IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff – Appellee,*	)	
v.	)	
MATTHEW WORTHING, *Defendant – Appellant.*	)	No. 18-10226

UNITED STATES' OPPOSITION TO MR. WORTHING'S MOTION UNDER CIRCUIT RULE 9-1.2 FOR BAIL PENDING APPEAL AND REMAND TO THE DISTRICT COURT PURSUANT TO *UNITED STATES V. WHEELER*, 795 F.2D 839 (9TH CIR. 1986)

The United States opposes this motion because the defendant does not present a "substantial question of law or fact" likely to result in reversal or a reduced sentence, 18 U.S.C. § 3143(b), and because a remand would serve no purpose other than to delay the disposition of his bail motion.[1] In 2012, Matthew Worthing pled guilty to bid-rigging and mail-fraud charges related to real estate foreclosure auctions, and agreed to cooperate with the government's investigation. Five and a half years later, Worthing moved to withdraw his guilty plea. The district court

[1] Worthing's statement that his counsel "has contacted government counsel to determine the government's position in regards to this motion," Mot. 1, is not accurate. The government does oppose the motion, but Worthing did not contact government counsel regarding the motion, as required. Circuit Rule 27-1, Advisory Committee. Note (5).

denied the motion to withdraw, imposed a 30-day sentence, and denied Worthing's motion for bail pending appeal.

Far from carrying his burden of raising a substantial question of law or fact, Worthing has waived that argument. He devotes only a single sentence each to the issues that he lists as substantial questions, the most perfunctory of argument. He purports to incorporate by reference more than a dozen filings from the district court, but this tactic is an impermissible circumvention of this Court's page limitation.

Nor is a remand necessary for the district court to explain again its reasons for denying Worthing's bail motion. Worthing waited until six weeks after the district court denied his bail motion before filing in this Court on the eve of his reporting date. A remand would mean only further delay.

STATEMENT

On June 20, 2012, Worthing entered a plea agreement pursuant to which he agreed to cooperate with the government's investigation and to plead guilty to two counts of conspiracy to rig bids, in violation of 15 U.S.C. § 1, and two counts of conspiracy to commit mail fraud, in violation of 18 U.S.C. § 1349, all in connection with bid rigging at real estate foreclosure auctions in San Mateo County and San Francisco County. Dkt.[2] Worthing agreed to "knowingly and voluntarily waive[]"

[2] References to filings in the district court are denoted by "Dkt." followed by the ECF docket number.

his right "to appeal his conviction" and "the right to file any appeal . . . that challenges the sentence imposed by the Court if that sentence is consistent with or below the Sentencing Guideline range stipulated by the parties." *Id.* at 2.

That same day, Worthing pleaded guilty to the four counts charged in the Information. *See* Dkt. 9, 52. At his plea hearing, Worthing stated under oath that he had discussed the charges against him and the plea agreement with his counsel and that he was fully satisfied with the representations of his attorney. Dkt. 52 at 3:18-4-:11. Worthing, who has a bachelor's degree, stated that he had read and understood the terms of his plea agreement and that the factual basis for the offenses in the plea agreement was true and correct. *Id*. at 3:18-4:11, 9:16-21. The district court found that Worthing was fully competent and aware of the nature of the charges against him, and that he entered his guilty pleas knowingly and voluntarily. *Id*. at 9:15-24.

Pursuant to his cooperation obligation, Worthing (accompanied by counsel) was interviewed by the government and described unlawfully rigging bids at real estate foreclosure auctions. Worthing agreed with the government to continue his sentencing hearing while the government pursued cases against other individuals, so that Worthing could continue his cooperation. *See, e.g.*, Dkt. 16, 17, 28, 29, 40, 41.

In October 2014, the grand jury charged five individuals (the "Giraudo defendants") with bid rigging and mail fraud in connection with real estate auctions

in San Mateo and San Francisco. Dkt. 78 at 2-3. The grand jury also charged a number of other individuals (the "East Bay defendants") with bid rigging and mail fraud in connection with real estate auctions in Alameda and Contra Costa. *Id.* In August 2016, District Judge Hamilton dismissed the mail-fraud charges against the East Bay defendants due to what the court determined was a defect in the indictment, namely, that the fraud allegations did not incorporate the bid-rigging allegations by reference. *United States v. Galloway*, No. 14-cr-607 (N.D. Cal. Aug. 15, 2016), Dkt. 139. Rather than seek a superseding indictment, the government instead pursued the bid-rigging charges alone, dismissed the mail-fraud charges against the Giraudo defendants, and offered to re-enter plea agreements with any defendant who had previously pleaded guilty to both bid rigging and mail fraud so long as they agreed to again plead guilty to bid rigging. Dkt. 45 at 4-5.

Worthing declined that offer. Dkt. 100 at 3. Instead, on January 17, 2018, more than five-and-a-half years after pleading guilty, Worthing moved to withdraw his guilty plea. Dkt. 61. The district court denied Worthing's withdrawal motion, finding that he had not advanced a "fair and just reason" for that withdrawal, as required under Federal Rule of Criminal Procedure 11(d)(2)(B). Dkt. 100 at 1.

Worthing also filed a series of motions seeking additional discovery supposedly related to his motion to withdraw his guilty plea (e.g., to pursue entrapment and taint arguments) and to his sentencing. Dkt. 74 (Motion to Compel

Discovery); Dkt. 97 (Motion to Compel Discovery for Sentencing); Dkt. 107 (Motion to Compel Disclosure of Client File); Dkt. 108 (Motion to Compel Production of Materials Relied Upon By Probation). The district court denied discovery related to the withdrawal motion, concluding that the requests were not related to the issue of whether Worthing had voluntarily entered a plea of guilty, and explaining "[y]ou don't sort of enter a plea of guilty and then have a trial, have a big proceeding as if it were a trial." Dkt. 84 at 4:3-8. It denied in part discovery related to sentencing, explaining, *inter alia*, that Worthing "essentially seeks all of the material the government collected in investigating and prosecuting the massive conspiracy of which he has admitted being a part." Dkt. 101 at 1; *see also* Dkt. 81, 111, 119.

Worthing also filed a Motion to Dismiss Information for Rule 11 Violation and a Motion to Dismiss Information for Judicial Interference in Prosecutorial Discretion, in which he claimed that the district court had intruded improperly into the plea bargaining by refusing to grant the motion to withdraw the guilty plea. Dkt. 109, 110. The district court construed these motions as a request for reconsideration of its denial of the withdrawal motion and denied them for the same reasons it denied the initial motion. Dkt. 111.

The district court ultimately sentenced Worthing to a 30-day term of imprisonment, to be followed by two years of supervised release. Dkt. 132. The

courts sentenced Worthing "as if he has only been convicted of the crimes of bid rigging" in order to address his argument that it would be unfair to sentence him on the mail-fraud charges as well, which the government had offered to drop. Dkt. 133 at 3:10-12. The court also sentenced Worthing as if it had granted a motion pursuant to Section 5K1.1 of the Sentencing Guidelines to reduce Worthing's sentence based upon cooperation, even though the government did not make a 5K1.1 motion. Dkt. 133 at 4:23-5:9. The court applied a guidelines range of 8 to 14 months—not the 12-to-18 month range stipulated in the plea agreement—and sentenced Worthing well below that range. Dkt. 8 at 9, 133 at 4:21-22.

The district court imposed a criminal fine of $45,699. Dkt. 132. Worthing had agreed to recommend restitution in the amount of $15,000 in his plea agreement, but the court granted his request for restitution in the amount of $9,500. Dkt. 133 at 4:3-7. At the sentencing hearing, the district court stated, "I think [your lawyer] has done a fine job," and advised Worthing "it made no difference that he counseled you and you took a direction that you took, no difference whatsoever in sentencing. It's entirely appropriate that [a] lawyer look at something and question it on behalf of his client." Dkt. 133 at 21:21-25; *see also id.* at 9:10-11 (stating that Worthing's motion to withdraw his guilty plea "has no impact on the sentence").

On July 18, 2018, Worthing moved in the district court for bail pending appeal and a stay of his sentence, incorporating by reference arguments contained in 13

prior filings, and specifically discussing nine issues. Dkt. 151 at 5, 8-19. On July 19, 2018, the district court denied bail because Worthing's appeal "is not likely to succeed on the merits" and referred to its prior rulings on Worthing's claimed issues. Dkt. 152 (citing Dkt. 100, 101, 111, 119). Worthing subsequently moved for clarification of the court's order, Dkt. 153, and, on July 27, 2018, the district court again held that Worthing's appeal "does not raise a substantial question of law or fact," Dkt. 155 (citing Dkt. 100, 101, 111, 119, 152).

About six weeks later, on September 6, 2018, Worthing moved this Court for bail pending appeal. He was scheduled to begin serving his 30-day sentence on September 17, 2018. On September 14, 2018, Worthing filed an unopposed emergency motion to stay his surrender date during the pendency of this motion, which this Court granted.

ARGUMENT

I. WORTHING'S PERFUNCTORY ARGUMENT DOES NOT SATISFY HIS BURDEN OF DEMONSTRATING A SUBSTANTIAL QUESTION OF LAW OR FACT

Resting on a single sentence per issue, and improper incorporation by reference of district court filings, Worthing has failed to establish that he raises a substantial question of law or fact likely to result in reversal or a lower sentence.

A. Legal Standard

As a convicted defendant sentenced to a term of imprisonment, Worthing carries the burden of demonstrating that bail is appropriate pending appeal. *United States v. Handy*, 761 F.2d 1279, 1283 (9th Cir. 1985). Worthing "shall" be detained pending appeal unless a judicial officer finds (1) "by clear and convincing evidence [he] is not likely to flee or pose a danger to the safety of any other person or the community if released" and (2) "the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in—(i) reversal, (ii) an order for a new trial, (iii) a sentence that does not include a term of imprisonment, or (iv) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process." 18 U.S.C. § 3143(b). This provision reflects Congress's view that "'once a person has been convicted and sentenced to jail, there is absolutely no reason for the law to favor release pending appeal or even permit it in the absence of exceptional circumstances.'" *United States v. Miller*, 753 F.2d 19, 22 (3d Cir. 1985) (quoting H. Rep. No. 91-907 at 186-87 (1970)).

The government does not challenge Worthing's showing as to risk of flight, danger to community, or delay. Worthing has not established, however, that this appeal presents a substantial question that will likely result in reversal, a new trial, or a reduced sentence. "Substantial" defines the level of merit required, while "likely

to result in reversal" defines the type of question that must be presented. *Handy*, 761 F.2d at 1281 (citing *Miller*, 753 F.2d 19). A "substantial question" is "one of more substance than would be necessary to a finding that it was not frivolous." *Id.* at 1283 (quotation omitted). A question may be substantial because it is "novel," "has not been decided by controlling precedent," or is "fairly debatable." *Id.* at 1282 & n.2. A question is likely to result in reversal if, for example, the asserted error would not be "harmless" if found. *See id.* at 1283.

In reviewing an order denying release pending appeal, this Court reviews the district court's "legal determinations de novo" and underlying factual determinations for "clear error." *United States v. Garcia*, 340 F.3d 1013, 1015 (9th Cir. 2003).

B. Worthing Has Waived Any Argument That His Appeal Raises a Substantial Question of Law or Fact

Worthing falls far short of meeting his burden of raising a substantial question of law or fact. He lists seven issues that he intends to raise on appeal, but devotes only a single sentence to each. Mot. 9. He asserts that these issues "require thoughtful consideration and are certainly not contrary to clearly controlling precedent," but leaves it at that. Mot. 19. A moving party is required to "state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it." Fed. R. App. P. 27(a)(2)(A). Making only the most perfunctory arguments, Worthing has waived the issues listed in his motion. *See,*

e.g., *United Nurses Ass'ns. of Cal. v. NLRB*, 871 F.3d 767, 780 (9th Cir. 2017) ("This perfunctory argument is inadequately briefed and therefore waived.").

Worthing's purports to "incorporate[] by reference arguments contained within his filings below," Mot. 20, but this tactic does not salvage his argument. Purporting to incorporate by reference more than a dozen district court filings is an impermissible end run around the page limit set forth in Circuit Rule 27-1, not, as Worthing claims it, a show "of respect for this Court's page length limitations." *Id.*; *cf.* Circuit Rule 28-1(b) ("Parties must not append or incorporate by reference briefs submitted to the district court or agency or this Court in a prior appeal, or refer this Court to such briefs for arguments on the merits of the appeal."). The Court should disregard Worthing's purported incorporation of materials from the district court, *see United States v. Marchini*, 797 F.2d 759, 767 (9th Cir. 1986) (not considering arguments incorporated by reference), and find that Worthing has waived any argument that his appeal raises a substantial question of law or fact.

C. Worthing Does Not Raise a Substantial Question of Law or Fact

In any event, the district court's rulings demonstrate why Worthing's appeal does not raise a substantial question of law or fact. Although the particulars of his arguments in this Court are not always clear, he challenges the denial of his motion to withdraw his guilty plea, which, *inter alia*, alleged errors during the Rule 11 plea colloquy and deficiencies in the Information; the denial of discovery motions; the

denial of his motions to dismiss the Information because of the district court's alleged interference in plea negotiations; and an alleged disparity in sentencing.

As a threshold matter, Worthing is unlikely to succeed on the merits of any of these claims of error because he has waived his right to appeal his conviction and his sentence. Dkt. 8 at 2; *see, e.g.*, *United States v. Rahman*, 642 F.3d 1257, 1259 (9th Cir. 2011) (waiver of right to appeal conviction encompasses motion to withdraw guilty plea). The district court's failure to discuss the appellate waiver during the Rule 11 plea colloquy does not invalidate the waiver because the record demonstrates that Worthing's waiver was knowing and voluntary. *See, e.g.*, *United States v. Lee*, 888 F.3d 503, 507 (D.C. Cir. 2018); *United States v. Johnson*, 626 F.3d 1085, 1088-89 (9th Cir. 2010). For example, the language of the waiver is clear, Dkt. 8 at 2, and Worthing, who is college-educated, stated under oath that he read the plea agreement, discussed it with his attorney, and understood its terms, *id*. at 4:4-11. Moreover, any error in the Rule 11 colloquy would invalidate only Worthing's waiver of his right to appeal his sentence. *See, e.g.*, *United States v. Vasquez-Martinez*, 616 F.3d 600, 604 (6th Cir. 2010); *United States v. Pugh*, 668 Fed. App'x 273 (9th Cir. 2016) (declining to enforce waiver of right to appeal sentence because of inadequate colloquy but enforcing waiver of right to appeal

conviction). Thus, his waiver of the right to appeal his conviction remains valid and enforceable.

Even if Worthing has not waived his appellate rights, however, his claims are without merit. First, the district court did not abuse its discretion in determining that the alleged failure to provide certain advisements required by Rule 11(b)(1) of the Federal Rules of Criminal Procedure did not constitute a fair and just reason for requesting the withdrawal. S*ee generally* Dkt. 78 at 4-12, 15-21. The defendant has the burden to show "a fair and just reason for requesting the withdrawal," Fed. R. Crim. P. 11(d)(2)(B), and "the decision to allow withdrawal of a plea is solely within the discretion of the district court," *United States v. Nostratis*, 321 F.3d 1206, 1208 (9th Cir. 2003). The five-and-a-half year delay in seeking to withdraw the guilty plea by itself undercuts Worthing's argument that he has a fair and just reason for withdrawing his plea. *E.g., id.* 1211 ("Courts have rejected plea withdrawal motions where the delay was much shorter than two years.").

As the district court explained, the Rule 11 advisements either were provided or the omission did not impact Worthing's rights. For example, contrary to his argument, Worthing was advised that he was subject to restitution or a special assessment, was alerted that he was pleading guilty to four charges, and any error in failing to specifically advise him of the consequences of perjury was harmless given that he did not claim to have perjured himself and is not facing prosecution for

perjury. Dkt. 100 at 2-3. Further, the plea agreement, which Worthing testified he read, discussed with his attorney, and understood the term of, covered topics that Worthing claims were omitted from the plea colloquy. Finally, even if Worthing did not knowingly waive his right to appeal his sentence, the remedy is to allow him to appeal his sentence, not withdraw his plea. Dkt. 100 at 3.

Second, alleged deficiencies in the mail-fraud charges do not constitute a fair and just reason for withdrawal of the plea. *See generally* Dkt. 78 at 12-15. A defendant's "belief that the government had a weaker case than originally thought does not constitute a fair and just reason to withdraw his guilty plea," *United States v. Showalter*, 569 F.3d 1150, 1156 (9th Cir. 2009), and Worthing cannot withdraw his plea simply by "point[ing] to some court decision somewhere that offered him hope of escaping conviction or otherwise caused him to second-guess his prior decision to plead guilty," *United States v. Ensminger*, 567 F.3d 587, 592, 593 (9th Cir. 2009).

Additionally, any error in the district court's denial of Worthing's motion to withdraw his guilty plea because of deficiencies in the mail-fraud charges is not a ground for granting Worthing bail. The district court sentenced Worthing "as if he has only been convicted of the crimes of bid rigging and not those of wire fraud," Dkt. 3:10-12; thus, even if Worthing prevailed on this claim, he would not receive a reduced sentence, as required by the bail statute, 18 U.S.C. § 3143(b).

Third, alleged deficiencies in the bid-rigging charges do not constitute a fair and just reason for withdrawal of Worthing's guilty plea. *See generally* Dkt. 78 at 21-24. Again, he fails to identify any intervening circumstance that "gives traction to a previously foreclosed or unavailable argument," *Ensminger*, 567 F.3d at 592, as the district court noted, Dkt. 100 at 2. He "may believe that [he] made a strategic miscalculation," but "such grounds do not justify setting aside an otherwise valid guilty plea." *United States v. Broce*, 488 U.S. 563, 571 (1989). Additionally, even apart from the waiver of his right to appeal his conviction, Worthing's guilty plea extinguished this challenge to the indictment. *Id.* at 570 ("a defendant who pleads guilty to two counts with facial allegations of distinct offenses concede[s] that he has committed two separate crimes").

Fourth, Worthing does not provide any legal or factual basis for his argument that the district court improperly denied his motion to withdraw his guilty plea after allowing other defendants to withdraw their pleas. Those defendants agreed to re-plead to the bid-rigging charge; Worthing did not.

Fifth, the district court properly denied Worthing's discovery motions. Worthing did not identify a proper legal basis for his requests, and the district court did not abuse its discretion in denying discovery to pursue potential defenses that were waived with his guilty plea and to conduct a wide-ranging review of the government's entire investigation into the real-estate foreclosure conspiracies as part

of the sentencing process. *See* Dkt. 84:2:24-4:9; 100, 101, 111, 119. Moreover, regardless of the merits of these decisions, Worthing has not explained how discovery likely would result in reversal or a reduced sentence, as 18 U.S.C. § 3143(b) requires.

Sixth, Worthing's argument that the district court violated Rule 11 and the Separation of Powers by interfering in plea negotiations makes no sense. The *government* offered to withdraw the mail-fraud charges, but Worthing declined the offer. Separately, the *district court* denied Worthing's motion to withdraw his guilty plea. Left unexplained is how the district court's denial of Worthing's non-meritorious motion constitutes interference with plea negotiations.

Seventh, Worthing's argument that the district court failed to adequately consider sentencing disparity is without merit. Assuming the Court concludes that Worthing's waiver of his right to appeal his sentence is unenforceable, it would review the sentence for an abuse of discretion, and would not reverse "[e]ven if [it is] certain that [it] would have imposed a different sentence had [it] worn the district judge's robe." *United States v. Edwards*, 595 F.3d 1004, 1015 (9th Cir. 2010) (quotation omitted). In imposing a sentence, a court must consider a number of factors, including the need to avoid unwarranted sentence disparities. 18 U.S.C. § 3553(a). Far from treating Worthing differently, the district court strove to treat him like similarly situated defendants. Notably, at sentencing, it disregarded the mail-

fraud claims, which had been dismissed for other defendants, Dkt. 133 at 3:8-4:2, and imposed the same sentence as a defendant with a "comparable" role, which was significantly below the Guidelines range, *id.* at 19:6.

Moreover, "the need to avoid unwarranted sentencing disparities is only one factor a district court is to consider in imposing a sentence." *United States v. Marcial-Santiago*, 447 F.3d 715, 719 (9th Cir. 2006). Worthing has not demonstrated that the ultimate sentence is unreasonable in light of all of the factors in § 3553(a), including the history and characteristics of the defendant (e.g., the health and age of the defendant). *United States v. Corona-Verbera*, 509 F.3d 1105, 1120 (9th Cir. 2007). Merely pointing to other defendants, with different characteristics, charged with different offenses, or sentenced by a different judge, does not establish that the district court's sentence was unreasonable. *See, e.g.*, *United States v. Treadwell*, 593 F.3d 990, 1011-12 (9th Cir. 2010); *United States v. Monroe*, 943 F.2d 1007, 1017 (9th Cir. 1991).

II. A REMAND IS UNNECESSARY AND WOULD ONLY DELAY THE DISPOSITION OF WORTHING'S BAIL MOTION

The district court explained adequately its reasons for denying Worthing bail, and a remand would serve only to delay the disposition of his motion. Rule 9(b) of the Federal Rules of Appellate Procedure provides that "the district court must state in writing, or orally on the record, the reasons for an order" denying bail. Fed. R. App. P. 9(a)(1), (b). The requirement that the trial court "adequately explain" its

decision ensures that the appellate court has a "sufficient basis for making a bail decision" and can "effectively and efficiently review a bail motion decision." *United States v. Wheeler*, 795 F.2d 839, 841 (9th Cir. 1986).

Only with a blinkered view of the record below can Worthing argue that the district court did not adequately explain its denial of his bail motion. In his bail motion in the district court, Worthing took the same shotgun approach that he takes in the current motion, incorporating by reference "the arguments contained in" 13 prior filings. Dkt. 151 at 5. Worthing waived his arguments with this summary presentation, *see* Fed. R. Crim. P. 47(b) (a motion "must state the grounds on which it is based"), and the district court hardly can have been expected to state reasons for denying unidentified arguments.

Worthing did, in his words, describe some of his arguments "in brief," Dkt. 151 at 7, but the district court explained adequately its reasons for rejecting them. The court stated that "[t]he appeal does not raise a substantial question of law or fact," cited 18 U.S.C. § 3143(b)(1), and referenced prior written orders that explained why Worthing's "brief" arguments were meritless. Dkt 155; *see also* Dkt. 152 ("Defendant is not likely to succeed on the merits."). In those orders, the court concluded that (a) the remedy for any error in the Rule 11 plea colloquy concerning the appellate waiver is non-enforcement of the waiver, Dkt. 100 at 3, 151 at 8-9; (b) other claims of error during the Rule 11 plea colloquy were without merit or

harmless, Dkt. 100 at 2-3, 151 at 9, (c) any flaws in the criminal information were not a "fair and just" reason for withdrawing his guilty plea because there was no intervening change in the law, Dkt. 100 at 2, 151 at 10-12, (d) allegation of vindictive prosecution did not justify withdrawal of the guilty plea because the government afforded Worthing the same opportunity it gave other defendants to enter a new guilty plea, Dkt. 100 at 3, 151 at 12, and (e) detailed the reasons for denying Worthing's sundry discovery motions, Dkt. 101, 110.

Worthing acknowledges as much, but insists that reasons articulated in prior orders cannot satisfy Rule 9 because the court did not specifically "speak to the question of whether Mr. Worthing's claims raised substantial questions of law or fact." Mot. 14. This exalts form over substance. Plainly, the district court concluded that Worthing did not raise a substantial question of law or fact for purposes of 18 U.S.C. § 3143 for the same reasons it denied Worthing relief initially. That is, his arguments were not "fairly debatable" or "novel" because they were without merit for the reasons stated in the court's prior orders.

Worthing erroneously claims that the district court "never addressed" his arguments for production of his client file or claims of Rule 11 and separation of powers violations. In fact, the district court addressed those arguments in two separate written orders. The first reasonably construed his Rule 11 and separation of powers arguments as a request for reconsideration of the denial of the motion to

withdraw the guilty plea, and rejected them accordingly. Dkt. 111; *see also* Dkt. 155 (citing Dkt. 111). The second denied his motion for production of his client file because Worthing "cites no applicable federal rule of discovery or other legal mechanism whereby this Court may grant the relief he seeks." Dkt. 119; *see also* Dkt. 155 (citing Dkt. 119). Moreover, despite claiming that the district court never explained its decisions, Worthing nonetheless engages with, and criticizes, their merits in his motion to this Court. Mot. 15-16 & n.5. That Worthing does not agree with the reasons given by the district court does not mean that the district court did not explain adequately its decision. That he argues the merits of the district court's decisions establishes that there is a "sufficient basis for making a bail decision" in this Court. *Wheeler*, 795 F.2d at 841.

Finally, the district court did not need to detail, in its order denying bail, its reasons for concluding that Worthing's sentencing disparity argument does not raise a substantial question likely to result in a reduced sentence. The district court explained its reasons for imposing a 30-day sentence (a sentence far below the guidelines range and the same length as that given a "comparable" defendant) at the sentencing hearing. *See, e.g.*, Dkt. 133 at 3:8-6:3, 11:18-20:8. As illustrated above, *supra* at 15-16, this Court can "effectively and efficiently review" the district court's rejection of Worthing's sentencing disparity argument on the present record. *Wheeler*, 795 F.2d at 841. A remand for further explication of this single issue (one

of many Worthing raises) is not an "efficient" way to resolve this motion, and would only serve to delay its disposition.

CONCLUSION

For the reasons set forth above, Worthing's motion should be denied.

Respectfully submitted,

/s/ Patrick M. Kuhlmann
FINNUALA K. TESSIER
PATRICK M. KUHLMANN
Attorneys
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Room 3224
Washington, DC 20530-0001
202-305-4639

September 17, 2018

CERTIFICATE OF COMPLIANCE

1. This opposition complies with the page limitation in Ninth Circuit Rule 27-1(1)(d) because it does not exceed 20 pages (excluding the items listed at Federal Rules of Appellate Procedure 27(a)(2)(B) and 32(f)). This opposition also complies with the word limitation based on the conversion in Ninth Circuit Rule 32-3(2) for briefs using proportionally spaced typeface because the word count for this opposition (excluding items listed at Federal Rules of Appellate Procedure 27(a)(2)(B) and 32(f)) is 4685, which divided by 280 is 16.73, less than the 20-page limit contained in Ninth Circuit Rule 27-1(1)(d).

2. This opposition complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2013 with 14-point Times New Roman font.

September 17, 2018

/s/ Patrick M. Kuhlmann
Attorney for the
United States of America

CERTIFICATE OF SERVICE

I, Patrick Kuhlmann, hereby certify that on September 17, 2018, I electronically filed the foregoing United States' Opposition to Mr. Worthing's Motion Under Circuit Rule 9-1.2 for Bail Pending Appeal and Remand to the District Court Pursuant to *United States v. Wheeler*, 795 F.2d 839 (9th Cir. 1986) with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit by using the CM/ECF System.

I certify that all participants in these cases are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

September 17, 2018

/s/ Patrick M. Kuhlmann
Attorney for the
United States of America