IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES	:	
	:	
v.	:	**CRIMINAL NO. 04-CR-611-2**
	:	
FARIDAH ALI	:	

MEMORANDUM AND ORDER

Kauffman, J. **August 16, 2005**

On February 2, 2005, a fifty-five count Superceding Indictment ("Indictment") was issued in the above-captioned case, charging Defendant Faridah Ali ("Defendant") and six others with various criminal activities, including violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-1968. Now before this Court is Defendant's Motion to Strike Surplusages and Aliases ("Motion") from the Indictment. Specifically, Defendant seeks to strike from the Indictment all references to: (1) her alleged aliases; (2) unnamed co-conspirators; and (3) alleged uncharged crimes, particularly, the solicitation of drug proceeds. For the reasons that follow, this Motion will be denied.

I. Legal Standard

Under Rule 7(d), a court may strike surplusage from an indictment upon motion by a defendant. Fed. R. Crim. P. 7(d). The purpose of the rule is to protect a defendant against prejudicial allegations that are neither relevant nor material to the charges made in the indictment. See, e.g., United States v. Yeaman, 987 F. Supp. 373, 376 (E.D. Pa. 1997); United States v. Gatto, 746 F. Supp. 432, 455 (D. N.J. 1990), rev'd on other grounds, 924 F.2d 491 (3d Cir. 1991). Accordingly, a motion to strike surplusage should be granted only where it is clear

that information or allegations contained within the indictment are not relevant, and the surplusage is prejudicial or inflammatory in nature. Yeaman, 987 F. Supp. at 376; see also United States v. Bortnick, 2004 WL 2861868, at *2-3 (E.D. Pa. Nov. 30, 2004).

II. Discussion

A. Defendant's Alleged Aliases

The Indictment identifies Defendant as Faridah Ali "a/k/a Rita Spicer, a/k/a Rita Ali." Defendant moves to have these so-called aliases stricken because "[t]hey suggest an effort to avoid apprehension or a connection to criminal activity" and are therefore prejudicial. Motion at 2. To the contrary, however, these represent alternate names that the government claims Defendant has used and which the government further alleges appear in documents and other evidence it intends to present at trial in support of its charges. See Gatto, 746 F. Supp. at 457 (ruling that government is permitted to included alleged aliases in an indictment, even if they carry a strong negative connotation, provided the aliases are necessary to connect the defendant to the charged crimes); see also United States v. Ruggiero, 824 F. Supp. 379, 397 (S.D.N.Y. 1993); United States v. Clark, 541 F.2d 1016, 1018 (4th Cir. 1976). Considering that the names carry no apparent negative connotation, the Court finds that they are both relevant to the Indictment and legally permissible. Accordingly, Defendant's Motion to strike aliases will be denied.

B. References to Unnamed Co-Conspirators

Defendant next challenges repeated references in the Indictment to her alleged actions with unnamed co-conspirators, both "known and unknown" to the grand jury. When a defendant raises a challenge to such vague phrasing in an indictment, a court must determine whether the

challenged language is relevant to the charges contained therein and, if not, whether use of such phrasing is prejudicial. See, e.g., Gatto, 746 F. Supp. at 456-57. Here, the challenged language is relevant to proving the government's allegations of Defendant's participation in racketeering, mail fraud, and wire fraud conspiracies, as charged in Counts Two, Twenty-Two, and Twenty-Seven. Cf. id. (holding that indictments properly reference all allegations that are relevant to the government's case and will be part of the proof at trial). In addition, the Court finds no prejudice from the inclusion of these terms. As a result, the Motion to strike these references will be denied.

C. References to Solicitations from Drug Dealers

Finally, Defendant objects to language in the Indictment related to her alleged solicitation of payments from drug dealers as irrelevant and prejudicial. However, this allegation is relevant to the Indictment. First, evidence of acceptance of such payments goes towards proof of the existence an enterprise, and its manner and means, which the government must establish in order to prove a violation of RICO, as charged in Counts One and Two. See United States v. Turkette, 452 U.S. 576, 583 (1981) (requiring separate proof of an enterprise and a pattern of racketeering activity in order to establish a RICO violation); see also United States v. DiSalvo, 34 F.3d 1204, 1221 (3d Cir. 1994) (ruling that evidence of certain acts, including uncharged crimes, may be presented to establish the existence of a RICO enterprise, the relationship between the conspirators, the members' knowledge of the illegal activities of the enterprise, or defendant's knowing and willful association with the enterprise and its affairs); United States v. Eufrasio, 935 F.2d 553, 572-73 (3d Cir. 1991); United States v. Clemente, 22 F.3d 477, 483 (2d Cir. 1994).

Second, these allegations support the various tax-violation charges, contained in Counts

Thirty-Five through Forty-Five, as an alleged source of income that Defendant failed to report. Thus, these references are highly relevant to the charges the government seeks to prove at trial and, therefore, are properly included in the indictment. See, e.g., Yeaman, 987 F. Supp. at 377 (holding that if language is information related to the charges that the government intends to prove at trial, it cannot be stricken as surplusage even if prejudicial).

III. Conclusion

For the foregoing reasons, the Defendant's Motion will be denied. An appropriate Order follows.

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ORDER

AND NOW, this 16th day of August, 2005, upon consideration of Defendant's Motion to Strike Surplusages and Aliases (docket no. 50), and the government's response thereto, it is **ORDERED** that the Motion is **DENIED**.

BY THE COURT:

s/Bruce W. Kauffman
BRUCE W. KAUFFMAN, J.