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14
15 UNITED STATES DISTRICT COURT
16 FOR THE CENTRAL DISTRICT OF CALIFORNIA
17 SOUTHERN DIVISION

18 UNITED STATES OF AMERICA,) SA CR 09-00077-JVS
)
19 Plaintiff,) GOVERNMENT'S OPPOSITION TO
) DEFENDANTS' MOTION TO DISMISS
20 v.) COUNTS 9-11; MEMORANDUM OF
) POINTS AND AUTHORITIES;
21 STUART CARSON et al.,) DECLARATION OF ANDREW GENTIN
)
22 Defendants.)
)
23 _____)

24
25 Plaintiff United States of America, by and through its
26 attorneys of record, the United States Department of Justice,
27 Criminal Division, Fraud Section, and the United States Attorney
28

1 for the Central District of California (collectively, "the
2 government"), hereby files its opposition to defendants' motion
3 to dismiss counts nine through eleven of the indictment. The
4 government's opposition is based upon the attached memorandum of
5 points and authorities, the declaration of Department of Justice
6 Trial Attorney Andrew Gentin and the exhibits attached thereto,
7 the files and records in this matter, as well as any evidence or
8 argument presented at any hearing on this matter.

9 DATED: October 21, 2009

Respectfully submitted,

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 Defendants seek the dismissal of three counts of the
5 indictment claiming that the five year statute of limitations for
6 these counts has lapsed. Defendants' motion should be denied
7 because the statute of limitations was tolled on September 8,
8 2008, when the government submitted a foreign evidence request to
9 Switzerland. Accordingly, the three counts at issue, none of
10 which had lapsed as of September 8, 2008, were properly tolled by
11 order of this Court as of September 8, 2008.

12 II.

13 BACKGROUND

14 A. The Swiss MLAT Request

15 In 2007, the Department of Justice opened a criminal
16 investigation into possible violations of the Foreign Corrupt
17 Practices Act ("FCPA") and other federal laws involving Control
18 Components, Inc. ("CCI"), a Rancho Santa Margarita-based company.
19 (Declaration of Andrew Gentin [Gentin Decl.], ¶ 2). The
20 government's investigation centered on hundreds of payments made
21 by CCI to officials of foreign state-owned companies as well as
22 officers and employees of foreign and domestic private companies.
23 (Id.). The government learned that CCI had adopted and instilled
24 within the company's sales force a business practice of
25 identifying and cultivating a "friend-in-camp" or "FIC" at its
26 customers to whom CCI would pay a "commission" fee if the FIC
27 successfully assisted CCI in obtaining business. (Id.). The
28 government also learned that these payments were arranged and/or

1 approved by individuals at the highest levels of CCI's senior
2 management. (Id.).

3 The scope of the government's investigation eventually
4 included two \$50,000 payments made by CCI in June 2000 to a UBS
5 AG bank account in Switzerland in the name of Fengxia Sun. (Id.,
6 ¶ 3). The government had information showing that Fengxia Sun
7 was an employee of Jiangsu Nuclear Power Corporation ("JNPC"), a
8 state-owned entity in China. (Id.). The government also learned
9 that JNPC owned the Tianwan nuclear power plant in China and that
10 the two \$50,000 payments were a 2.2% commission paid by CCI to
11 Fengxia Sun for a valve project at the Tianwan nuclear power
12 plant that had been awarded to CCI. (Id.).

13 Additionally, during the government's witness interviews,
14 several witnesses stated that FICs may have been paying kickbacks
15 to members of CCI's senior management, including Stuart Carson
16 and Rose Carson. (Id., ¶ 4). This allegation was a significant
17 one, and the government sought additional information related to
18 it. (Id.).

19 In this context, the payments from CCI to the UBS AG account
20 in Switzerland were notable. (Id., ¶ 5). The vast majority of
21 the other FIC payments were made directly in the FIC's home
22 country, either to the FIC directly or through an intermediary.
23 (Id.). The unusual nature of the payments to a country known for
24 bank secrecy raised an inference that the payments may have been
25 made to facilitate a kickback payment to one or more of CCI's
26 senior management. (Id.). These suspicions were heightened when
27 a witness reported that Rose Carson was a co-signatory on the UBS
28 AG account. (Id.) The government also suspected that the

1 discovery of such a payment could also lead to the discovery of
2 other payments through common bank accounts or similar means of
3 transfer. (Id.).

4 Accordingly, on September 8, 2008, the Office of
5 International Affairs of the United States Department of Justice
6 made an official request to the government of Switzerland
7 pursuant to the Treaty on Mutual Legal Assistance for Criminal
8 Matters (commonly known as an "MLAT") between the United States
9 of America and the Swiss Confederation. (Id., ¶ 6, Exhibit A).
10 This MLAT request sought Switzerland's assistance in obtaining
11 records from UBS AG. (Id.). Specifically, the government stated
12 in the request that it was investigating "whether Rose Carson,
13 Control Components Inc., and others violated United States
14 criminal laws by making improper payments to foreign officials to
15 assist in the obtaining and retention of business and by
16 laundering the proceeds of the bribery scheme." (Id., Exhibit A
17 at 1). The government stated in the request that it "needs Swiss
18 bank records in order to confirm that improper payments to
19 foreign officials were deposited into the account **and to trace**
20 **the disposition of those improper payments.**" (Id. (emphasis
21 added)).

22 The documents requested included complete records related to
23 the account into which CCI made the two \$50,000 transfers. (Id.,
24 Exhibit A at 8). The government also requested complete records
25 for "[a]ny other accounts controlled by . . . Fengxia Sun . . .
26 or . . . Rose Carson." (Id.). The government sought not only
27 records for 2000, when the transfers took place, but also records
28 "through December 31, 2006." (Id.). The government explained

1 that it sought records for the entire time period because CCI
2 continued to receive orders related to the Tianwan plant through
3 the end of 2006. (Id., Exhibit A at 5).

4 The government's official request listed the following as
5 "persons and entity involved": (1) Rose Carson; (2) Stuart
6 Carson; (3) Paul Cosgrove; (4) Mario Covino; (5) Dave Edmonds;
7 (6) Tai Ha; (7) Rick Morlok; (8) Scott Tredo; and (9) CCI. (Id.,
8 Exhibit A at 7-8). The official request identified 15 U.S.C. §
9 78dd (the FCPA), 18 U.S.C. § 371 (conspiracy), and 18 U.S.C. §
10 1956(a)(2) (money laundering) as the "offenses." (Id., Exhibit A
11 at 6-7).

12 B. The Tolling Order

13 On November 25, 2008, the government filed with this Court
14 an *ex parte* application for an order suspending the statute of
15 limitations pursuant to 18 U.S.C. § 3292. (Id., ¶ 7, Exhibit B).
16 The government's application described its investigation and its
17 request to the government of Switzerland on September 8, 2008.
18 (Id., Exhibit B at 2-5). It also provided sufficient detail
19 regarding the investigation and the underlying payments by CCI to
20 the UBS AG bank account for the court to conclude that there was
21 reason to believe that evidence related to that investigation was
22 in Switzerland. (Id.). Accordingly, the government asked this
23 Court to issue an order under § 3292(a) suspending the
24 limitations period as of September 8, 2008, for the offenses
25 under investigation, until such time as the authorities in
26 Switzerland took final action on the MLAT request. (Id., Exhibit
27 B at 8-9). The government identified the persons and offenses
28 under investigation as follows:

1 The Grand Jury and the Federal Bureau of
2 Investigation have been conducting an investigation
3 into possible criminal violations in connection with
4 Central [sic] Components, Inc. (CCI), a Rancho Santa
5 Margarita, California, based valve manufacturing
6 company, and several of its former employees, including
7 Rose Carson, for the following criminal offenses:
8 conspiracy, 18 U.S.C. § 371; mail fraud, 18 U.S.C. §
9 1341; wire fraud, 18 U.S.C. § 1343; violations of the
10 Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd, *et*
11 *seq.*; violations of the Travel Act, 18 U.S.C. § 1952;
12 obstruction of justice, 18 U.S.C. § 1519; and money
13 laundering, 18 U.S.C. §§ 1956(a)(2)(A) and 1956(h) (the
14 "Offenses").

15 (*Id.*, Exhibit B at 2).

16 On November 30, 2008, this Court (the Honorable David O.
17 Carter) issued an order that found, by a preponderance of the
18 evidence, that (1) there is evidence in a foreign country of
19 "conspiracy . . . mail fraud . . . wire fraud . . . violations of
20 the Foreign Corrupt Practices Act . . . violations of the Travel
21 Act . . . obstruction of justice . . . and money laundering";
22 (2) the government made an official request to obtain such
23 evidence on September 8, 2008; and (3) that no indictment had yet
24 been returned in the matter. (*Id.*, ¶ 7, Exhibit C at 2).
25 Accordingly, this Court ordered that "the statute of limitations
26 for these offenses be tolled to the extent permitted by 18 U.S.C.
27 § [3292] ***commencing on September 8, 2008.***" (*Id.*) (emphasis
28 added).

29 The government of Switzerland took final action on the
30 Justice Department's MLAT request on May 18, 2009. (Gentin
31 Decl., ¶ 7).

32 C. The Indictment

33 On April 9, 2009, a federal grand jury returned a sixteen-
34 count indictment ("the Indictment") charging six members of CCI's

1 senior management, defendants Stuart Carson, Hong "Rose" Carson
2 ("R. Carson"), Paul Cosgrove, David Edmonds, Flavio Ricotti, and
3 Han Yong Kim (collectively, "the defendants"), with conspiring to
4 secure contracts for CCI by paying bribes to officials of foreign
5 state-owned companies as well as officers and employees of
6 foreign and domestic private companies. Count One of the
7 Indictment charges the defendants with conspiring to violate the
8 Foreign Corrupt Practices Act ("FCPA"), 15 U.S.C. § 78dd-2, and
9 the Travel Act, 18 U.S.C. § 1952, from 1998 through 2007. Counts
10 Two through Ten of the Indictment allege substantive FCPA
11 violations involving corrupt payments to foreign officials in
12 Korea, China, United Arab Emirates, and Malaysia. Counts Eleven
13 through Fifteen allege substantive violations of the Travel Act
14 involving corrupt payments to private companies. The final count
15 of the indictment alleges that defendant R. Carson obstructed an
16 investigation within the jurisdiction of a federal agency when
17 she destroyed documents relevant to CCI's internal investigation
18 of the corrupt payments by flushing them down the toilet of CCI's
19 ladies' room.

20 Three of the sixteen counts involve conduct that would have
21 been outside of the five-year statute of limitations but for this
22 Court's order tolling the statute as of September 8, 2008, i.e.,
23 conduct that occurred between September 8, 2003, and April 9,
24 2004. Count Nine alleges a violation of the FCPA against
25 defendants R. Carson and Cosgrove related to a corrupt payment of
26 \$24,500 on or about October 21, 2003, from CCI to an official of
27 Guohua Electric Power, a state-owned power company in China.
28 (See Indictment at 24-26, 31). Count Ten alleges a violation of

1 the FCPA against defendant Edmonds related to a corrupt payment
2 of \$98,000 on or about January 6, 2004, from CCI to an official
3 at Petronas, a state-owned petroleum company in Malaysia. (See
4 id. at 25, 32). Count Eleven alleges a violation of the Travel
5 Act against defendant Edmonds related to a corrupt payment of
6 \$10,000 on or about March 9, 2004, from CCI to an employee at
7 "Company 1" for the purpose of securing Company 1's business for
8 the Meizhouwan project in China. (See id. at 25, 33).

9 **III.**

10 **ARGUMENT**

11 Defendants make two arguments in support of their motion to
12 dismiss. First, defendants argue that 18 U.S.C. § 3292 is
13 "offense-specific," and propose that the term "offense" actually
14 only means specific **counts** for which foreign evidence is being
15 sought. (Defts' Motion at 5-9). Under defendants' theory, the
16 fact that the government's MLAT request to Switzerland did not
17 seek evidence directly related to Counts Nine through Eleven
18 renders the government's tolling order ineffective to toll the
19 statute of limitations as to those counts. (See id.). Second,
20 defendants argue, notwithstanding contrary Ninth Circuit
21 authority, that the statute of limitations period is not
22 suspended until the court issues an order suspending the
23 limitations period, as opposed to the date of the government's
24 request for foreign evidence. (Id. at 9-13). Because each of
25 these arguments is legally misplaced, defendants' motion should
26 be denied.

1 A. Because the Government's Foreign Evidence Request Was
2 Reasonably Specific to Elicit Evidence of the Bribery
3 Offenses Under Investigation, It Tolloed the Statute of
4 Limitations for All Such Offenses

5 18 U.S.C. § 3292(a)(1) provides:

6 (a) (1) Upon application of the United States,
7 filed before return of an indictment, indicating that
8 evidence of an offense is in a foreign country, the
9 district court before which a grand jury is impaneled
10 to investigate the offense shall suspend the running of
11 the statute of limitations for the offense if the court
12 finds by a preponderance of the evidence that an
13 official request has been made for such evidence and
14 that it reasonably appears, or reasonably appeared at
15 the time the request was made, that such evidence is,
16 or was, in such foreign country.

17 Defendants state that Section 3292 "only suspends the
18 statute of limitations for the specific offense or offenses
19 related to the foreign evidence being sought." (Defts' Motion at
20 5). According to defendants, because Counts Nine through Eleven
21 do not relate specifically to the two \$50,000 payments to Fengxia
22 Sun's UBS AG bank account in Switzerland, the Court's November
23 30, 2008, tolling order cannot toll the statute of limitations as
24 to those counts and they must be dismissed.

25 Defendants' position should be rejected. First, it relies
26 on an unduly narrow interpretation of "offense" in Section 3292 -
27 - one that reads "offense" as meaning "count" and which is not
28 supported by either the legislative history of Section 3292 or
the cases interpreting Section 3292(a)(1), all of which have
offered a broader interpretation of "offense." Second, it
ignores the fact that the government's foreign evidence request
was far broader than just the bank records related to the two
\$50,000 payments, and indeed sought evidence related to a seven-
year time period from multiple accounts.

1 1. The Legislative History of Section 3292 Establishes
2 that the Term "Offense" Should Be Interpreted Broadly

3 Although Section 3292 provides that the statute of
4 limitations shall be suspended for "the offense" for which
5 evidence in a foreign country is being sought, the term "offense"
6 is not defined. Therefore, it is appropriate for a court to
7 consult the legislative history in order to discern "the
8 legislative purpose as revealed by the history of the statute."
9 Concrete Pipe & Prods. of Cal. v. Constr. Laborers Pension Trust,
10 508 U.S. 602, 627 (1993). If legislative history reveals clear
11 Congressional intent, a court must give effect to that intent
12 unless the statutory language prohibits such a result. Johnson
13 v. United States, 529 U.S. 694, 710 n. 10 (2000).

14 The legislative history of Section 3292 makes clear that it
15 is a provision designed to permit prosecutors more time to
16 investigate cases where obtaining foreign evidence is necessary.
17 Section 3292 was enacted as part of the Comprehensive Crime
18 Control Act of 1984. See H.R. Rep. No. 98-907 (1984), reprinted
19 in 1984 U.S.C.C.A.N. 3578. The stated "purpose" of the
20 legislation in the House of Representative Report ("the House
21 Report") was to "extend statute of limitation . . . deadlines
22 when evidence located in foreign countries must be obtained."
23 Id. at 2. The House Report further explained the rationale as
24 follows: "Once funds are traced to offshore banks, federal
25 prosecutors face serious difficulties in obtaining records from
26 those banks in both the investigative and trial stages of a
27 prosecution." Id. "The delays attendant in obtaining records
28 from other countries create . . . statute of limitation . . .

1 problems. . . . [T]he delay in getting the records might prevent
2 filing an information or returning an indictment within the time
3 period specified by the relevant statute of limitation." Id. at
4 2-3. The House Report thus described Section 3292(a)(1) as a
5 provision that "authorizes a federal court, upon application of
6 federal prosecutor that is made before the return of an
7 indictment and that indicates that evidence of an offense is
8 located in a foreign country, to suspend the running of the
9 applicable statute of limitation." Id. at 7.

10 This legislative history supports the government's position
11 that "offense" should be interpreted broadly. In enacting
12 Section 3292, Congress recognized that the necessity of obtaining
13 evidence through foreign governments can be a time-consuming
14 process, and that it would be beneficial to the administration of
15 justice to permit the government to obtain a tolling of the
16 applicable statutes of limitation where it had to seek such
17 evidence. Defining "offense" to mean "count" would retard this
18 purpose by unduly restricting the government's ability to
19 investigate fully and completely its cases without fear of
20 running the statute of limitations.

21 2. Cases Interpreting Section 3292 Have Interpreted the
22 Term "Offense" Broadly

23 In light of this legislative history, the few cases that
24 have interpreted Section 3292(a)(1)'s "offense" language have
25 uniformly reached the conclusion that the statute of limitations
26 has been tolled, and cautioned against an "unreasonably
27 formalistic" application of the statute. The most recent
28 district court opinion to examine the scope of what is tolled

1 under Section 3292 is United States v. Ratti, 365 F. Supp. 2d 649
2 (D. Md. 2005). In Ratti, the defendant was an Italian executive
3 accused of orchestrating a scheme to falsify manufacturing
4 records and regulatory submissions to the Food and Drug
5 Administration. Id. at 651. The indictment charged the
6 defendant with conspiracy, wire fraud, making false statements,
7 and shipping adulterated drugs in interstate commerce. Id. The
8 indictment against the defendant was returned after the
9 expiration of the five-year statute of limitations, but the
10 government relied on a Section 3292 order tolling the limitations
11 period. Id. at 653-54. The government's application for that
12 order stated that it was investigating unspecified "employees" of
13 the Italian drug manufacturer for introduction into interstate
14 commerce of adulterated drugs, making of false statements, and
15 conspiracy. Id. No mention was made of either wire fraud or the
16 defendant, except as a possible witness. Id.

17 Defendant contended that the application's failure to
18 identify either wire fraud or the defendant as a subject of the
19 investigation meant that the statute of limitations had not been
20 effectively tolled. Id. at 655-56. The Maryland district court
21 disagreed. "So long as the offenses designated in the request to
22 the foreign government and in the Section 3292 application are
23 reasonably specific to elicit evidence probative of the offenses
24 under investigation, the application is in order." Id. at 656.
25 The Ratti court concluded that the statute was tolled even though
26 neither wire fraud nor the defendant was specifically mentioned
27 in the government's Section 3292 application because (1) "the
28 wire fraud counts are intimately related to the general scheme to

1 defraud that was under investigation" and (2) the defendant's
2 "role was highlighted in the MLAT request." Id.

3 Ratti relied on United States v. Neill, 952 F. Supp. 831 (D.
4 D.C. 1996). Neill considered whether Section 3292 required that
5 a foreign evidence request expressly list the alleged statutory
6 violations in order to satisfy Section 3292. Id. at 832. The
7 D.C. district court concluded that it did not. Id. at 833.

8 After cautioning that the statute "does not grant the government
9 *carte blanche* to toll statutes of limitations," the Neill court
10 noted two constraints imposed by the statute. Id. at 832. "The
11 first major constraint upon government discretion is the clear
12 requirement that an offense be under investigation by a grand
13 jury." Id. The district court then described the second
14 constraint: "While it would be unreasonably formalistic as well
15 as unnecessary to impose a requirement that the government list
16 by citation the statutes that may have been violated, the request
17 for evidence must nevertheless be reasonably specific in order to
18 elicit evidence of the alleged violations under investigation by
19 the grand jury." Id. at 833. Neill thus concluded: "The
20 government can only request that statutes of limitation be tolled
21 for offenses under investigation by the grand jury; and such
22 tolling can only be triggered through official requests for
23 foreign evidence that are sufficiently specific." Id. at 833-34.

24 Defendants mis-characterize the holding of Neill, arguing
25 that Neill holds that Section 3292 is **count**-specific: "a foreign
26 evidence request only tolls the statute of limitations for the
27 **count(s)** to which the sought evidence specifically pertains."

28 (Defts' Motion at 8) (emphasis added). In fact, the Neill

1 opinion supports the opposite proposition. Applying the test
2 quoted above, Neill concluded that the government's MLAT request
3 seeking foreign evidence, including bank records related to
4 "money laundering, conflicts of interest, bribery or gratuity and
5 foreign financial transactions" was sufficient to toll the
6 statute of limitations for tax offenses which were charged in the
7 indictment. Id. at 833.

8 In its opinion, the court in Neill indicates, on at least
9 two occasions, that the term "offense" refers to "tax
10 violations," and thus rejects any possibility that "offense"
11 refers to a specific count.¹ Had Neill concluded that the
12 language of Section 3292 was **count**-specific, it would have
13 concluded that the failure of the MLAT to identify the tax
14 violation counts would have been fatal to the government's
15 tolling argument.

16 3. The Government's MLAT Request Sought Evidence Related
17 to the Bribery Offenses Under Investigation

18 The government submitted a reasonably specific request for
19 foreign evidence to the Swiss government. It sought bank records
20 related to an account that had been identified as receiving two
21 specific bribery payments from defendants' employer, CCI, to a
22

23 ¹ In the first instance, the court states "The first major
24 constraint upon government discretion is the clear requirement
25 that an **offense** be under investigation by a grand jury. That
26 requirement is satisfied here. Based upon the government's
27 submission, it is clear that a grand jury was investigating
28 possible **tax violations**" Id. at 832 (emphases added).
In the second instance, the court states "This request was
reasonably specific to elicit evidence probative of the **tax**
violations then under investigation by the grand jury, and it
was, therefore, effective to toll the statute of limitations for
those **offenses**." Id. at 833 (emphases added).

1 bank account allegedly controlled by an official at a state-owned
2 facility in China. (Gentin Decl., Exhibit B). It further sought
3 records for any other accounts held by that official as well as
4 the CCI employee who allegedly facilitated the bribery payments
5 and who was a joint holder of the account. (Id. at 8 (“[a]ny
6 other accounts controlled by . . . Fengxia Sun . . . or . . .
7 Rose Carson”). It sought records for these accounts for a seven-
8 year period, since the government had evidence showing an ongoing
9 relationship between CCI and JNPC. (Id. (“Records should be for
10 the period January 1, 2000, through December 31, 2006”)).

11 It would be, in the words of Neill and Ratti, “unreasonably
12 formalistic” to limit the government’s ability to toll the
13 statute with regard to only counts that may be related to the two
14 \$50,000 payments. As described above, at the time of the Swiss
15 MLAT request, the government was investigating the scope of the
16 bribery and possible related money laundering. More
17 specifically, the government was looking into possible money
18 flows that would lead to evidence of “kickbacks” from FICs back
19 to CCI’s senior management, as several witnesses had reported
20 allegations of such kickbacks. Had such kickbacks been verified,
21 it may have re-shaped the government’s indictment to a
22 significant degree. Such kickbacks could have led to one or more
23 of the charges identified in the Section 3292 tolling request
24 that were not in fact included in the indictment, such as mail
25 fraud, wire fraud, or money laundering. The fact that the
26 government did not obtain sufficient evidence to allege such
27 kickbacks in the indictment should not affect the scope of its
28 Section 3292 order.

1 B. Under Controlling Ninth Circuit Precedent, the Tolling
2 Period of Section 3292 Begins with the Government's Official
3 Request for Foreign Evidence

4 Separate and apart from their argument that Counts Nine
5 through Eleven are collectively time-barred because the tolling
6 order related to a different offense, defendants also argue that
7 Count Nine is also untimely for an independent reason. Count
8 Nine alleges a violation of the FCPA on October 21, 2003.
9 Despite the fact that Judge Carter's November 30, 2008 order
10 explicitly found that the government made an official request to
11 obtain such evidence on September 8, 2008 and ordered that the
12 "statute of limitations for these offenses be tolled to the
13 extent permitted by 18 U.S.C. § [3292] **commencing on September 8,**
14 **2008**" (Exhibit C at 2) (emphasis added),² defendants argue that
15 Count Nine is untimely because "the tolling period under § 3292
16 only commences at the time the government applies for a tolling
17 order." (Defts' Motion at 9).

18 Defendants' argument cannot be squared with the plain
19 language of the Court's Order or with the Ninth Circuit's
20 decision in United States v. Bischel, 61 F.3d 1429 (9th Cir.
21 1995). In Bischel, the defendant appealed from the denial of the
22 district court's refusal to dismiss the indictment, arguing, like
23 defendants here, that a suspension of the limitations period must
24 be marked from the date of the Section 3292 order, not the date
25 of the official request to the foreign government. 61 F.3d at
26 1434. Rejecting this argument, the Ninth Circuit looked at the

27 ² In quoting from the Court's November 30, 2008, Order,
28 defendants misleadingly omit the key words "commencing on
September 8, 2008." (Defts' Motion at 9).

1 language of Section 3292, observing that subparagraph (b) states
2 that the suspension period "'shall begin on the date on which the
3 official request is made'" and subparagraph (a)(1) requires a
4 district court "to find that an official request 'has been made'
5 before entering an order suspending the statute of limitations."
6 Id. Thus, "[Section 3292] plainly contemplates that the starting
7 point for tolling the limitations period is the official request
8 for evidence, not the date the § 3292 motion is made or granted."

9 Id.

10 To reach this conclusion, Bischel relied on United States v.
11 Miller, 830 F.2d 1073 (9th Cir. 1987), where the Ninth Circuit
12 rejected the argument that the government must apply for a
13 suspension of the tolling period under Section 3292 before it
14 obtained the foreign evidence it sought. "The statute itself
15 specifies the only relevant time the application must be made:
16 'before return of an indictment.'" Id. at 1076.³

17 In an effort to avoid this conclusion, defendants argue that
18 Bischel was wrongly decided, noting that the Second Circuit and a
19 district court in Utah have rejected Bischel's analysis and
20 concluded that Section 3292 requires the government to make an

21
22 ³ The district court in Neill adopted Bischel's analysis.
23 In Neill, the government applied for a Section 3292 order after
24 the statute of limitations would have expired on four counts of
25 the indictment. Defendants moved to dismiss on the ground that
26 Section 3292 could not revive an expired statute of limitations.
27 952 F. Supp. at 835-36. The district court rejected this
28 argument, holding that "the statutes of limitations were tolled
by the official request to a foreign government, not by the
government's application to the Court." Id. at 836. Neill
relied not only on Bischel, but also on (1) Section 3292's
language that the government need only apply for tolling "before
return of an indictment," and (2) the holding in Miller that this
is the only language in the statute specifying when a Section
3292 application must be made. Id.

1 application to suspend the statute of limitations before the
2 limitations period expires. (Defts' Motion at 9-12 (citing
3 United States v. Kozeny, 541 F.3d 166, 170-71 (2d Cir. 2008) and
4 United States v. Brody, 621 F. Supp. 2d 1196 (D. Utah 2009)). Of
5 course, a panel opinion of the Ninth Circuit is binding on
6 subsequent panels and the district courts of the Ninth Circuit
7 unless and until overruled by the Supreme Court or an en banc
8 decision of the Ninth Circuit. See United States v. Easterday,
9 564 F.3d 1004, 1010 (9th Cir. 2009). Accordingly, defendants'
10 efforts to persuade this Court to apply non-Ninth Circuit
11 authority instead of Bischel should be rejected.

12 Even if this Court were writing on a blank slate, the
13 analysis adopted by the Second Circuit and the Utah district
14 court is flawed. The courts' analysis renders superfluous the
15 only requirement in Section 3292 concerning when an application
16 must be made, effectively replacing the statute's requirement
17 that the government's application must be "filed before return of
18 an indictment" with "filed before return of an indictment and
19 before expiration of the un-tolled statute of limitations."

20 Defendants also argue that the Supreme Court's subsequent
21 decision in Stogner v. California, 539 U.S. 607 (2003), limits
22 Bischel's holding that the tolling period begins with the
23 official request for foreign evidence to situations where the
24 statute of limitations has not yet expired. (Defts' Motion at
25 12). This argument misapprehends Stogner's application to an
26 already-existing statute.

27 In Stogner, the Supreme Court considered the extent to which
28 a law could create a new limitations period by authorizing

1 criminal prosecutions "that the passage of time had previously
2 barred." 539 U.S. at 610. Unsurprisingly, since the *Ex Post*
3 *Facto* clause expressly bars such legislative resuscitation of an
4 already time-barred offense, Stogner concluded that such a
5 statute violated the clause. 539 U.S. at 632-633 ("We conclude
6 that a law enacted after expiration of a previously applicable
7 limitations period violates the *Ex Post Facto* Clause when it is
8 applied to revive a previously time-barred prosecution.").

9 Here, by comparison, Section 3292 was not a new law at all,
10 as it was enacted nearly a quarter-century before the limitations
11 period expired. Thus, Bischel's rejection of an *Ex Post Facto*
12 argument still applies, as there is no "new statute that is the
13 culprit, but its judicial application." 61 F.3d at 1434.

14 In sum, Bischel forecloses defendants' argument that Count
15 Nine was not tolled because the government's application was not
16 made before expiration of the statute of limitations. For this
17 reason, the defendants' motion to dismiss Count Nine on this
18 independent ground should be rejected.

19 IV.

20 CONCLUSION

21 For the foregoing reasons, defendants' motion to dismiss
22 Counts Nine through Eleven of the indictment should be denied.
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DECLARATION OF ANDREW GENTIN

I, Andrew Gentin, hereby declare and state as follows:

1. I am a Trial Attorney in the Fraud Section of the Criminal Division of the United States Department of Justice in Washington, D.C. I am one of the attorneys representing the government in United States v. Stuart Carson, et al.

2. In 2007, the Department of Justice opened a criminal investigation into possible violations of the Foreign Corrupt Practices Act ("FCPA") and other federal laws involving Control Components, Inc. ("CCI"), a company headquartered in Rancho Santa Margarita, California. The investigation centered on hundreds of payments made by CCI to officials of foreign state-owned companies as well as officers and employees of foreign and domestic private companies. The investigation revealed that CCI had adopted and instilled within the company's sales force a business practice of identifying and cultivating a "friend-in-camp" or "FIC" at its customers to whom CCI would pay a "commission" fee if the FIC successfully assisted CCI in obtaining business. The evidence showed that these payments were arranged and/or approved by individuals at the highest levels of CCI's senior management.

3. The government's investigation identified two \$50,000 payments made by CCI in June 2000 to a UBS AG bank account in Switzerland in the name of Fengxia Sun. Evidence showed that Fengxia Sun was an employee of Jiangsu Nuclear Power Corporation ("JNPC"), a state-owned entity in China. JNPC owned the Tianwan nuclear power plant in China. CCI had a valve project at the Tianwan nuclear power plant, and the evidence showed that these

1 two \$50,000 payments were a 2.2% "commission" paid by CCI to
2 Fengxia Sun in connection with CCI's obtaining plant-related
3 business.

4 4. During the government's witness interviews, several
5 witnesses stated that FICs may have paid kickbacks to members of
6 CCI's senior management, including Stuart Carson and Rose Carson.
7 This allegation was a significant one, and the government sought
8 additional information related to it.

9 5. The payments from CCI to the UBS AG account in
10 Switzerland were unusual. The vast majority of the other FIC
11 payments the government had discovered were made directly in the
12 FIC's home country, either to the FIC directly or through an
13 intermediary. A payment to a country known for bank secrecy
14 raised an inference that the payment may have been made to
15 Switzerland to facilitate a kickback payment to one or more of
16 CCI's senior management. These suspicions were heightened when a
17 witness reported that Rose Carson was a co-signatory on the UBS
18 AG account. The discovery of such a payment could have led to
19 the discovery of other payments through common bank accounts or
20 similar means of transfer.

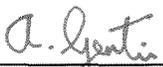
21 6. Accordingly, on September 8, 2008, the government
22 sought Switzerland's assistance in obtaining records from UBS AG
23 through an official request pursuant to the Treaty on Mutual
24 Legal Assistance for Criminal Matters ("MLAT") between the United
25 States of America and the Swiss Confederation. A true and
26 correct copy of the government's MLAT request to Switzerland is
27 attached hereto as Exhibit A.

28 7. On November 25, 2008, the government filed with this

1 Court an *ex parte* application for an order suspending the statute
2 of limitations pursuant to 18 U.S.C. § 3292. A true and correct
3 copy of the government's *ex parte* application is attached hereto
4 as Exhibit B. On November 30, 2008, this Court issued an order
5 stating that "the statute of limitations for these offenses be
6 tolled to the extent permitted by 18 U.S.C. § [3292] commencing
7 on September 8, 2008." A true and correct copy of this order is
8 attached hereto as Exhibit C. The government of Switzerland took
9 final action on the Justice Department's MLAT request on May 18,
10 2009.

11 I declare under penalty of perjury of the laws of the State
12 of California and the United States that the foregoing is true
13 and correct.

14 Executed this 21st day of October, 2009, at Washington, D.C.

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16 
17 _____
18 ANDREW GENTIN
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U.S. Department of Justice

Criminal Division

MEW:SCR:KH:JHF:kc
182-29161

Washington, D.C. 20530

Date: *August 21, 2008*

To: The Central Authority of Switzerland

Subject: Request for Assistance in the Investigation of
Rose Carson, et al.

The Central Authority of the United States requests the assistance of the appropriate authorities in Switzerland pursuant to the Treaty on Mutual Assistance in Criminal Matters and the OECD Anti-Bribery Convention. The United States Department of Justice, Criminal Division, Fraud Section is investigating whether Rose Carson, Control Components Inc., and others violated United States criminal laws by making improper payments to foreign officials to assist in the obtaining and retention of business and by laundering the proceeds of the bribery scheme. At least some of the funds obtained in connection with the scheme were transferred to a UBS AG account in Switzerland. The prosecutor needs Swiss bank records in order to confirm that improper payments to foreign officials were deposited into the account and to trace the disposition of those improper payments.

EXHIBIT "A"

THE FACTS

Control Components Inc. ("CCI") is a Rancho Santa Margarita, California-based company that develops, designs, and manufactures a wide range of sophisticated service control valves for use in the nuclear industry, oil and gas industry, and pulp and power plants worldwide. From the early 1990s through 2007, CCI made hundreds of improper payments to foreign officials for the purpose of obtaining and retaining business. In total, from 2003 to 2007, CCI made approximately \$7 million in improper payments in at least 37 countries.

When seeking new business opportunities, CCI would often identify a friend-in-camp ("FIC") to whom CCI would pay a "commission" fee if the FIC successfully assisted CCI in obtaining business. The majority of FICs were employees of CCI customers, who had direct power to award contracts or had the power to dictate the technical specifications of an order in a way that would favor CCI. Once CCI identified an FIC who had influence over the bidding process, CCI would often submit a contract bid to the customer. If CCI was awarded the contract, CCI would then pay a portion of the payments received as a result of the contract to the FIC.

These improper payments were authorized by senior management at CCI, including CCI's former President, Stuart Carson

("Carson"), who led CCI from 1989 through 2005. According to CCI employees, Carson heavily promoted payments to FICs. Many FIC payments were approved by Paul Cosgrove, Executive Vice President of CCI, and Rick Morlok, Director of Finance. Mario Covino, Director of Worldwide Factory Sales; Dave Edmonds, Vice President of Worldwide Customer Service; Scott Tredo, Worldwide Customer Service Manager; and Tai Ha, Director of Aftermarket Sales, also knowingly participated in making or approving payments to FICs.

While CCI senior management approved many of the FIC payments, CCI relied upon regional sales directors to identify FICs in each country where CCI planned to conduct business. CCI would then use improper payments to these FICs both to secure new contracts and to retain existing business. In 1995, CCI hired Rose Carson ("Rose"), the wife of Stuart Carson, to serve as the CCI sales director in China and Taiwan. Rose was in charge of directing five CCI representative offices in China and a 17-person sales staff.

During her tenure as sales director in China and Taiwan, Rose arranged for or made numerous improper payments to FICs on behalf of CCI. Rose would identify FICs in China to whom bribes could be offered and then would seek approval for these payments from Cosgrove. According to N.B. Fung, former CCI Customer Services Manager in China, CCI made payments to FICs in 60-70% of

new construction sales during the time he worked under Rose at CCI. The majority of these payments were approved by Cosgrove and Morlok.

On one such project, Rose requested, and CCI approved, a \$100,000 payment to an FIC named Fengxia Sun on a project in China under the name "LYG." LYG is CCI's code for the Tianwan nuclear power plant, located in the city of Lianyuangang, China. The Tianwan nuclear plant is owned by Jiangsu Nuclear Power Corporation ("JNPC"), a government-owned entity. Fengxia Sun is an employee of JNPC and had influence in awarding JNPC contracts.

According to Dean Capper, former CCI Vice President of Finance, on June 8, 2000, he received a request from Rose to transfer \$50,000 into a Swiss bank account in the name of Fengxia Sun. E-mails provided by Capper show that the \$50,000 was part of a 2.2% "commission" payment on a JNPC project that had been awarded to CCI. In a follow-up e-mail provided by Capper, dated June 29, 2000, Rose confirmed that "the money should go to the same account as last time," in response to a question regarding where the second payment of \$50,000 should be transferred.

A subsequent e-mail from Morlok to Capper, dated July 17, 2000, indicates that CCI made two transfers from its account in California to UBS AG account number 572688.01M in the name of Fengxia Sun. The first \$50,000 payment was made on June 6, 2000.

A second \$50,000 payment was made on June 30, 2000. Guido Friedman, an employee of CCI Switzerland, reported to Capper that Rose was a co-signer on the UBS AG account to which CCI had transferred the FIC payment.

In 2004, CCI was awarded another Tianwan/JNPC sales order in the amount of \$710,000. In connection with the order, a commission in the amount of \$16,000 was paid to an FIC at JNPC. While the prosecutor has no direct proof that such funds were transferred to Fengxia Sun, given the transfers to the UBS AG account in 2000, there is a strong suspicion that Fengxia Sun may be the FIC in this instance as well.

In addition to these payments, Rose also approved "entertainment expenses" and "gifts" to be given to Fengxia Sun. CCI continued to receive orders related to the Tianwan plant through the end of 2006. Given the large prior payments to Fengxia Sun, the prosecutor believes that CCI may have made additional payments to Fengxia Sun between 2000 and 2006.

CCI self-reported its conduct to the Department of Justice in the summer of 2007 and suspended Rose Carson and other culpable employees. As a result, the prosecutor believes that the scheme is not ongoing.

THE OFFENSES

15 U.S.C. § 78-dd-3. Prohibited foreign trade practices by persons other than issuers or domestic concerns

(a) It shall be unlawful for any person . . . or for any officer, director, employee, or agent of such person . . . , while in the territory of the United States, corruptly to make use of the mails or any means or instrumentality of interstate commerce or to do any other act in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to-

(1) any foreign official for purposes of-

(A) (i) influencing any act or decision of such foreign official in his official capacity, (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or (iii) securing any improper advantage; or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such person in obtaining or retaining business for or with, or directing business to, any person. . . .

* * *

(e) (1) (A) Any juridical person that violates subsection (a) of this section shall be fined not more than \$2,000,000. . . .

(e) (2) (A) Any natural person who willfully violates subsection (a) of this section shall be fined not more than \$100,000 or imprisoned not more than 5 years, or both.

18 U.S.C. § 371. Conspiracy

If two or more persons conspire either to commit any offense against the United States . . . in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined . . . or imprisoned not more than five years, or both.

18 U.S.C. § 1956(a)(2). Laundering of monetary instruments

Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States-- (A) with the intent to promote the carrying on of specified unlawful activity; . . . shall be sentenced to a fine of not more than \$500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer whichever is greater, or imprisonment for not more than twenty years, or both.

PERSONS AND ENTITY INVOLVED

1. ROSE CARSON
Alias: Hong Jiang Carson
Date of Birth: July 25, 1963
Place of Birth: China
Citizenship: United States
2. STUART CARSON
Date of Birth: July 29, 1938
Citizenship: United States
3. PAUL COSGROVE
Date of Birth: April 30, 1947
Citizenship: United States
4. MARIO COVINO
Date of Birth: November 27, 1964
Place of Birth: Italy
Citizenship: Italian
5. DAVE EDMONDS
Date of Birth: July 24, 1952
Citizenship: United States
6. TAI HA
Date of Birth: March 3, 1974
Citizenship: United States
Sex: Male

7. RICK MORLOK
Date of Birth: November 23, 1953
Citizenship: United States
8. SCOTT Tredo
Date of Birth: Unknown
Citizenship: United States
9. CONTROL COMPONENTS INC.
Address (U.S.): 22591 Avenida Empresa
Rancho Santa Margarita
California

Address (Switzerland): Im Link 11
8404 Winterthur
Switzerland

DOCUMENTS NEEDED

Please provide complete records from UBS AG,
Guggenbuhlstrasse 2, Winterthur - CH, 8401, relating to:

1. Account Number 572688.01M; and
2. Any other accounts controlled by:
 - a. Fengxia Sun, a/k/a Fenxia Sun; or
 - b. Rose Carson.

Records should be for the period January 1, 2000, through
December 31, 2006, and should include, but not be limited to:

1. original signature cards;
2. documentation of account opening;
3. account ledger cards;
4. periodic account statements;
5. records (copied front and back) of all items deposited,

- withdrawn, or transferred, including wire transfers;
6. correspondence to, from, or on behalf of the account holder; and
 7. memoranda related to the account.

PROCEDURES TO BE FOLLOWED

Please ask the appropriate judicial authority to certify the bank records in the usual manner.

August 21, 2008
Date

Randy Toledo
Randy Toledo
Acting Deputy Director
Criminal Division
Office of International Affairs

COPY

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14
 15 Attorneys for Plaintiff
 United States of America

17 UNITED STATES DISTRICT COURT
 18 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 19 SOUTHERN DIVISION

SAC 08 032

20 IN RE GRAND JURY) SA CR MISC.
 PROCEEDINGS)
 21) MEMORANDUM IN SUPPORT OF
) APPLICATION FOR AN ORDER SUSPENDING
 22) THE RUNNING OF THE STATUTE OF
) LIMITATIONS PURSUANT TO
 23) 18 U.S.C. § 3292
)
 24) UNDER SEAL
)

25
 26 The United States of America respectfully submits this
 27 memorandum in support of its application, pursuant to 18 U.S.C.
 28 § 3292, requesting the Court to issue an order suspending the
 running of the statute of limitations, 18 U.S.C. § 3282, for

1 running of the statute of limitations, 18 U.S.C. § 3282, for
2 offenses under investigation in the above-captioned matter,
3 pending final action by the government of Switzerland on a
4 pending foreign evidence request of the United States.

5 I. Statement of Facts

6 The Grand Jury and the Federal Bureau of Investigation have
7 been conducting an investigation into possible criminal
8 violations in connection with Central Components, Inc. (CCI), a
9 Rancho Santa Margarita, California, based valve manufacturing
10 company, and several of its former employees, including Rose
11 Carson, for the following criminal offenses: conspiracy, 18
12 U.S.C. § 371; mail fraud, 18 U.S.C. § 1341; wire fraud, 18 U.S.C.
13 § 1343; violations of the Foreign Corrupt Practices Act, 15
14 U.S.C. §§ 78dd, *et seq.*; violations of the Travel Act, 18 U.S.C.
15 § 1952; obstruction of justice, 18 U.S.C. § 1519; and money
16 laundering, 18 U.S.C. §§ 1956(a)(2)(A) and 1956(h) (the
17 "Offenses"). (Smith Affid. ¶ 2).

18 From the early 1990s through 2007, CCI made hundreds of
19 improper payments to individuals at both state-owned and
20 commercial entities for the purpose of obtaining and retaining
21 business. (Smith Affid. ¶ 3).

22 When seeking new business opportunities, CCI, at the urging
23 of its senior management, would often identify a friend-in-camp
24 ("FIC") to whom CCI would pay a "commission" fee if the FIC
25 successfully assisted CCI in obtaining business. The majority of
26 FICs were employees of CCI customers and either had direct power
27 to award contracts or had the power to dictate the technical
28 specifications of an order in a way that would favor CCI. Once a

1 CCI employee had identified an FIC who had influence over the
2 bidding process, the employee would seek the authorization via e-
3 mail of a CCI executive to pay a percentage of the contract to
4 the FIC (either directly or via an agent who had been engaged by
5 CCI) in the event CCI was awarded the contract. (Smith Affid. ¶
6 4).

7 Once the CCI executive had approved the proposed payment
8 structure, CCI would then submit a contract bid to the customer.
9 If CCI was awarded the contract, CCI would then pay the
10 predetermined commission to the FIC (directly or via CCI's agent)
11 after it had received payment from the customer for the parts or
12 service CCI was providing. (Smith Affid. ¶ 5).

13 The term "FIC" was widely used within the company (in fact
14 there were FIC posters on the walls at the offices) and the
15 concept of cultivating FICs was pushed strongly by Stuart Carson
16 via his sales approach, which he termed "the Method." (Smith
17 Affid. ¶ 5).

18 Paul Cosgrove was the second-highest ranking executive at
19 CCI and headed the sales department. The sales department was
20 then further broken down into Factory Sales (i.e. new parts),
21 which was headed by Mario Covino, and Aftermarket (i.e. service
22 and replacement parts), which was led by David Edmonds. With the
23 exception of very low dollar value orders, either Cosgrove,
24 Covino, or Edmonds had to approve almost all proposed payments to
25 agents or FICs. In certain regions of the world, such as the
26 Middle East and China, the regional director could approve the
27 proposed payments. Rick Morlok, the head of the Finance
28 Department, had to approve the payments prior to the wire

1 transfers being made. (Smith Affid. ¶ 6).

2 In 1995, CCI hired Rose Carson, the wife of Stuart Carson,
3 to serve as the CCI sales director in China and Taiwan. Rose was
4 in charge of directing five CCI representative offices in China
5 and a seventeen-person sales staff. Flavio Ricotti served as the
6 CCI sales director for Europe, Africa, and the Middle East. Han
7 Yong Kim was the head of CCI-Korea, a position he accepted after
8 CCI purchased the company he had owned. Carson, Ricotti, and Kim
9 all approved or made numerous payments to FICs. (Smith Affid. ¶
10 7).

11 II. Evidence in Switzerland

12 In June 2000, at the request of Rose Carson, CCI made two
13 \$50,000 payments into a UBS AG Swiss bank account in the name of
14 Fengxia Sun in connection with CCI's sale of valves to the
15 Tianwan nuclear power plant in China. The Tianwan nuclear power
16 plant is owned by Jiangsu Nuclear Power Corporation (JNPC), a
17 government-owned entity. Fengxia Sun is an employee of JNPC and
18 had influence in awarding JNPC contracts. The two \$50,000
19 payments constituted a 2.2% "commission" payment to Fengxia Sun
20 related to a JNPC project that had been awarded to CCI. (Smith
21 Affid. ¶ 8).

22 Evidence clearly relevant to this investigation is located
23 in Switzerland. Specifically, it appears that improper payments
24 made by CCI were sent to a Swiss bank account located at UBS AG.

25 Based on the above facts, and at the request of the Fraud
26 Section of the Criminal Division, United States Department of
27 Justice, on September 8, 2008, the Office of International
28 Affairs of the United States Department of Justice made an

1 official request to Switzerland pursuant to the Treaty between
2 the Government of the United States of America and the Swiss
3 Confederation on Legal Assistance in Criminal Matters for legal
4 assistance in obtaining evidence. (Smith Affid. ¶ 9).

5 III. Pursuant to 18 U.S.C. § 3292, the Court Should Enter an
6 Order Suspending the Running of the Statute of Limitations
for a Period of up to Three Years

7
8 Title 18, United States Code, Section 3292 authorizes the
9 Court to issue an order to suspend the running of the statute of
10 limitations for a period of up to three years when an official
11 request has been made for evidence in a foreign country. Section
12 3292 provides:

13 (a) (1) Upon application of the United
14 States, filed before return of an indictment,
15 indicating that evidence of an offense is in
16 a foreign country, the district court before
17 which a grand jury is empaneled to
18 investigate the offense shall suspend the
19 running of the statute of limitations for the
20 offense if the court finds by a preponderance
21 of the evidence that an official request has
22 been made for such evidence and that it
23 reasonably appears, or reasonably appeared at
24 the time the request was made, that such
25 evidence is, or was, in such foreign country.

26 (2) The court shall rule upon such
27 application not later than thirty days after
28 the filing of the application.

(b) Except as provided in subsection (c) of
this section, a period of suspension under
this section shall begin on the date on which
the official request is made and end on the
date on which the foreign court or authority
takes final action on the request.

(c) The total of all periods of suspension
under this section with respect to an offense

(1) shall not exceed three years;
and

(2) shall not extend a period with

1 which a criminal case must be
2 initiated for more than six months
3 if all foreign authorities take
4 final action before such period
5 would expire without regard to this
6 section.

7 (d) As used in this section, the term
8 "official request" means a letter rogatory, a
9 request under a treaty or convention, or any
10 other request for evidence made by . . . an
11 authority of the United States having
12 criminal law enforcement responsibility, to a
13 court or other authority of a foreign
14 country.

15 An application for an order pursuant to 18 U.S.C. § 3292 is
16 appropriately made ex parte to the District Court in the District
17 in which the grand jury investigation is taking place. DeGeorge
18 v. United States District Court, 219 F.3d 930, 937 (9th Cir.
19 2000) (finding "no basis" for argument that 3292 application
20 cannot be made ex parte); United States v. King, No. 98-Cr-91A,
21 2000 WL 36026, at *20 (W.D.N.Y. March 24, 2000) ("In neither the
22 statute itself nor the legislative history is there any
23 indication that Congress intended the application process would
24 turn on notice to anyone. Moreover, an ex parte application to
25 suspend a statute of limitations to facilitate a grand jury
26 investigation is consistent with the long established principle
27 that grand jury proceedings are secret and non-adversarial in
28 nature.").

29 So long as an application under section 3292 is made prior
30 to the return of an indictment, the Government is not required to
31 make the application while the foreign evidence is still abroad,
32 but may wait until after the evidence has been received. United
33 States v. Miller, 830 F.2d 1073, 1076 (9th Cir. 1987) ("The
34 statute itself specifies the only relevant time the application

1 must be made: 'before return of an indictment.'"). Nor must the
2 application be filed prior to the time the statute of limitations
3 for the offenses under investigation would have otherwise
4 expired. United States v. Bischel, 61 F.3d 1429, 1434 (9th Cir.
5 1995). "The statute plainly contemplates that the starting point
6 for tolling the limitations period is the official request for
7 evidence, not the date the § 3292 motion is made or granted."
8 Id.; see 18 U.S.C. § 3292(b) ("a period of suspension under this
9 section shall begin on the date on which the official request is
10 made").

11 While the period of suspension begins on the date the
12 official request is made, it ends on "the date on which the
13 foreign court or authority takes final action on the request."
14 18 U.S.C. § 3292(b). A foreign country is not deemed to have
15 taken "final action" on an official request until it has made a
16 "dispositive response to each item set out in the official
17 request." United States v. Bischel, 61 F.3d at 1433; accord
18 United States v. King, 2000 WL 36026, at *17. However, the total
19 of all periods of suspension under Section 3292 cannot exceed
20 three years. 18 U.S.C. § 3292(c)(1).

21 An order suspending the running of the statute of
22 limitations should be entered here. The Government has met its
23 burden under 18 U.S.C. § 3292(a) of showing, by a preponderance
24 of the evidence, that the requirements for relief under the
25 statute are satisfied.

26 First, the attached affidavit provides sufficient evidence
27 that there is a grand jury in the Central District of California
28 which is investigating, among other things, possible criminal

1 offenses committed by CCI and its employees, including
2 conspiracy, mail fraud, wire fraud, violations of the
3 Foreign Corrupt Practices Act and Travel Act, obstruction of
4 justice, and money laundering.¹ (Smith Aff. ¶ 2).

5 Second, the affidavit provides the Court with sufficient
6 evidence that an "official request" has been made within the
7 meaning of § 3292(d), with the request to Switzerland made on
8 September 8, 2008 (Smith Aff. ¶ 9).

9 Third, the affidavit provides sufficient evidence that, at
10 the time of the making of the official request and continuing to
11 the present date, there is reason to believe that there is
12 evidence which was, and continues to be, located in Switzerland.
13 The evidence includes, among other things, bank records. (Smith
14 Aff. ¶ 10).

15 Accordingly, the Government respectfully requests the Court
16 to issue an ex parte order under 18 U.S.C. § 3292(a) that
17 suspends the running of the statute of limitations as of
18 September 8, 2008, for the offenses under investigation by the
19 grand jury, until such time as authorities in Switzerland take

20
21 ¹ Although not specifically cited in the official request,
22 the subject matter of the grand jury's investigation encompassed
23 violations of mail fraud, wire fraud, and tax charges. See
24 United States v. Neill, 952 F. Supp. 831, 832 (D.D.C. 1996)
25 ("While the plain text of the statute is . . . offense-specific,
26 such specificity does not require that foreign evidence request
27 expressly list by citation the alleged statutory violations . . .
28 ."); Id. at 833 ("While it would be unreasonably formalistic, as
well as unnecessary to impose a requirement that the government
list by citation the statutes that may have been violated, the
request for evidence must nevertheless be reasonably specific in
order to elicit evidence of the alleged violations under
investigation by the grand jury."); see also United States v.
Wilson, 249 F.3d 366, 374 (5th Cir. 2001) (citing Neill).

1 final action on the foreign evidence request, but not for a total
2 of more than three years.

3

4 Dated: November 25, 2008

Respectfully submitted,

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THOMAS P. O'BRIEN
United States Attorney

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ROBB C. ADKINS
Assistant United States Attorney
Chief, Santa Ana Branch

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Deputy Chief

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ANDREW GENTIN
Trial Attorney

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Attorneys for Plaintiff
United States of America

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DECLARATION OF BRIAN SMITH

1
2 I, Brian Smith, state the following:

3 1. I am a Special Agent with the Federal Bureau of
4 Investigation and I submit this Declaration in support of the
5 accompanying application pursuant to 18 U.S.C. § 3292 to suspend
6 the running of the statute of limitations for offenses arising
7 out of this district's Grand Jury investigation of Central
8 Components, Inc. ("CCI") and several of its current and former
9 employees. This declaration is not intended to, and does not,
10 set forth all information gathered concerning CCI. Instead, it
11 is meant to provide a sufficient factual basis to support the
12 motion to toll the statute of limitations.

13 2. The Grand Jury and the Federal Bureau of Investigation
14 have been conducting an investigation into possible criminal
15 violations in connection with CCI, a Rancho Santa Margarita,
16 California, based valve manufacturing company, and several of its
17 former employees for the following criminal offenses: conspiracy,
18 18 U.S.C. § 371; mail fraud, 18 U.S.C. § 1341; wire fraud, 18
19 U.S.C. § 1343; violations of the Foreign Corrupt Practices Act,
20 15 U.S.C. §§ 78dd, et seq.; violations of the Travel Act, 18
21 U.S.C. § 1952; obstruction of justice, 18 U.S.C. § 1519; and
22 money laundering, 18 U.S.C. §§ 1956(a)(2)(A) and 1956(h).

23 3. From the early 1990s through 2007, CCI made hundreds of
24 illegal payments to individuals at both state-owned and
25 commercial entities for the purpose of obtaining and retaining
26 business. During this time period, Stuart Carson served as CCI's
27 Chief Executive Officer.

28 4. When seeking new business opportunities, CCI, at the

1 urging of its senior management, would often identify a
2 friend-in-camp ("FIC") to whom CCI would pay a "commission" fee
3 if the FIC successfully assisted CCI in obtaining business. The
4 majority of FICs were employees of CCI's customers and either had
5 direct power to award contracts or had the power to dictate the
6 technical specifications of an order in a way that would favor
7 CCI. Once a CCI employee had identified an FIC who had influence
8 over the bidding process, the employee would seek the
9 authorization via e-mail of a CCI executive to pay a percentage
10 of the contract to the FIC (either directly or via an agent who
11 had been engaged by CCI) in the event CCI was awarded the
12 contract.

13 5. Once the CCI executive had approved the proposed
14 payment structure, CCI would then submit a contract bid to the
15 customer. If CCI was awarded the contract, CCI would then pay
16 the predetermined commission to the FIC (directly or via CCI's
17 agent) after it had received payment from the customer for the
18 parts or service CCI was providing. The term "FIC" was widely
19 used within the company (in fact there were FIC posters on the
20 walls at the offices) and the concept of cultivating FICs was
21 pushed strongly by Stuart Carson via his sales approach, which he
22 termed "the Method."

23 6. Paul Cosgrove was the second-highest ranking executive
24 at CCI and headed the sales department. The sales department was
25 then further broken down into Factory Sales (i.e. new parts),
26 which was headed by Mario Covino, and Aftermarket (i.e. service
27 and replacement parts), which was led by David Edmonds. With the
28 exception of very low dollar value orders, either Cosgrove,

1 Covino, or Edmonds had to approve almost all proposed payments to
2 agents or FICs. In certain regions of the world, such as the
3 Middle East and China, the regional director could preliminarily
4 approve the proposed payments. Rick Morlok, the head of the
5 Finance Department, had to approve the payments prior to the wire
6 transfers being made.

7 7. In 1995, CCI hired Rose Carson, the wife of Stuart
8 Carson, to serve as the CCI sales director in China and Taiwan.
9 Rose was in charge of directing five CCI representative offices
10 in China and a seventeen-person sales staff. Flavio Ricotti
11 served as the CCI sales director for Europe, Africa, and the
12 Middle East. Han Yong Kim was the head of CCI-Korea, a position
13 he accepted after CCI purchased the company he had owned. Rose
14 Carson, Ricotti, and Kim all approved or made numerous payments
15 to FICs.

16 8. In June 2000, at the request of Rose Carson, CCI made
17 two \$50,000 payments into a UBS AG Swiss bank account in the name
18 of Fengxia Sun in connection with CCI's sale of valves to the
19 Tianwan nuclear power plant in China. The Tianwan nuclear power
20 plant is owned by Jiangsu Nuclear Power Corporation (JNPC), a
21 government-owned entity. Fengxia Sun is an employee of JNPC and
22 had influence in awarding JNPC contracts. The two \$50,000
23 payments constituted a 2.2% "commission" payment to Fengxia Sun
24 related to a JNPC project that had been awarded to CCI.

25 9. Based on the above, and at the request of the Fraud
26 Section of the Criminal Division, United States Department of
27 Justice, on September 8, 2008, the Office of International
28 Affairs of the United States Department of Justice made an

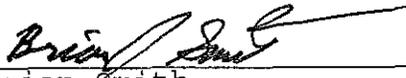
1 official request to Switzerland pursuant to the Treaty between
2 the Government of the United States of America and the Swiss
3 Confederation on Legal Assistance in Criminal Matters for legal
4 assistance in obtaining evidence.

5 10. At the time of the making of the official request and
6 continuing to the present date, there was, and continues to be,
7 evidence related to this case, including bank records, in
8 Switzerland.

9 11. To date, Switzerland has not provided any evidence to
10 the United States pursuant to the request.

11 I declare under penalty of perjury that the foregoing is
12 true and correct.

13
14 Dated: 11/17/08



Brian Smith
Special Agent
Federal Bureau of Investigation

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United States of America

17 UNITED STATES DISTRICT COURT
18 FOR THE CENTRAL DISTRICT OF CALIFORNIA

19 SOUTHERN DIVISION

SACM08 032

20 IN RE GRAND JURY
21 PROCEEDINGS

) SA CR MISC.

) [PROPOSED] ORDER

) UNDER SEAL

23 FORWARDED

2008 NOV 25 PM 3:35
CENTRAL DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA

BY

1 Based on the declaration of Brian Smith, pursuant to 18
2 U.S.C. § 3282 the Court hereby finds by a preponderance of
3 evidence:

- 4 1) that there is evidence in a foreign country of
5 conspiracy, 18 U.S.C. § 371; mail fraud, 18 U.S.C. §
6 1341; wire fraud, 18 U.S.C. § 1343; violations of the
7 Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd, et
8 seq.; violations of the Travel Act, 18 U.S.C. § 1952;
9 obstruction of justice, 18 U.S.C. § 1519; and money
10 laundering, 18 U.S.C. §§ 1956(a)(2)(A) and 1956(h);
- 11 2) that the government made an official request to obtain
12 this evidence on September 8, 2008; and
- 13 3) that no indictment has been handed down in this matter.

14 The Court further orders that the statute of limitations for
15 these offenses be tolled to the extent permitted by 18 U.S.C. §
16 3282 commencing on September 8, 2008.

17
18 Dated: *Nov 20 2008*

DAVID G. CARTER

Hon. ~~DAVID G. CARTER~~
UNITED STATES DISTRICT JUDGE

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