Family. A list identifying those individuals is attached as Exhibit A.

Respectfully submitted,

ZANE DAVID MEMEGER
United States Attorney

/s/ Frank A. Labor III
FRANK A. LABOR III
SUZANNE B. ERCOLE
Assistant United States Attorneys

JOHN S. HAN
Trial Attorney
Organized Crime and Gang Section
Criminal Division
U.S. Department of Justice

CERTIFICATE OF SERVICE

FRANK A. LABOR III, certifies that copies of the United States' Sentencing Memorandum was served on counsel for the defendant on July 3, 2013.

/s/ Frank A. Labor III
FRANK A. LABOR III
Assistant United States Attorney

EXHIBIT A

RESTRICTED ASSOCIATION LIST FOR ANTHONY STAINO, JR.

1. Ralph Abbruzzi
2. Anthony Accardo
3. Martin Angelina
4. Curt Arbitman
5. Gary Battaglini
6. George Borgesi
7. Damion Canalichio
8. Vincent Centorino
9. John Ciancaglini
10. Joseph Ciancaglini, Sr.
11. Joseph Ciancaglini, Jr.
12. Nicholas Cimino
13. Daniel D'Ambrosia
14. Eric Esposito
15. Louis Fazzini
16. Vincent Filipelli
17. Steven Frangipani
18. Frank Gambino
19. Dominic Grande
20. Joseph Grande
21. Salvatore Wayne Grande
22. Francis Iannarella, Jr.

23. Charles Iannece, Sr.

24. Michael Lancellotti

25. Joseph Licata

26. Joseph Ligambi

27. Gaeton Lucibello

28. Angelo Lutz

29. Jack Manfredi

30. Vincent Manzo

31. Joseph Massimino

32. Salvatore Mazzone

33. Steven Mazzone

34. Joseph Merlino

35. Salvatore Merlino

36. Louis Monacello

37. Frank Narducci, Jr.

38. Anthony Nicodemo

39. Anthony Pungitore, Jr.

40. Joseph Pungitore

41. James Ranieri

42. Robert Ranieri

43. Christian Salvo

44. David Salvo

45. Michael Salvo

46. Nicodemo Scarfo, Sr.

47. Nicodemo Scarfo, Jr.

48. Stephen Sharkey

49. Ralph Staino, Jr.

50. Robert Verrecchia, Jr.

51. Raymond Wagner