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11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE DISTRICT OF ARIZONA

14 United States of America,
15 Plaintiff,
16 vs.
17 Thomas Mario Costanzo,
18 Defendant.
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CR-17-00585-PHX-GMS

**GOVERNMENT'S RESPONSE TO
MOTION IN LIMINE TO PRECLUDE
EXPANSION AT TRIAL OF
REGULATORY BASES**

20 The Government does not intend to expand the regulatory bases beyond those cited
21 in its Response to the Motion for Bill of Particulars. (Doc. 117.) Thus, the Government
22 has no objection to the Court granting the pending motion in limine regarding expansion
23 at trial of regulatory bases. (Doc. 133.)

24 **I. Introduction and background.**

25 The five money laundering counts set for trial in this case are money laundering
26 sting charges which allege, conjunctively, that Costanzo engaged in a financial transaction
27 for two purposes: to conceal and disguise the nature, location, source, ownership and
28 control of the undercover agents' drug money, in violation of 18 U.S.C. § 1956(a)(3)(B);

1 and with the intent to avoid a transaction reporting requirement that any financial institution
2 would have been obligated to undertake, in violation of 18 U.S.C. § 1956(a)(3)(C). The
3 pending motion in limine (Doc. 133) deals only with the second way Costanzo is alleged
4 to have laundered the money at issue here. Specifically, Subsection C states that it is money
5 laundering when a person intending “to avoid a transaction reporting requirement under
6 State or Federal law” conducts or attempts to conduct a financial transaction involving
7 property represented to be the proceeds of specified unlawful activity, or property used to
8 conduct or facilitate specified unlawful activity. *See* 18 U.S.C. § 1956(a)(3)(C). “To prove
9 a violation of this section, the Government must prove (1) that the defendant conducted or
10 attempted to conduct a financial transaction, (2) with the intent to avoid a transaction
11 reporting requirement, and (3) that the property involved in the transaction was represented
12 by a law enforcement officer to be the proceeds of specified unlawful activity.” *United*
13 *States v. Nelson*, 66 F.3d 1036 1040 (9th Cir. 1995) (quoting *United States v. Breque*, 964
14 F.2d 381, 386-87 (5th Cir. 1992)). That means, in order to find Costanzo guilty at trial, the
15 jury does not have to find a violation of a specific regulation—it simply has to find that
16 Costanzo attempted to work around those regulatory concepts.

17 **II. The evidence will show that Costanzo intended to help the undercover agents**
18 **avoid the regulatory reporting requirements mentioned in the response to the**
19 **motion for bill of particulars.**

20 There is ample evidence that Costanzo intended to help the undercover agents work
21 around the regulatory concepts mentioned in the response to the motion for bill of
22 particulars. The Government need not mention additional regulatory bases. At trial, the
23 Government intends to present general evidence about Currency Transaction Reporting
24 (CTR) requirements, Suspicious Activity Reporting (SAR) requirements, and Know Your
25 Customer (KYC) requirements. The government will then introduce recorded statements
26 made by Costanzo showing that he intended to help the undercover agents avoid those
27 requirements. For example, when Costanzo told an undercover agent that “radar goes off,
28 the bells go off” if the undercover agent were to deposit more than \$10,000. (Meeting on

1 March 20, 2015.) Or when Costanzo tells another undercover agent that “dealing with
2 [him] is one way” to keep what he is doing from being discovered because “[Costanzo]
3 do[es]n’t say anything to anybody,” along with “that’s why you are paying me.” (Meeting
4 on October 7, 2015.) The government also plans to introduce Costanzo’s own statements
5 about reporting requirements, for example, when he tells the third undercover agent that
6 “if you take out more than \$3,000, they fill out what’s called [a] SAR” and then goes on to
7 explain that SAR stands for “Suspicious Activity Report.” (Meeting on November 16,
8 2016.) During that same meeting, he tells the third undercover agent, “I don’t even wanna
9 know people’s real name.” (Meeting on November 16, 2016.) The statements above, along
10 with others, will be introduced at trial to show that Costanzo intended to help the
11 undercover agents avoid the regulatory concepts mentioned in the response to the bill of
12 particulars. The Government will not present regulations other than those that have already
13 been noticed. *See* Doc. 117.

14 **III. Conclusion.**

15 The Government will not expand the regulatory bases beyond those mentioned in
16 the Response to the Bill of Particulars. (Doc. 117.) The Court should, accordingly, grant
17 the motion in limine. (Doc. 133.)

18 Respectfully submitted this 6th day of March, 2018.

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21 *s/ Matthew Binford*
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CERTIFICATE OF SERVICE

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I hereby certify that on this date, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to counsel of record in this case.