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 9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,  
 13 Plaintiff,  
 14 v.  
 15 MONGOL NATION,  
 An unincorporated association,  
 16 Defendant.  
 17

No. CR 13-106(A)-DOC

UNITED STATES' SECOND SUBMISSION  
IN OPPOSITION TO DEFENDANT'S  
SECOND MOTION FOR A NEW TRIAL

Date: October 6, 2022  
 Time: 3:00 p.m.  
 Location: Courtroom of the  
 Hon. David O. Carter

18  
 19 Plaintiff United States of America, by and through its counsel  
 20 of record, the United States Attorney for the Central District of  
 21 California and Assistant United States Attorney Christopher Brunwin,  
 22 hereby files its Second Submission in Opposition to Defendant's  
 23 Second Motion for a New Trial.  
 24  
 25  
 26  
 27  
 28

1           This Opposition is based upon the attached memorandum of points  
2 and authorities, the files and records in this case, and such further  
3 evidence and argument as the Court may permit.

4   Dated: September 22, 2022

Respectfully submitted,

5                                   E. MARTIN ESTRADA  
6                                   United States Attorney

7                                   SCOTT M. GARRINGER  
8                                   Assistant United States Attorney  
9                                   Chief, Criminal Division

10   /s/Christopher Brunwin            
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13                                   Attorneys for Plaintiff  
14                                   UNITED STATES OF AMERICA

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2 MEMORANDUM OF POINTS AND AUTHORITIES

3 I. INTRODUCTION

4 Years after the jury convicted defendant Mongol Nation of  
5 racketeering and racketeering conspiracy, defendant moved for a new  
6 trial, claiming that its national president, David Santillan  
7 ("Santillan"), had been a confidential informant who disclosed  
8 defendant's trial strategy to the government during the 2018 trial.  
9 Days of testimony from numerous witnesses have proven defendant's  
10 claim to be untrue. There is not a single witness or piece of  
11 evidence that supports defendant's claim. Because this is  
12 defendant's only claim, now proven to be wholly without merit, its  
13 motion for a new trial must be denied.

14 II. RELEVANT LAW

15 A motion for new trial requires the defendant to show: (1)  
16 evidence that is newly discovered; (2) failure to discover the  
17 evidence sooner was not due to a lack of diligence; (3) the evidence  
18 was material to trial issues; (4) the evidence was not cumulative or  
19 merely impeaching; and (5) a new trial would probably result in an  
20 acquittal.

21 Here, defendant did not, and cannot, point to any newly  
22 discovered evidence, because its claims about Santillan were not  
23 true, and its attempts to elicit testimony about the Mexican Mafia or  
24 arguments within the defense group did not change that. Moreover,  
25 there was no showing, or even argument, that a new trial would result  
26 in an acquittal. That element is significant here, because the jury  
27 verdicts in this case were supported by weeks of testimony, exhibits  
28 and videos showing endless crimes -- murders, shootings, stabbings,

1 scalping, riots, narcotics transactions, and attacks on law  
2 enforcement, as well as the rewards for those crimes, including the  
3 skull and crossbones patch for committing murder on behalf of the  
4 gang. Without question, a new trial in this case would include even  
5 more of those crimes -- more assaults, more murders, and more riots,  
6 because there are more, many more.

7 Defendant brought its Motion without support and based on claims  
8 that were not true. It does not establish any basis for a new trial,  
9 and it must now be denied.

10 III. BACKGROUND

11 A. Procedural Background

12 The background for this case is set forth in the United States'  
13 Trial Brief and Opposition to Defendant's Motion for Judgment of  
14 Acquittal. CR 186, 363. In sum, the Ninth Circuit remanded the  
15 matter on July 11, 2017, after the Court dismissed the original  
16 indictment on September 16, 2015. CR 114, 127, 128. The Grand Jury  
17 returned the First Superseding Indictment on May 17, 2018. See First  
18 Superseding Indictment (CR 169).

19 The First Superseding Indictment charged defendant with  
20 racketeering in violation of Title 18 of the United States Code,  
21 Section 1962(c), and conspiracy to commit racketeering offenses in  
22 violation of Title 18 of the United States Code, Section 1962(d).  
23 The FSI also included forfeiture allegations. *Id.*

24 B. Trial

25 Trial began on October 30, 2018, and continued through December  
26 13, 2018, when the jury convicted defendant on both counts, which  
27 charged racketeering and RICO conspiracy. CR 310, 311.

28

1           At trial, the government presented testimony from approximately  
2 28 witnesses, including undercover Special Agents of the Bureau of  
3 Alcohol, Tobacco, Firearms, and Explosives (ATF), local law  
4 enforcement officers, and other percipient witnesses to the charged  
5 offenses. Specifically, the government offered testimony from each  
6 of the undercover ATF agents who had infiltrated the Mongols during  
7 the Black Rain investigation. Special Agents Daren Kozlowski, Greg  
8 Gaioni, Paul D'Angelo, and John Carr all testified. Retired Special  
9 Agents William Queen, who worked undercover during Operation Ivan,  
10 and Jay Dobyms also testified, as did numerous local law enforcement  
11 officers, percipient witnesses, and victims of violent crimes  
12 committed by the defendant and its members, including a person who  
13 had been beaten unconscious by the Mongols and another who witnessed  
14 the Mongols stab his friend to death. See Witnesses Called at Trial,  
15 dated December 13, 2018 (CR 312).

16           Retired Special Agent Queen specifically testified about the  
17 Mongols having cut the scalp off a victim and thereafter displayed  
18 the scalp on a Mongols banner. A photograph of the scalp was  
19 admitted into evidence. The jury also watched surveillance videos of  
20 numerous shootings and stabbings committed by Mongols members. Those  
21 included videos of Mongols members stabbing a victim in his face,  
22 Mongols beating a man after they had knocked him unconscious in a  
23 parking lot, and Mongols members chasing and shooting more victims.  
24 Jurors saw the muzzle flash when Mongols shot the victims. The jury  
25 also heard testimony about Mongols members having shot law  
26 enforcement officers and killed Officer Shaun Diamond. It also heard  
27 testimony from Mongols member Christopher Ablett, who bragged about  
28 having murdered the president of the Hells Angels, by shooting and

1 stabbing him on the street in San Francisco. Defendant actually  
2 identified some 50 witnesses for trial and presented testimony from  
3 Mongols members, retired ATF agents, and persons it designated as  
4 expert witnesses. Defendant also compelled the appearance of several  
5 Mongols members who then refused to testify and, instead invoked  
6 their 5th Amendment right against self-incrimination. See Witnesses  
7 Called at Trial (noting witnesses who invoked their 5th Amendment  
8 right against self-incrimination) (CR 312).

9 On December 13, 2018, the jury returned verdicts and convicted  
10 defendant on all the counts charged, racketeering and RICO  
11 conspiracy. See Minutes, dated December 13, 2018 (CR 310). On  
12 January 11, 2019, the jury returned its findings on the forfeiture of  
13 several categories of property, pursuant to the conviction on Count  
14 Two of the FSI. CR 350, 353. The Court denied defendant's previous  
15 new trial motion on February 28, 2019.

16 Defendant filed its Notice of Appeal on May 29, 2019. CA No.  
17 19-50176 (CR 440, 441). The United States filed its Notice of Appeal  
18 on June 13, 2019. CA 19-50190 (CR 453, 454). The appeals have been  
19 briefed and are scheduled for hearing on September 23, 2022.

20 C. Defendant's Current Motion for New Trial

21 Defendant filed this Motion for New Trial on December 10, 2021,  
22 almost exactly three years after the verdict. (CR 535). It noticed  
23 the hearing more than two months later, on February 28, 2022 (CR  
24 535), and, even then, after two months and after the government filed  
25 its Opposition, on February 14, 2022, defendant moved to delay the  
26 hearing on its Motion for several months more, until June 6, 2022.  
27 Defendant's Motion for Continuance (CR 540). Defendant claimed that

28



1 it needed those months to "gather additional evidence and locate  
2 witnesses." *Id.*

3 In requesting that continuance, defendant also recognized that  
4 its Motion for New Trial did not support a new trial or other relief.  
5 Instead, defendant asserted that its "moving papers do not need to  
6 prove their case before they have an opportunity to have a hearing."  
7 Motion for Continuance, at 4 (CR 540). Even then, on May 23, 2022,  
8 defendant filed a Reply brief that was incoherent, but again asserted  
9 that it had no burden "to demonstrate anything until the evidentiary  
10 hearing is finished." Defendant's Reply, at 2 (CR 542). Defendant  
11 also claimed that it only needed to show "cause for the Court to  
12 investigate." *Id.*, at 7 (CR 542).

13 D. The Hearings on Defendant's Motion

14 On June 6, 2022, the Court conducted the first of several  
15 evidentiary hearings and received testimony from Annie Yumiko  
16 Santillan ("A. Santillan"). See Reporter's Transcript ("R.T."),  
17 dated June 6, 2022. A. Santillan immediately refuted defendant's  
18 Motion and testified that she made recorded statements about her  
19 husband, Santillan, because he had been unfaithful and was not sober.  
20 A. Santillan testified repeatedly that she wanted to "hurt him and  
21 destroy him." R.T., at 32:7-12. She testified, "I would have said  
22 anything to hurt him." *Id.* A. Santillan also testified that she  
23 knew of only three occasions that her husband had spoken with SA  
24 Ciccone and that each of those was in public and with other Mongols  
25 present. R.T., at 40:1-18. She stated that there were never any  
26 private conversations. *Id.* Her testimony was:

27 Q: You said that other Club members were with David on at  
28 least some of the occasions where you saw him conversing with Mr.  
Ciccone.

1  
2 A: No, I said they were always with him on any of the  
conversations that he had with him.

3 Q: Okay, which --

4 A: I never -- David was never alone.

5 6/6/22 R.T., at 44:3-9.

6 A. Santillan also repeatedly stated that she made her statements  
7 to hurt and "destroy" her husband in front of the other Mongols.

8 6/6/22 R.T., at 52:13-22 ("The motive was to hurt him. To destroy  
9 him --."; and "I was literally trying to destroy him.").

10 On June 28, 2022, A. Santillan again testified to the facts she  
11 had described on June 6, 2022. See 6/28/22 R.T. Vol. 1. Hence, she  
12 testified that, despite her recorded statement, she did not have any  
13 personal knowledge that Santillan was a "CI or a rat." 6/28/22 R.T.  
14 Vol. I 45:1-22. She testified that she had never spoken to SA  
15 Ciccone or "anyone from the government" and that anytime Santillan  
16 met with SA Ciccone or the ATF had been at Mongols events and in  
17 front of all the other Mongols, like National Runs. *Id.* She also  
18 testified that SA Ciccone would show up and talk with "whoever was in  
19 charge," including Santillan, because he was the Mongols "national  
20 president." 6/28/22 R.T. Vol. I 46:1-25. She affirmed that any  
21 meeting was "never in private." Rather, it was "[a]llways public."  
22 6/28/22 R.T. Vol. I 47:5-21. She repeated that there were no  
23 private meetings and stated "It's always ... done with members ... in  
24 front of the clubhouse. It was at National Runs ... there was always  
25 brothers around." 6/28/22 R.T. Vol. I 49:8-25.

26 A. Santillan also testified that no one from the government or  
27 the ATF had ever assisted her or Santillan to avoid prosecution for  
28

1 any criminal conduct. She specifically contradicted the  
2 representations attached to defendant's Motion. 6/28/22 R.T. Vol. I  
3 52:14-55:15. When asked if anyone from the government intervened  
4 with the disposition of charges, she answered, "No. No one." *Id.*  
5 When questioned about defense counsel's representations that the  
6 Santillans had been allowed to "walk free" from prosecution, she  
7 explicitly denied that and stated, "I would know because I got 'em  
8 out of jail, bailed 'em." A. Santillan specifically testified, "I  
9 know that we -- we got 'em out of jail. I own a bail bonds company  
10 so he was bailed out. There was no assistance." 6/28/22 R.T. Vol. I  
11 56:14-24. She also specifically stated, contrary to defendant's  
12 representations, "he's gone to court on all of those," that Santillan  
13 had been prosecuted and had been required "to pay fines and do  
14 community service ... we had to take a misdemeanor, and we had to do  
15 community service." She testified repeatedly, "There was no  
16 assistance." 6/28/22 R.T. Vol. I 55:1-56:22.

17 Defendant next called Santillan, and Santillan also contradicted  
18 each of the representations defense counsel had attached to  
19 defendant's Motion. 6/28/22 R.T. Vol. I 63:10. Santillan responded  
20 to claims that he had been meeting with SA Ciccone at Starbucks in  
21 the mornings by saying, "That's an absolute lie." 6/28/22 R.T. Vol I  
22 91:9-23. Santillan also stated that he had elected not to testify at  
23 trial because a senior Mongols member and "most of my cabinet were  
24 against me testifying -- or any Mongols, for that matter. We never  
25 take the stand."<sup>1</sup> 6/28/22 R.T. Vol I 93:9-23. Santillan stated that

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27 <sup>1</sup> The record of Witnesses Called at Trial reflects that  
28 defendant sought to elicit testimony from at least four Mongols  
members who refused to testify and invoked their 5th Amendment right  
against self-incrimination at trial. (CR 312).

1 he was against Roger Pinney testifying "[b]ecause he's 'out bad' from  
2 our club," and that his testimony would have been "irrelevant. It  
3 wasn't part of our trial, our case." 6/28/22 R.T. Vol I 98:5-11.  
4 Santillan stated that he did not want to testify, because "I don't  
5 want to self-incriminate about stuff I already knew about the club."  
6 6/28/22 R.T. Vol II 5:14-15. He repeated his concern about self-  
7 incrimination over "illegal activity that I may have been involved  
8 with in the past." Santillan also stated that "Nobody wanted to  
9 testify":

10 Q. He was on the witness list; was he not?

11 A. You put him on the list. I didn't. Joe, you put a hundred  
12 people on the list. I didn't know half of them who they were.  
13 Nobody showed up.

14 Q. You didn't put anybody on the witness list? I did. Isn't  
15 that right?

16 A. Yeah, and I didn't even know half the people you put on  
17 there.

18 6/28/22 R.T. Vol II 18:8-19:9.<sup>2</sup>

19 Santillan later stated that "It was like pulling teeth trying to  
20 get anybody on the stand," that "[n]obody wanted to testify. Why  
21 would you? ... It's the lifestyle." 6/28/22 R.T. Vol II 27:25-28:6.  
22 When asked about SA Ciccone being called to testify, Santillan  
23 repeatedly told defense counsel, "You left him on the witness list.

---

24 <sup>2</sup> Santillan's stated 5th Amendment concern was immediately  
25 demonstrated when the Court asked a question about the 2002 riot in  
26 Laughlin, Nevada. In response, Santillan stated, "Somebody shot a  
27 gun behind me. I know who it was. I'm not going to say who it was,"  
28 and the Court asked Santillan if he did not want to say based on a  
5th Amendment concern. 6/28/22 R.T. Vol II 25:20-25. The Court  
later described the Court's own concern about "the spectacle of you  
[Santillan] continually taking the Fifth Amendment in front of this  
jury or prior and the breadth of the questions the Government would  
certainly ask you ..." 9/7/22 R.T. Vol I 19:25-20:3.

1 You could have called him when we voted right before Christmas during  
2 the break before we rested, including your daughter was part of --  
3 raising her hand not to badger him on the stand ... Joe, you left him  
4 on the witness list. You could have called him with or without me."  
5 6/28/22 R.T. Vol II 28:14-20. Santillan also testified that he never  
6 spoke with Ciccone "other than public events, and it was brief with  
7 brothers around me." 6/28/22 R.T. Vol II 31:7-8.

8 The hearing resumed on June 29, 2022. Santillan was then asked  
9 for the first time, on cross-examination, whether he was an  
10 informant, and he answered directly, "No, sir." 6/29/22 R.T. Vol I  
11 29:21-23. Santillan also testified that retired Montebello Police  
12 Officer Christopher Cervantes was not his "handler," despite defense  
13 counsel having represented that they "believed" he was. See  
14 Defendant's Reply Brief, Ales Decl. ¶ 4 (CR 542). Santillan also  
15 testified that he brought police reports regarding his arrests and  
16 charges against him, and that he had received "[z]ero assistance"  
17 from the government on his criminal cases. 6/29/22 R.T. Vol I 30:4-  
18 22. He also restated his own and other Mongols' concerns about self-  
19 incrimination and acknowledged the fact that SA Ciccone had actually  
20 been named on each of the witness lists filed by the defendant in the  
21 case. 6/29/22 R.T. Vol I 31:19-32:25; *see also*, Defendant's Witness  
22 Lists, dated October 26, 2018, November 14, 2018, and November 27,  
23 2018 (CR 222, 253 and 275).

24 Santillan specifically testified:

25 Q. And when you referred to "inappropriate conduct," is it  
26 fair to say that you meant you were never acting as an informant for  
Agent Ciccone at that time?

27 A. That's correct.

28 Q. Or at any time; is that fair to say?

1 A. That's correct.  
2

3 Q. And you were never acting as an informant for the ATF at  
4 any point?

5 A. Ever.

6 Q. Or any other federal or state agency?

7 A. Ever.

8 6/29/22 R.T. Vol I 33:16-34:1.<sup>3</sup>

9 Santillan testified that he did not meet with SA Ciccone at  
10 Starbucks, and that he had only run into Ciccone one time -- "[t]hen  
11 that was it." 6/29/22 R.T. Vol I 34:2-9. He also testified that one  
12 of the concerns for the defense in calling SA Ciccone as a witness  
13 was that defense counsel would behave unprofessionally after having  
14 claimed he wanted to "tear off his head and shit down his throat" --  
15 referring to retired Special Agent Ciccone. 6/29/22 R.T. Vol I 38:6-  
16 12 ("Yeah. 'shit down his throat' and berate 'em, yes.").<sup>4</sup>

17 Santillan testified that defense counsel's argument about the  
18 Mongols' war with the Hells Angels was counsel's own "conspiracy  
19 theory," because the Mongols had "been at war with the Hells Angels  
20 for four decades." 6/29/22 R.T. Vol I 40:1-19. He stated that SA  
21 Ciccone's testimony would have "put the last nail in the coffin for  
22 the club ... It would not have helped." 6/29/22 R.T. Vol I 45:10-13.

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24

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25 <sup>3</sup> Santillan repeatedly testified that he was not an informant  
26 for the ATF or any other state or federal agency. 6/29/22 R.T. Vol I  
27 37:13-17, 47:21-48:21 (stating that he never acted as an informant  
for ATF or any other federal or state law enforcement agency).

28 <sup>4</sup> Defense counsel found it appropriate to state that he had said  
he wanted to "pop his [referring to SA Ciccone] eyeball and piss in  
his skull." 6/29/22 R.T. Vol I 58:17-19.

1 Santillan repeatedly testified that he was never an agent of the  
2 government. 6/29/22 R.T. Vol I 56:6-22 ("No, never."). He testified  
3 that he never passed information to SA Ciccone or anyone for the  
4 government about the trial. 6/29/22 R.T. Vol I 51:9-17 ("Absolutely  
5 not."). He did not pass information to the government about  
6 witnesses, witness lists or trial strategy. 6/29/22 R.T. Vol I  
7 51:18-22 ("No."), 54:8-18 ("No, I did not."). Also, Santillan  
8 testified that he and his wife were not allowed to "walk free" from  
9 charges of assault, weapons charges, and driving under the influence,  
10 contrary to the representations defendant submitted. 6/29/22 R.T.  
11 Vol I 52:5-17 ("Not true.").

12 Santillan also testified about his conflicts with defense  
13 counsel during the trial and that the conflict owed to the fact that  
14 defense counsel had borrowed \$35,000.00 from him and another Mongols  
15 member, and counsel had given Santillan a check that "bounced," so  
16 that Santillan was "on the hook for that money." 6/29/22 R.T. Vol II  
17 14:11-23. Santillan testified that he had brought the bounced checks  
18 and noted that those checks had been submitted to the Court at the  
19 end of the trial. 6/29/22 R.T. Vol II 15:1-12; see also, Statement  
20 of Candor, dated May 16, 2019 (attaching bank checks for \$5,000 and  
21 \$3,000) (CR 436).

22 He also testified that the evidence presented at trial against  
23 the Mongols was "super strong" and specifically described one of the  
24 stabbings that had been captured on surveillance video and played for  
25 the jury as an example. 6/29/22 R.T. Vol II 16:4-17:10. Santillan  
26 testified about his actual prior convictions and, again, testified  
27 that he had not received assistance from the government on his  
28 criminal cases. 6/29/22 R.T. Vol II 19:22-20:23.

1 The Court next heard testimony from retired Special Agent John  
2 Ciccone on June 29, 2022. Defense counsel questioned SA Ciccone at  
3 length about his career and training as a law enforcement agent.  
4 Defense counsel asked Ciccone if he had been running "some type of  
5 investigation" on Maravilla in April 2007. Contrary to defense  
6 counsel's theory, the answer was "no" (6/29/22 R.T. Vol II 37:17-21),  
7 and SA Ciccone repeatedly corrected the inaccuracies in defense  
8 counsel's questions. Specifically, SA Ciccone corrected defense  
9 counsel about the shooting at Laughlin, Nevada in 2002:

10 Q. Did you have any operations, informants, or agents either  
11 infiltrate or attempting to infiltrate the Hells Angels at the time?

12 THE COURT: In 2002?

13 MR. YANNY: 2002.

14 THE WITNESS: I did not.

15 THE COURT: Okay. Now ask him about the Mongols.

16 BY MR. YANNY:

17 Q. What about the Mongols?

18 A. No.

19 6/29/22 R.T. Vol II 48:14-24.

20 Defense counsel later asked the same thing again:

21 Q: Did you have any undercovers in any other clubs besides the  
22 Mongols at that time?

23 A: We didn't have any undercovers in the Mongols at that time.

24 ...

25 Q: So you had no agents infiltrating the Mongols or the Hells  
26 Angels or the Vagos or any other Motorcycle Club at that time that  
27 you were infiltrating?

28 A: No.



1 6/29/22 R.T. Vol II 54:1-25.

2 Defense counsel asked the same thing again, later:

3 Q: Well, were there times where you had undercovers in both  
4 the Hells Angels and the Mongols simultaneously?

5 A: I've never had that.

6 6/29/22 R.T. Vol II 56:5-7.

7 Defense counsel then made another request for a continuance,  
8 prior to the hearing scheduled for July 22, 2022. 7/22/22 R.T. Vol I  
9 96:8. That request was denied, and the Court summarized SA Ciccone's  
10 testimony to have stated "that your contacts were public in nature;  
11 that you're contacting David Santillan because he's the president of  
12 the Mongols. On those contacts, Santillan would always come out with  
13 somebody else."

14 THE WITNESS: His - his security team.

15 THE COURT: Security.

16 And whatever that was, on the indicative pieces of evidence  
17 that I would examine would be his roll-up with the news reports -  
18 female news reporter who apparently wants to cover the Mongols - and  
19 there's a brief interchange between you and Santillan.

20 Is that typical?

21 THE WITNESS: Yeah. And - and the other members that were  
22 with 'em.

23 THE COURT: Sure.

24 7/22/22 R.T. Vol I 48:8-25.

25 The Court specifically asked SA Ciccone if the events were all  
26 public, and SA Ciccone answered, "Yes. They're at public events:  
27 Meetings, parties, um, different size events, runs." 7/22/22 R.T.  
28 Vol I 48:8-25. The Court also explained that the Court understood

1 that there would be testimony from ATF (referring to ATF SSA Susan  
2 Raichel) "that there were no formal documents, apparently, or  
3 indication of any payments made to Santillan. Is that correct?"; and  
4 SA Ciccone answered, "Yes." 7/22/22 R.T. Vol I 49:10-17.

5 Further:

6 THE COURT: Okay.

7 And when you're talking to Santillan, you said, basically,  
8 to me a few moments ago, "Keep your people" -- you know - basically,  
9 from committing violent acts and, basically, no issues; in other  
10 words, stop the violence.

11 Is that correct?

12 THE WITNESS: Yes.

13 7/22/22 R.T. Vol I 49:18-24; see also 52:6-14.

14 SA Ciccone testified that the tactic had been attempted with the  
15 Hells Angels and possibly the Vagos, and he considered it to be  
16 "effective for public safety -- and it was used with everybody that  
17 we came in contact with." 7/22/22 R.T. Vol I 72:7-73:6.

18 The Court also asked if there had been any formal discussions in  
19 which SA Ciccone offered Santillan protection, and SA Ciccone  
20 answered, "No." 7/22/22 R.T. Vol I 50:7-12. SA Ciccone also  
21 testified that he did not have any conversation or receive any notice  
22 from the defense that they were not going to call him as a witness  
23 (7/22/22 R.T. Vol I 81:1-4)<sup>5</sup> and agreed with the Court's  
24 characterization that he had only a "random bump-in" encounter with  
25 Santillan at the nearby Starbucks (7/22/22 R.T. Vol I 83:13-19).

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27

28 <sup>5</sup> SA Ciccone also testified, again, that Santillan did not pass  
any trial information to him during the trial. 7/22/22 R.T. Vol III  
37:11-17.

1 Ciccone also testified that he did not have any involvement in the  
2 disposition of criminal cases against Santillan (7/22/22 R.T. Vol I  
3 89:7-16; and 7/22/22 R.T. Vol III 37:1-17), and the Court  
4 subsequently noted, "I don't see that he's gotten a break" (7/22/22  
5 R.T. Vol I 93:14-17).

6 Defense counsel then attempted to put forth another unsupported  
7 claim that David Santillan was actually an "unindicted co-  
8 conspirator" in another indictment. 7/22/22 R.T. Vol II 32:19-21  
9 ("My point is, sir, I believe that David Santillan, the president of  
10 the Mongols Motorcycle Club, is UICC 39."). The government then  
11 produced the case agent, FBI SA Joseph Talamantez, and, contrary to  
12 defense counsel's assertion, SA Talamantez testified that "UICC 39"  
13 was not David Santillan. He also testified that David Santillan was  
14 not "UICC 38" or any of the other UICCs in the indictment. 7/22/22  
15 R.T. Vol II 39:20-44:10 (THE COURT: "Are any of the UICCs in this  
16 Indictment David Santillan?" THE WITNESS: "No.").

17 ATF Supervisory Special Agent Susan Raichel then testified that  
18 she had reviewed the ATF database, which had records back to 2002,  
19 and determined that "David Santillan has never been an informant for  
20 ATF." She affirmed there was no record of him as a CI, and he had  
21 never been a CI, as far back as 2002. 7/22/22 R.T. Vol III 63:7-12.

22 Defense counsel then stated his belief that Santillan was being  
23 "handled" by Montebello Police Officer Christopher Cervantes.  
24 7/22/22 R.T. Vol III 52:6-8. The following Monday, July 25, 2022,  
25 retired Officer Cervantes appeared, and the Court asked him, "Is  
26 Santillan a rat? A cooperator? I'm asking you that: Is Santillan a  
27 cooperator?" and Cervantes answered, "No, sir." 7/25/22 R.T. Vol I  
28 16:1-6. Further:

1 THE COURT: This has one focus: Is Santillan a government  
2 informant? That's the focus.

3 You can ask him if he paid him money. All fair game. Okay?

4 MR. YANNY: I don't think they did.

5 THE COURT: Well, ask him.

6 BY MR. YANNY:

7 Q. Did you guys ever pay David Santillan?

8 A. No.

9 7/25/22 R.T. Vol I 17:11-19.

10 Defense counsel asked Cervantes if Cervantes and SA Ciccone were  
11 "protecting David [Santillan] in some capacity," and Cervantes  
12 answered, "No."

13 THE COURT: Let's broaden that.

14 Any memory of the ATF, DEA, task force, um, any member of  
15 any federal authority, to your knowledge, protecting him in some way?

16 THE WITNESS: No, sir.

17 7/25/22 R.T. Vol III 19:19-20:3.

18 On August 25, 2022, defendant called Ralph Rocha, but Rocha  
19 invoked his 5th Amendment rights and refused to testify. 8/25/22  
20 R.T. Vol. I 5-6. Defendant then called its co-counsel, Stephen  
21 Stubbs, who claimed that Santillan had said he met multiple times  
22 with SA Ciccone. 8/25/22 R.T. Vol. I 44:1-6. Stubbs described two  
23 incidents in 2017 and 2018, when he and other Mongols were present,  
24 including the "Mother Chapter" (8/25/22 R.T. Vol. I 40:6-42::6), and  
25 Stubbs testified that he was not aware of any agreements of "any kind  
26 of cooperation allegedly between Santillan and ATF or any kind of  
27 government agency." (8/25/22 R.T. Vol. I 63:12-16). Stubbs claimed  
28 Santillan had embezzled money, and he also testified that defense

1 counsel had borrowed money from Santillan, and that defense counsel  
2 had "submitted a number of false statements" to the court and engaged  
3 in a "dishonest scheme" to show that the defendant would not be able  
4 to pay a fine at sentencing. 8/25/22 R.T. Vol. I 92:21-99:6; and  
5 Statement of Candor (read into record) (CR 436). Stubbs also  
6 acknowledged that defense counsel had challenged his credibility,  
7 accused him of falsifying documents, and acknowledged that Stubbs had  
8 been censured by the Nevada State Bar. 8/25/22 R.T. Vol. II 8:1-  
9 9:25.

10 Santillan testified again on September 7, 2022. At that time,  
11 the Court questioned Santillan, and he testified to the same facts as  
12 he had previously, including one encounter with SA Ciccone at  
13 Starbucks (9/7/22 R.T. Vol. I 17:9-16), and the fact that he never  
14 worked as an informant, never received any payment or legal  
15 protection, including from Montebello (9/7/22 R.T. Vol. I 18:24-  
16 19:9). Santillan testified that he had explained his reasoning for  
17 why he did not want to testify, and the Court acknowledged the Court  
18 would be concerned about "the spectacle of you continually taking the  
19 Fifth Amendment in front of this jury or prior and the breadth of the  
20 questions that the government would certainly ask you ..." 9/7/22 R.T.  
21 Vol. I 19:24-20:3. SA Ciccone also testified again on September 7,  
22 2022. He stated that he was not asked to testify at the trial, and  
23 he also testified again about public safety contacts with the  
24 Mongols. 9/7/22 R.T. Vol. I 26:23-27:25. Ciccone testified that to  
25 his knowledge no local agencies had opened any investigation or used  
26 Santillan as an informant, including Montebello, and he was not aware  
27 of any cooperation with Santillan. 9/7/22 R.T. Vol. I 32:1-33:2. In  
28 response to defense counsel's questions, SA Ciccone testified that he

1 had not threatened Santillan with "potential indictment for extortion  
2 with La Eme" or discussed "cooperative extortion efforts. 9/7/22  
3 R.T. Vol. I 78:16-21.

4 The Court then allowed defense counsel to question Santillan  
5 again, and counsel immediately chose to question Santillan yet again  
6 about the Mexican Mafia and counsel's asserted belief that Santillan  
7 was an unindicted co-conspirator in another case. Santillan  
8 testified:

9 You got together with her, and that's why I got served right  
10 here, because you thought I was a rat on that case. And I'm not  
11 a rat on that case. I told you that. And I'm not an unindicted  
12 co-conspirator either, and it was proven. The investigator told  
13 me they know who it is. And it's not me. It was somebody  
14 locked up in the county jail, April of 2014. I was not in the  
15 county jail ... What does anything from Eme have to do with the  
16 video, Joe? Nothing. Not a g\*ddamn thing. So why start  
17 dragging it out -- dragging it out. Everybody's testifying, I'm  
18 not a f\*cking rat. How much more are you going to drag it out  
19 it out? Seven more days? Come on, Joe. That hard up for  
20 money? ... You owe me \$35,000. I paid your f\*cking debt to my  
21 club brother. I have proof, too, all of it. My club brothers  
22 know. I don't know why they even have you here. You found a  
23 way to monetize on the club and bring this frivolous motion.  
24 That's what this is about. You have an axe to grind with me,  
25 personally and Bobby D, because I embarrassed you and you know.

19 9/7/22 R.T. Vol. I 100:1-101:14.

20 Santillan also repeatedly denied ever having provided  
21 information to SA Ciccone. 9/7/22 R.T. Vol. I 102:15-16; 106:13-16  
22 ("I did not give any information."). He denied that he had embezzled  
23 money. 9/7/22 R.T. Vol. I 122:11-22 ("That's incorrect. Wrong.  
24 Wrong. Show me the paperwork."). Santillan also told defense  
25 counsel, "You're the thief. You welsh on your promises and your  
26 loans, you deadbeat." 9/7/22 R.T. Vol. I 123:2-4. He also denied  
27 having conversations with SA Ciccone in Laughlin, Nevada (9/7/22 R.T.  
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1 Vol. I 124:16-21), and the Court then asked, specifically, about  
2 defense counsel's theory about Laughlin, Nevada in 2002:

3 THE COURT: So Ciccone doesn't have anything to do with  
4 stirring this up then?

5 THE WITNESS: Not at all.

6 THE COURT: Then why was this defense floated in front  
7 of jury? You had to be part of this group discussion?

8 THE WITNESS: Because Mr. Conspiracy entrepreneur over  
9 here wants to lay it out thick and make things more than they  
10 really are. I had an issue with him ever since he started this  
11 whole thing - these conspiracy theories that never - He never  
12 proved anything. They were never factual. They were just his  
13 theories ... based on talking to old biker dudes.

14 9/7/22 R.T. Vol. I 126:2-127:3.

15 The government then presented testimony from Sergeant Omar  
16 Rodriguez of the Montebello Police Department, Detective Ivania  
17 Farias of the Los Angeles County Sheriff's Department and Sergeant  
18 Jerrod Lewis of the Long Beach Police Department. They testified  
19 that they had searched the records of their departments and found no  
20 records of any agreements or cooperation for Santillan. 9/7/22 R.T.  
21 Vol. I 129:6-130:7. The government also submitted that ATF SSA Susan  
22 Raichel had again checked the ATF database of confidential informant  
23 records and again reported the same result, that David Santillan has  
24 never been an ATF informant from 2002 to 2022. Declaration of Susan  
25 Raichel (Exhibit 20).

26 IV. ARGUMENT

27 DEFENDANT HAS NOT MET ITS BURDEN

28 Ninth Circuit law requires that a defendant seeking a new trial  
on the ground of newly discovered evidence must show: (1) evidence  
that is newly discovered; (2) that the failure to discover the

1 alleged evidence sooner was not due to a lack of diligence; (3) the  
2 evidence was material to trial issues; (4) the evidence was not  
3 cumulative or merely impeaching; and (5) a new trial, if granted,  
4 would probably result in acquittal. *United States v. George*, 420  
5 F.3d 991, 1000 (9th Cir. 2005) (new trial motion denied under Rule  
6 33(b)(1)); *citing, United States v. Kulczyk*, 931 F.2d 542, 549 (9th  
7 Cir. 1991) (holding "evidence that would merely impeach a witness  
8 cannot support a motion for new trial.")<sup>6</sup>.

9 Defendant did not make that showing when it filed its Motion.  
10 It submitted only hearsay statements and unsupported declarations  
11 from defense counsel, which is not sufficient for a new trial motion.  
12 *United States v. Felix*, 425 F.2d 240, 242 (9th Cir. 1970) (new trial  
13 motion denied where "evidence" submitted "was principally hearsay and  
14 therefore inadmissible."); *Wilke v. United States*, 422 F.2d 1298,  
15 1299, n. 1 (9th Cir. 1970) (*per curiam*) ("This information was of  
16 course hearsay and as such provided no support for a new trial  
17 motion[.]"); *United States v. Chapman*, 851 F.3d 363, 382 (5th Cir.  
18 2017) (representations from defense counsel were inadmissible hearsay  
19 and a motion for new trial may not be based on inadmissible  
20 evidence."). Defendant, nonetheless, claimed that it did not need to  
21 make any showing prior to a hearing. Specifically, when it moved for  
22 a continuance on February 14, 2022, defendant stated that its "moving  
23 papers do not need to prove their case before they have an  
24 opportunity to have a hearing." Defendant's Motion for Continuance  
25 (CR 540). Then, in its Reply on May 23, 2022, defendant claimed,  
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27 <sup>6</sup> Rule 33(b)(1) provides that the court may not grant a motion  
28 for a new trial while an appeal is pending. Fed. R. Crim. Proc.  
33(b)(1). The court can deny a motion, but it cannot grant a motion  
until the appellate court remands the case.



1 again, that it had no burden "to demonstrate anything until the  
2 evidentiary hearing is finished" and claimed that it only needed to  
3 show "cause for the Court to investigate." Reply, at 7 (CR 542).  
4 That is not the law, but, ultimately, defendant's very publicized  
5 claims were not true.

6 The government submitted that the claims were not true, and the  
7 Court has now heard testimony and received evidence from numerous  
8 state and federal law enforcement officers, from the ATF, FBI,  
9 Montebello Police Department, Los Angeles County Sheriffs Department,  
10 Long Beach Police Department, as well as Santillan and A. Santillan.  
11 Even though defendant has the burden of proof, the testimony from the  
12 witnesses was that Santillan was not a confidential informant, and he  
13 did not provide trial information to the government. Defendant's  
14 claims were never true, and defendant, therefore, did not meet its  
15 burden under Rule 33(b)(1).

16 1. Defendant Has Not Shown Newly Discovered Evidence.

17 Defendant did not show any newly discovered evidence to support  
18 a motion for new trial. His claims about Santillan were false, and  
19 the witnesses testified that they were false. Hence, his Motion  
20 fails.

21 As discussed, witnesses repeatedly testified, and often in  
22 response to questions directed by the Court, that Santillan was not a  
23 confidential informant and did not provide information to the  
24 government at trial. 7/25/22 R.T. Vol I 17:11-19 (THE COURT: "This  
25 has one focus: Is Santillan a government informant? That's the  
26 focus."). A. Santillan, Santillan, retired ATF Special Agent John  
27 Ciccone, retired Montebello Police Officer Christopher Cervantes, ATF  
28 Supervisory Special Agent ("SSA") Susan Raichel all testified that

1 this was not true. SSA Raichel, Montebello Police Sergeant Omar  
2 Rodriguez, Los Angeles County Sheriff Deputy Ivania Farias, and Long  
3 Beach Police Department Sergeant Jarrod Lewis also testified that  
4 they conducted searches, and there are no records of any agreements  
5 with Santillan. FBI SA Joey Talamantez testified, as well, that  
6 Santillan was not "UICC 38," "UICC 39" or any other "unindicted co-  
7 conspirator" in his case. Defendant's claims about Santillan were  
8 not true and, therefore, do not show new evidence.

9 In response to defendant's allegations, the witnesses also  
10 testified and offered documentation to show that Santillan did not  
11 receive any assistance from the government for any of the criminal  
12 cases against him. Defendant did not respond to that testimony, even  
13 after the Court advised about the conclusion. See 7/22/22 R.T. Vol I  
14 93:14-17 {"I don't see that he's gotten a break"). Witnesses also  
15 testified that trial information was not passed to the government.  
16 Defendant did not meet its burden to show newly discovered evidence.

17 Defense counsel's questions and witnesses about the Mexican  
18 Mafia and other issues also would not be newly discovered evidence.  
19 First, those matters did not appear relevant to the matter raised,  
20 and second, the matters related to events that would have occurred,  
21 if ever, years before, in 2009 or 2010. Similarly, testimony about  
22 arguments within the defense team or votes about witnesses to call  
23 would also have involved events before or, at the latest, during the  
24 trial in 2018, and, therefore, also not new evidence. Even law  
25 enforcement contacts at Mongols runs were described as incidents that  
26 occurred before, in some instances, years before trial. They were  
27 also in the presence of many other members -- even hundreds of other  
28 members and, also, would not be "newly discovered evidence."

1           Ultimately, defendant did not show any newly discovered  
2 evidence.

3           2.    Defendant also Did Not Show that It was Diligent.

4           The second element on a motion for new trial requires the  
5 defendant to show that its failure to discover evidence was not due  
6 to a lack of diligence. *United States v. George*, 420 F.3d at 1000  
7 (lack of diligence and documents were not material and merely  
8 impeachment); *United States v. Kulczyk*, 931 F.2d at 549 (Lack of  
9 diligence where defendant failed to inform the court about inability  
10 to locate witnesses and evidence was merely impeachment). In this  
11 case, defendant's representations about Santillan were untrue and,  
12 therefore, do not meet any elements for the Motion.

13           3.    Defendant Did Not Show New Evidence that was Material to  
14 Trial Issues, Not Cumulative or Merely Impeaching.

15           The third and fourth elements require defendant to show that new  
16 evidence that would have been material to trial issues, and that it  
17 would not be cumulative or merely impeaching. *United States v.*  
18 *George*, 420 F.3d at 1000 (evidence did not support defendant's motion  
19 for a new trial where the evidence was not material and merely  
20 impeachment evidence). Again, defendant did not show any newly  
21 discovered evidence, so his Motion also did not show these elements.

22           4.    Defendant Did Not Show that a New Trial would Probably  
23 Result in Acquittal.

24           Defendant also did not show that a new trial would probably  
25 result in an acquittal. *United States v. George*, 420 F.3d at 1000;  
26 *United States v. Kulczyk*, 931 F.2d at 549. The Motion fails on that  
27 basis as well.

28           The jury convicted the defendant on both counts charged,  
racketeering and RICO conspiracy. As discussed, it did so after

1 weeks of testimony from many witnesses about the unending crimes this  
2 defendant, and crimes that the defendant and its members continue to  
3 commit to this day. At trial, the jury heard testimony from retired  
4 Special Agent Daren Kozlowski, who infiltrated the Mongols as an  
5 undercover officer during Operation Black Rain. The jury also heard  
6 testimony from each of the other undercover ATF Special Agents, Greg  
7 Gaioni, Paul D'Angelo, and John Carr. In addition, the jury heard  
8 extensive testimony from retired ATF Special Agent William "Billy"  
9 Queen, who infiltrated the Mongols during Operation Ivan, and retired  
10 Special Agent Jay Dobyms. This testimony included descriptions of  
11 murders, shootings, stabbings, an actual scalping (supported by  
12 photographic evidence), riots, narcotics transactions, and attacks on  
13 police officers. The jury also watched numerous videos of shootings  
14 and stabbings committed by Mongols members and associates. It heard  
15 Christopher Ablett testify in detail about how he killed the  
16 president of the Hells Angels in San Francisco, and testimony about a  
17 man who was beaten to death with a pool cue in a bar in Lancaster,  
18 and another who was dragged out of a bar in Merced, California and  
19 stabbed in the parking lot, where he died. The jury watched  
20 surveillance video of a Mongol member slashing a victim's face, and  
21 another man who was ambushed leaving a restaurant, beaten unconscious  
22 and kicked in his head as he lay helpless at the feet of Mongols  
23 members and associates. The jury saw and heard members of  
24 defendant's leadership, bragging of the gang's reputation for  
25 violence and mayhem, and the importance of expanding the scope of  
26 that reputation throughout the world. It saw methamphetamine, guns,  
27 knives, and bullets sold and used by the gang. It learned that the  
28 Mongols have an actual skull and crossbones murder patch, and it saw

1 the murder patch and heard testimony that the patch was awarded to  
2 members who killed for the organization. It saw their "wings"  
3 patches and "Respect Few Fear None" patch. It heard about  
4 racketeering and conspiracy many, many times over, and, ultimately,  
5 the jury convicted the defendant of both racketeering and conspiracy  
6 to commit racketeering, because it saw and heard direct evidence from  
7 numerous witnesses -- including witnesses who had been called by  
8 defendant -- that showed defendant had been committing those crimes  
9 for decades and continued to commit them.

10 Santillan was correct when he said that the evidence at trial  
11 was "super strong." 6/29/22 R.T. Vol II 16:4-17:10. It was. A new  
12 trial would be even more so, because it would contain evidence of  
13 more murders, more shootings, more drugs, and just many more crimes.  
14 It would include more, because the Mongols do not stop. They attack  
15 unaware people outside bars and restaurants and beat, shoot, and stab  
16 them. That was shown at trial, and it still happens. They shoot  
17 police officers. They kidnap and murder women. They deal drugs.  
18 Like Santillan testified, "It's the lifestyle." 6/28/22 R.T. Vol II  
19 27:25-28:6. It is what they do. There were more federal convictions  
20 last week in Tennessee. *United States v. Frazier, et al.*, CR 17-130.

21 Ultimately, and especially based on the evidence in this case,  
22 it cannot be said that a new trial would probably result in an  
23 acquittal. Defendant has shown nothing to oppose that conclusion,  
24 and the Motion fails on this basis as well.

25 V. CONCLUSION

26 The United States, thus, respectfully submits that defendant has  
27 not met its burden to support a new trial, and the Motion must be  
28 denied.

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