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Attorney for Defendant

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF [COUNTY]

THE PEOPLE OF THE STATE OF CALIFORNIA Plaintiff, vs. [DEFENDANT'S NAME] Defendant	**CASE NO. [CASE NUMBER]** **MOTION TO DISMISS FOR VIOLATION OF DEFENDANT'S CONSTITUTIONAL RIGHT TO SPEEDY TRIAL** **MEMORANDUM** **Date:** **Time:** **Dept.:**

PLEASE TAKE NOTICE that on [DATE] at [TIME] or as soon thereafter as the matter may be heard, and in the above-designated department, [NAME OF DEFENDANT] ("Defendant") will move this court to dismiss the above-entitled matter for a violation of the Constitutional Right to a Speedy Trial. The Motion will be based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declarations of [NAME OF ATTORNEY] with attached investigative reports, the files in this matter, and such other and further evidence as may be introduced at the hearing.

Dated:

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[NAME OF ATTORNEY]
Attorney for Defendant.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Procedural History of this matter.

On November 12, 1999, a female resident of Olympia, Washington, reported that she had been attacked and raped while on the Chehalis Western Trail. The scene of the attack was near to an apartment complex occupied primarily by Spanish speaking workers. Extensive investigation produced a DNA profile, and a unidentified suspect connected to the City of Concord, California On the night May 2, 2000, the complaining witness in the instant matter reported that she had been raped in her apartment in the City of Concord. She described the assailant as a Filipino of approximate 30 years of age. Investigation by the Concord Police located two used condoms, and books and equipment indicating an interest in S&M practices. The complaining witness indicated that the books and equipment were hers, and that she had been introduce to the practices by a prior boyfriend.

In the first of June of the year 2000, a DNA match between the Washington SART kit and a cigarette butt found in a automobile raised suspicions concerning the defendant. On June 7, 2000, Concord Police, at the request of Washington State, obtained a search warrant for the defendant's blood. The warrant was served on the defendant while he was confined in Juvenile Hall on a shoplifting charge. The defendant had told the authorities that he was 16 years old, but the defense has obtained a birth certificate from Mexico indicating that he was 14 years old at the time. During the service of the warrant, the defendant was interviewed by a Spanish speaking member of the Concord Police Department, and made incriminating statements concerning the Washington State attack.

Defendant was arrested on a warrant out of Washington State, and was booked in Washington State on July 2, 2000. A DNA match with evidence from the Washington State attack was obtained, and he was subsequently convicted of the rape and sentenced to State Prison.

On March 10, 2004, the Concord Police was informed of a CODIS (Combined DNA Index System) match based on the DNA profile obtained in the instant case. The DNA match was identified as belonging to the defendant, then in custody at Clalloam Bay Correctional Center

in Washington State. On approximately Nov. 11, 2004, the defendant was served with a search warrant for blood in Washington State. On January 31, 2005, Concord Police received notice of a match between the defendant and evidence obtained in the instant case. On Feb. 3, 2005, a Felony Complaint was filed. Handwritten notes on discovery provided by the prosecution indicate a decision to serve the arrest warrant at the end of defendant's sentence in Washington State, and a projected release date of December 22, 2014. (See Exhibit A.) The defendant was unaware of the outstanding arrest warrant.

In 2014, as the defendant was being prepared for release to ICE, the warrant was discovered and the defendant informed. He prompt filed a demand for trial under the interstate compact, and proceedings in this court began.

II. In Motions to Dismiss for Violations of Constitutional Speedy Trial, the burden of the Defense is to show some prejudice, actual or presumed, however minor, and then the burden passes to the prosecution to justify the delay.

A guarantee of a speedy trial exists under both the State and Federal constitutions. (U.S. Const., 6th Amendment; Cal.Const. Art.I, section 15; *People v. Lowe* (2007) 40 Cal.4th 937.) The statutory speedy trial provisions are supplementary to and a construction of the state constitutional guarantee. (*Craft v. Superior Court* (2006) 140 Cal.App.4th 1533, 1539.)

There are some differences. Both the state and federal Constitutions guarantee criminal defendants the right to a speedy trial. (U.S. Const., 6th Amend.; Cal. Const. art. I, § 15.) But the rights differ from each other in two significant respects. First, the state constitutional right arises upon the filing of a felony complaint, whereas the federal right does not come into play until an indictment or an information has been filed or the defendant has been arrested and held to answer. Second, an "uncommonly long" delay triggers a presumption of prejudice under the federal Constitution, but not under the state Constitution. (*Martinez, supra*, 22 Cal.4th at pp. 765–766, 94 Cal.Rptr.2d 381, 996 P.2d 32.) (*People v. Lowe* (2007) 40 Cal.4th 937, 942.)

The interpretation of the Sixth Amendment's speedy trial right by California Courts has evolved over the years. It begins with *Jones v. Super Court* (1970) 3 Cal.3d 734, where our

Supreme Court held that both the state constitutional right and the Sixth Amendment Right attached to a proceeding at either the arrest, or the filing of a formal accusation. In Jones, it was alleged that the defendant sold heron to an undercover officer May 7, 1968. A Complaint was file and an arrest warrant issued July 8, 1968, The defendant was not arrested until February 16, 1970. The court reasoned that the function of the Speedy Trial Rights was "to protect those accused of crime against possible delay, caused either by willful oppression, or the neglect of the state or its officers. (Jones, supra, at p. 738.) The court reasoned that suspect became an "accused" within the meaning of the Sixth Amendment and the California Constitution at the time a complaint was filed and a warranted issued. This reasoning remains the interpretation of the California Constitution, but the California interpretation of the Sixth Amendment right as changed.

The court revisited the issue in *People v. Hannon* (1977) 19 Cal.3d 588. Leaving the application of the state right to a speedy trial unchanged, the court look at the impact of *U.S. v. Marion* (1971) 404 U.S. 307. In Marion, the U.S. Supreme Court addressed a claim by the defendants that there speedy trial rights have been violated by a three year long investigation. Justice White responded by finding that, "In our view, however, the Sixth Amendment speedy trial provision has no application until the putative defendant in some way becomes an 'accused,' an event that occurred in this case only when the appellees were indicted on April 21, 1970. (*Id., supra* at p.313.) Later in the opinion, following Justice White, concluded, "So viewed, it is readily understandable that it is either a formal indictment or information or else the actual restraints imposed by arrest and holding to answer a criminal charge that engage the particular protections of the speedy trial provision of the Sixth Amendment."

Invocation of the speedy trial provision thus need not await indictment, information, or other formal charge. But we decline to extend that reach of the amendment to the period prior to arrest. (Id. at pp. 320-321.)

What is not addressed in Marion is the specific actions that turn a putative defendant into an accused, or the meaning of the phrase "other formal charge." What is address specifically in Marion is the application of the Sixth Amendment to Federal Criminal Procedure. Unlike

California's two stage prosecutorial process, stemming from the historical requirement that all criminal prosecutions begin in the Municipal Courts, and be refiled in the Superior Court following a holding order, a Federal prosecution has only one stage. The only arraignment occurs after an indictment or information. (Federal Rules of Criminal Procedure, Rule 10.) The term "criminal complaint" applies only to an application for an arrest warrant, analogous to California's issuance of a warrant by a judge based on the declaration of a law enforcement officer before the filing of a complaint. (Federal Rules of Criminal Procedure, Rule 3.) No one would contend that the declaration in either case would be a formal accusation, requiring arraignment and the start of court proceedings. Nonetheless, the Hannon court interpreted Marion to restrict the application of the Sixth Amendment right to arrest, indictment, or Information following a holding order. The entire discussion, however, can be viewed as dicta as the court when on to review the case under the State Speedy Trial right, and conclude that "the People demonstrated sufficient justification to outweigh whatever prejudice accrued to defendant as a result of the seven-month delay in serving the warrant. (*Hannon, supra*, at p. 610.)

The holding, however, had the unintended consequence of depriving any application of the Sixth Amendment right in misdemeanor prosecution, as a California criminal complaint was not considered formal charging document. This issue came before the California Supreme Court in *Serna v. Superior Court* (1985) 40 Cal.3d 239. In Serna, the defendant contended his Speedy Trial rights were violated under the Sixth Amendment by a four year delay between the filing of a complaint and his arrest. Citing Hannon, the People contended that the Sixth Amendment had no application to misdemeanor prosecutions in California.

In determining the applicability of other constitutional rights, the Supreme Court has emphasized that the nature of the proceeding and its consequences determine the applicability of the protections of the Bill of Rights, not "labels of convenience." (See, e.g., *In re Gault* (1966) 387 U.S. 1, 50, 87 S.Ct. 1428, 1455, 18 L.Ed.2d 527; see also *McKeiver v. Pennsylvania* (1971) 403 U.S. 528, 541, 91 S.Ct. 1976, 1984, 29 L.Ed.2d 647; *Matter of Anthony P., supra*, 104 Misc.2d 1024, 430 N.Y.S.2d 479, 480.) Moreover, elsewhere in Marion the court uses language

generally applicable to any criminal proceeding, referring to the time at which "the putative defendant in some way becomes an 'accused' " (404 U.S. at p. 313, 92 S.Ct. at p. 459), to "indictment, information, or other formal charge" (*id*., at p. 321, 92 S.Ct. at p. 463), and to whether the defendant had been "arrested, charged, or otherwise subjected to formal restraint prior to indictment" (*id.* at p. 325, 92 S.Ct. at p. 466), as events triggering the right to speedy trial. (*Id*. at p. 256.)

The People suggest no basis upon which to explain or support a construction of the right to speedy trial that extends to misdemeanor defendants different rights than it accords felony defendants. Nor do they offer any basis for distinguishing between those defendants charged with misdemeanors by indictment and those charged by complaint. (*Ibid*.)

In addressing *Hannon*, the court distinguished between felony and misdemeanor complaints, and in particularly emphasized that the misdemeanor complaint, filed in a municipal court, did not confer trial jurisdiction on that court. This grounds for distinction ended in 1998 with consolidation of the courts. In this instant case, the complaint, filed in February, 2004, confirmed trial jurisdiction on the Superior Court of Contra Costa County. (*Id*. at p. 257.) Finally it cited numerous opinion in other state and federal jurisdictions holding that the right to Speedy Trial is not dependent upon the label placed on the accusatory pleading. (*Id.* at p. 258.)
The California Supreme Court next addressed the California interpretation of the Sixth Amendment in *People v. Martinez* (2000) 22 Cal.4th 750. Justice Kennard, writing for the court, continued the criticism of the reasoning of Hannon, but eventually continued the California rule that the Sixth Amendment speedy trial right does not attach in an arrest, indictment, or information in felony prosecutions.

Subsequent California Supreme Court decision have not directly addressed this issue, but have rather used more general terms in describing the required court filing. In *People v. Nelson* (2008) 43 Cal.4th 1242, Justice Chin, writing for the court, stated that neither speedy trial right, state or federal, applied "until at least the defendant has been arrested or a charging document has been filed." (*Id*. at p. 1250.) Nelson involved a cold case murder prosecution, where advances in

technology provided a DNA match after 25 years. Justice Chin went on to hold that claim of a Due Process violation could be brought for the 25 year delay, but that the delay was justified by technological advances. (*Id*. at p. 1250.)

In *People v. Cowan* (2010) 50 Cal.4th 401, a death penalty appeal, the defendant complained of a ten year delay between the homicide and his arrest. The court noted that the case came under the due process clauses of the Fifth Amendment and Article 1, section 15 of the California Constitution, as both the State and Federal Speedy Trial rights, "as those rights do not attach until a defendant as been arrested or a charging document has been filed." (*Id*. at p. 430.) Neither Nelson or Cowan directly address the nature of the charging document filed. Nor has the Ninth Circuit or the United States Supreme Court directly addressed the California interpretation of the application of the Sixth Amendment to California criminal procedure. However, in 2003, three years after Nelson, the applied the Sixth Amendment speedy trial rules, including its presumption of prejudice, to a six year delay in a California prosecution that had not yet proceeded to a preliminary examination. (*McNeely v. Blanas* (2003)336 F.3d 822.) Although the defendant had been in some sort of custody that period, there was no discussion of the lack of a "charging document."

Under the Sixth Amendment speedy trial right, prejudice is presumed after an undue delay. An undue delay is defined as one year. In this case we have what appears to be an intentional delay by law enforcement of nearly 10 years. Should California courts rule that the defendant has not shown prejudice, this case would be the ideal vehicle to place the state interpretation of the Sixth Amendment before the Federal Courts. If, as Jones held, a California felony criminal complaint, which begins a prosecution requiring arraignment and other procedural safeguards, triggering the right to counsel, is a formal charging document, this case must be dismissed.

Under California procedure, the defense has the initial burden of showing some prejudice from the delay in bringing the defendant to trial. Once the defense satisfies the burden, the prosecution must show justification for the delay. If the prosecution does, the trial court must

balance the prejudice against the justification. (*Lowe, supra* at p. 942; *Serna v. Superior Court* (1985) 40 Cal.3d 239, 249.)

A minimal showing of prejudice will require dismissal if the proffered justification for delay is insubstantial. By the same token, the more reasonable the delay, the more prejudicial the defense would have to show to require dismissal. (*People v. Mirenda* (2009) 174 Cal.App.4th 1313, 1328; *People v. Conrad* (2006) 145 Cal.App.4th 1175, 1185.) The same balancing test is applied for pre-accusation delay resulting in a denial of due process. (*People v. Catlin* (2001) 26 Cal.4th 81, 107; *People v. Boysen* (2007) 165 Cal.App.4th 761, 772.)

Under the federal procedure, the Sixth Amendment right attaches when a suspect becomes the accused. In U.S. District Court, an indictment is the first procedural step in most prosecutions. In Sixth Amendment cases, both state and federal court, there is a presumption of prejudice for any extended delay. "Extended delay" is defined as more than one year. (*U.S. v. Cardona* (2002) 302 F.3d 494, 497.) There are four factors to be considered: 1, the length of the delay; 2, the reason for the delay; 3, the defendant's diligence is asserting his rights; and, 4, prejudice to the defendant resulting from the delay. (*Barkers v. Wingo* (1972) 407 U.S. 514, 530-533.) In *Moore v. Arizona* (1973) 415 U.S. 25, the unjustified delay was the failure of Arizona to extradite the defendant, who was serving time is California State Prison, for 28 months following his demand. In *Smith v. Hooey* (1969) 393 U. S. 374, the failure of Texas to seek extradition of the defendant from federal custody over a period of six years resulted in dismissal. In *United States v. Mendoza* (2008) 530 F.3d, 758, it was the lack of diligence by government authorities in pursuing the defendant, who was living in the Philippines, over a period of six years. Given lack of diligence, the defendant was not required to show specific prejudice. In *U.S. v. Cardona* (2002) 302 F.3d 494, it occurred when the government waited five years to execute an arrest warrant on a defendant who was living openly in the United States. In *McNeely v. Blanas* (2003) 336 F.3d 822, a six year delay in the prosecution, and the failure of the state to explain the delays, resulted in the release of the defendant and the dismissal of all pending charges with prejudice.

The threshold inquiry is whether the delay was long enough to trigger a "speedy trial" analysis. If the delay reaches the threshold level of one year, it is "presumptively prejudicial" and requires the court to engage in the speedy trial analysis, balancing the remaining factors. *Robinson v. Whitley,* 2 F.3d 562, 568 (5th Cir.1993), cert. denied, 510 U.S. 1167, 114 S.Ct. 1197, 127 L.Ed.2d 546 (1994); *Doggett,* 505 U.S. at 651–52 & n. 1, 112 S.Ct. 2686, 2690–91, 120 L.Ed.2d 520. This delay of over five years certainly suffices to raise the presumption of prejudice and trigger the analysis. (*Id.* at p. 497.)

In Sixth Amendment cases, the delay and any actual or presumed prejudice is balanced against the government's justification for the delay. Where a lengthy delay is not justified, the presumed prejudice alone requires dismissal.

In the instant case, the prosecution and the Concord Police knew where the defendant was housed, having obtained a sample of his blood pursuant to warrant while he was imprisoned in Washington prior to the filing of the complaint. The notations on Exhibit A indicate that law enforcement not only knew where he was, but also knew his release date, and elected to serve the warrant on his release. No justification for the decision has been provided to this counsel, and this counsel can not see what justification could exist.

It is well established that prejudice may be shown by loss of material witnesses due to lapse of time, or loss of evidence because of fading memory attributable to the delay. "The overarching theme is that the loss of such evidence, particularly where the defendant or victims cannot independently recall details of the crime, makes it difficult or impossible for the defendant to prepare a defense thus showing prejudice. (Mirenda, supra, at p.1329.)

As we recognized in *Boysen, supra*, 165 Cal.App.4th 761, 62 Cal.Rptr.3d 350, because "due process is ultimately tied to the fundamental conceptions of justice that lie at the base of our civil and political institutions and which define the community's sense of fair play and decency," (*id*. at p. 774, 62 Cal.Rptr.3d 350), it is also shown to be "properly offended when, with little or no justification, the government waits decades to bring a prosecution and that delay has demonstrably placed the defense at a profound and perhaps fatal disadvantage." (*Ibid*.)

Under both Federal and California law, the speedy trial right serves a three fold purpose. "It protects the accused . . against prolonged imprisonment; it relieves him of the anxiety and public suspicion attendant upon an untried accusation of crime; and . . . it prevents him from being exposed to the hazard of a trial, after so great a lapse of time, that the means of proving his innocence may not within his reach" - as, for instance by the loss of witnesses or the dulling of memory." (*Craft, supra*, at p. 1540.) Prejudice, in the form of the loss of the possibility of concurrent sentences in separate prosecutions, has been recognized as such prejudice, or at lease an element of the prejudice. (See *People v. Barker* (1966) 64 Cal.2nd 806, 813.) This position was rejected in Lowe, supra, which holds that although the loss of the possibility of concurrent sentences alone can not serve as prime facie prejudice, it can be consider in the balancing of any justification against the prejudice. (*Lowe, supra*, at p. 946.)

III. The preparation of the defense in this matter has been extensively prejudice by the delay of fourteen plus years between the event and the bringing of the defendant to court.

It is the defense position that the relationship between the complaining witness and the defendant was ongoing and consensual. On the occasion of the charged incident, there was a fight between the complaining witness and the defendant resulting in the filing of the complaint. This theory is supported by the following facts contained in the police report: the presence of two used condoms after the event; the use, during the event, of trick handcuffs owned by the complaining witness; the presence at the scene of S&M related "toys" and literature; the admission by the complaining witness that she had an interest in such matters, and had been introduced to it by a former boyfriend. In addition, the description of the assailant as a 30 year old Filipino when the defendant was a 14 or 16 year old Hispanic suggests that the complaining witness was aware of the illegality of her relationship with the defendant. The passage of time has prejudiced the preparation of the defense in the follows areas:

1. The resident of the apartment complex, who made the 911 call to the police at the request of the complaining witness, has died. He would have been a witness to the lack of

screams or other noise during the alleged assault, and possibly to the defendant's presence in the complex as a guest of the complaining witness. He did tell the police that he heard nothing before the complaining witness banged on his door. This is in contrast to the testimony of the complaining witness that she screamed throughout the incident. (See Exhibit B, Concord Police Report re Ronald Reese; Exhibit C, Death Certificate Ronald Reese; Preliminary Hearing Transcript page 33.)

2. Investigation by the public defender, including visits to the complex by both the investigator and the assigned attorney, was unable to locate any person who had been a resident of the complex at the time of the incident in 2000. The testimony of such witnesses would have been relevant to the presence of the defendant on other occasions, and to whether or not any screams were heard during what is described as a lengthy assault. Of particular interest would have been the complaining witness' immediate neighbor. When the complaining witness sought help after the assault, she did not try the neighbors door, know that the neighbor would have been aware of the assault form the noise and screams, had done nothing, and therefore "didn't care." Records from the public defender show extensive efforts to locate these witnesses. (See Exhibit C, declaration the defendant, attached hereto, and Exhibit D, Statement of complaining witness.)

3. The public defender attempted to locate the former boyfriend of the complaining witness (who introduced S&M). They located a man with the same name, but who had never met the complaining witness. There are indications that the former boyfriend is now in England. This witness could testify to the extent of the complaining witness' involvement in S&M. (See Exhibit E, Police Report; Exhibit F, Notes of investigator.)

4. The defense has served a subpoena duces tecum on American Airlines, the successor to America West, to confirm whether or not the complaining witness actually arrived in Oakland the night of the assault. Given that America West merged with US Airways in 2005, which in turn merged with American in 2013, this counsel believes that it is unlikely that the records exist. As February 29, the court had not received a return of that subpoena.

5. The complaining witness was in therapy with a M.S.W. at the time of the assault. A

subpoena duces tecum has been served on the therapist. This therapist may have received statements concerning the interest in S&M, or an interest in younger men, or specifically in the accused. The response from the therapist was that the records have been destroyed. (See return in Court file.)

6. The defense has obtained a list of five witnesses that knew the defendant while he was in Concord in 2000, and where close enough to him to have known of any romantic involvement. With the authorization of funds by the presiding judge of this court, an investigator has been hired and is attempting to locate the five witness. So far we have learned that two adult friends are living in Mexico, and have moved from their last known locations. We have received information is that one of the three remaining has died. So far we have been unable to locate any of the four surviving witnesses. A man with the same name of one of the four has been located, but he does not remember the defendant or his family, and has not left the United States since the year 2000. In all probability he is not the witness sought. If he is, it would be the classic case of prejudice caused by delay. The investigator for the defense has located investigators in Mexico willing to conduct further investigations, but that would require both time and additional funding, and the likelihood of success is small. (See Exhibit G and H, emails from Rod Harmon, investigator.)

7. The prosecution has indicated an intent to introduce the Washington rape under 1108. A witness list in the file include the victim in the Washington incident and a large number of law enforcement officers. During the Washington investigation, a large number of residents of the neighboring apartment complex were interviewed, and their reported information help the police connect the defendant to the assault. Prior to the involvement of this office, no effort had been made to investigate in this area. With the authorization of the presiding judge, the defense has obtained the services of a Washington State Investigator to attempt to locate the witness who resided at the complex in 1999. To date, despite extensive efforts, none of the witnesses who resided in the complex have been located. This have has spoken with the investigator Michael K. Anderson, and has been informed that, despite diligent efforts, none of the witness identified in

1999 and 2000 have been located. One of these witness, Fernando Fernandez, told Detective Weiss of Washington State law enforcement, and he was a friend of the defendant, the he helped him with his job, and that in the days after the Washington assault the defendant had no injuries. Another, Manuel Mesa, told the police that he owned the bicycle that the police associated with the Washington State attack.

8. The prosecution has indicated an intent to prove the 1108 incident with DNA testimony from Washington State, Included in the discovery is a summary report to the police department that a match had been made. The defense has requested the lab notes concerning the match, and has not yet received them. Given the passage of 14 years, and the closure of the Washington case with a long prison sentence, the lab notes may well be no longer available.

On Monday, February 8, the defense received, via email, copies of written lab notes. They have been sent the Simon Ford, the DNA expert consulted by the public defender. In a reply, he indicates that he will need additional electronic date concerning the examination, as well as additional funding, that would have to be secured from the Presiding Judge. As of the below date, the defense has not received the electronic data necessary for review.

9. The defendant spent the period between February 3, 2005, and October or November, 2014, in custody in Washington State. If he had been brought to trial promptly, and convicted, the sentencing judge would have had the option to run the sentence in the instant case concurrently with the sentence in Washington State. The defendant lost this possibility due to the delay of law enforcement.

IV. CONCLUSION

The defendant was identified as a suspect in the instant case by a CODIS match on March 10, 2004. A criminal complaint charging the defendant with this offense was filed Feb. 3, 2005, within the state Statute of Limitations. With the filing of the complaint, the defendant became an accused, and both the California and Sixth Amendment speedy trial right attached. Law enforcement knew where the defendant was, housed is a Washington State prison, but did nothing. Exhibit A reflects a law enforcement decision not to serve the arrest warrant until his

release, in December, 2014, nearly 10 years following the filing of the Complaint.

Under the Sixth Amendment of the United States Constitution, there is a presumption of prejudice of such extended delay. In *U. S. V. Mendoza, supra*, the failure of the government to seek the defendant's extradition form the Philippines for a period of six years mandated dismissal. In U.S. v. Cardona, supra, the failure of the government to arrest a defendant living openly in the United States over a five year period mandated dismissal. In *McNeely v. Blanas, supra*, the failure of the government to explain a six year delay in bring a defendant to trial resulted in dismissal. In this case, we have an unexplained, and apparently intentional, delay of over nine years, during which the defendant's location was known, resulting in a presumption of prejudice, as well as actual prejudice. Dismissal is the mandated remedy.

Dated:

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[NAME OF ATTORNEY]
Attorney for Defendant.