



A. John Pappalardo  
Tel (617) 310-6072  
Fax (617) 279-8472  
pappalardoj@gtlaw.com

November 29, 2016

**Via ECF**

The Honorable Robert M. Levy  
United States Magistrate Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

Re: United States v. Juan Angel Napout (22) (15-cr-00252-PKC-RML)

Dear Judge Levy:

Attached is an Affidavit of Michael Kendall, Esq., who was a witness at the October 25, 2016 hearing.

Respectfully submitted,

/s/ A. John Pappalardo  
A. John Pappalardo

cc: Counsel of Record via ECF

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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UNITED STATES OF AMERICA,		)	
		)	
		)	
-against-		)	Docket No. 15-CR-252(S-I) (PKC)(RML)
		)	
JUAN ANGEL NAPOUT,		)	
		)	
Defendant.		)	
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**AFFIDAVIT OF MICHAEL KENDALL, ESQ.**

I, Michael Kendall, hereby depose and state:

- (1) I testified pursuant to a subpoena from counsel for defendant Juan Angel Napout before the Court on October 25, 2016. I recently received and read the Government’s Post-Hearing Brief Concerning the Existence and Scope of Certain Privileges Claimed by Defendant Napout, and two letters filed by Quinn Emanuel, on behalf of CONMEBOL, all of which are dated November 16, 2016. Because these documents attempt to draw certain incorrect inferences from my testimony, and the Government and Quinn are selectively disclosing and withholding information from the Court, I am filing this affidavit.
- (2) The Government’s Brief raises several questions about CONMEBOL’s retention of my former law firm, McDermott, Will & Emery LLP, and the independence of our advice. At all times, McDermott acted in the best interests of CONMEBOL, including when it arranged for it to enter into a Common Interest Agreement (“CIA”) with Juan Napout’s counsel.
- (3) It is my understanding that Mr. Napout selected McDermott to represent CONMEBOL before the government disclosed to John Pappalardo, on or about June 12 – 15, 2015, that Mr. Napout was a target. This retention was ratified by CONMEBOL’s General Counsel, Mr. Alfredo Montanaro, by no later than June 23, 2015, when he started to instruct McDermott. I was also told that Mr. Napout had discussed McDermott’s retention with at least some of the Executive Committee members in late June and early July, 2015. I believe he introduced me to CONMEBOL Vice-President Wilmar Valdez and Executive

Committee member Alejandro Dominguez during my July 6-8 visit to Asuncion. Based upon my knowledge of CONMEBOL's bylaws and practices, the President and General Counsel of CONMEBOL followed the standard practice to retain an outside law firm when it hired McDermott.

(4) CONMEBOL's governing entity is its Executive Committee, which consists of the president of the national soccer organizations of its ten member countries, and CONMEBOL's President. After June 12, 2015, CONMEBOL's Executive Committee held its next meeting on July 24, 2015 in St. Petersburg, Russia. I did not attend this meeting, but I helped Mr. Napout prepare for it and I reviewed the minutes of it. The minutes indicate that the Executive Committee was informed of McDermott's retention and it approved McDermott's recommendations to adopt far reaching compliance measures. Thus, CONMEBOL's retention and confirmation of McDermott as outside counsel followed CONMEBOL's standard procedures and bylaws.

(5) The Government's Brief at 7 implies that McDermott withheld Mr. Napout's target status from CONMEBOL. That does not accurately describe the facts. During summer and fall, 2015, it was common knowledge at CONMEBOL, and in soccer circles outside of South America, that several members of CONMEBOL's Executive Committee were subject to the Department of Justice's ongoing investigation. The May 20, 2015 Indictment at paragraph 249 alleged that the corrupt middlemen had agreed to bribe ten of the eleven members of CONMEBOL's 2013 Executive Committee, but it did not say that all ten had agreed to accept such bribes or who was the one member who was outside of this interaction. This was a very explicit statement that members of the Executive Committee were within the scope of the continuing investigation. Numerous members of international soccer circles discussed this ongoing investigation with me and we discussed it in at least one Executive Committee meeting. Thus, it was clear to the Executive Committee that the Department of Justice's investigation of Executive Committee members (including Mr. Napout) was ongoing. In short, there was no "secret" to withhold.

(6) Based on the information available, it was prudent for CONMEBOL to enter into the CIA. Before I proposed the CIA to Mr. Pappalardo, he informed me that it was Mr. Napout's position that he was innocent, that Mr. Napout would cooperate with the DOJ, and that Mr. Pappalardo intended to make

a full presentation to the DOJ. In my June 2015 discussion with DOJ, I specifically raised the issue of Mr. Napout's target status and CONMEBOL's intention to cooperate. At no point would the government share any information supporting its allegations against Mr. Napout with McDermott. Though I did not discuss the details of Mr. Napout's defense with him or his counsel, in or shortly after our July 6, 2015 meeting in Paraguay, Mr. Napout assured me that he did not receive any soccer related bribes. Other than the Government's statement that Mr. Napout was a target, we were not aware of any specific allegations or evidence that inculpated him.

(7) Thus, starting in June 2015 and continuing thereafter, I thought it reasonable to conclude Mr. Napout and CONMEBOL shared a common interest in reforming CONMEBOL's commercial relations, without generating any concern by the government that CONMEBOL or its sitting president were continuing to further the criminal activities described in the indictment. Mr. Napout and his attorneys discussed with me that both Mr. Napout and CONMEBOL wanted to keep CONMEBOL solvent and we wanted to bring in immediately tens of millions of dollars, while negotiating to unravel corrupt contracts. CONMEBOL and all other parties in the renegotiation of the broadcast and sponsorship contracts agreed that we needed to submit any new arrangement to the DOJ for its approval, to avoid any claim that the new arrangement was void and a continuation of the bribery offense.

(8) The way the DOJ structured its cooperation agreements with the indicted soccer promoters created unusual pressures on CONMEBOL's and Mr. Napout's efforts to reform the commercial contracts. The DOJ allowed the corrupt middlemen to retain the contracts they secured through bribery, and to demand that CONMEBOL pay them millions of dollars to untangle these broadcast and sponsorship deals. At times I asked DOJ to help CONMEBOL rid itself of such demands from DOJ's cooperators and others, but it refused to do anything to assist. Thus, CONMEBOL was renegotiating deals permeated by bribery with people who were felons, fugitives, or in the midst of negotiating plea and cooperation agreements.

(9) Counsel for Mr. Napout and I also discussed that both Mr. Napout and CONMEBOL expected they could become co-defendants in litigation that would arise from these tangled commercial

relationships. In particular, we discussed that a specific Uruguayan soccer promoter was likely to bring such litigation against CONMEBOL and Mr. Napout, and we wanted to preserve all privileges. As expected, this Uruguayan promoter filed a complaint against both CONMEBOL and Mr. Napout in Miami Federal Court in October, 2016.

(10) I also want to clarify how I intended the CIA would operate. Without any CIA, Mr. Napout would still learn all of CONMEBOL's strategies to resolve the commercial disputes and to secure the DOJ's approval of such measures, and he would be able to discuss them in privileged conversations with CONMEBOL's counsel. He also would be able to discuss such matters in privileged conversations with his own personal legal counsel. The purpose of the CIA was to allow CONMEBOL's outside counsel to discuss directly with Mr. Napout's personal counsel actions that McDermott would recommend Mr. Napout approve and implement. Without the CIA, the same level of communication would take place, but it would happen as a cumbersome game of telephone, with both sets of lawyers separately talking to Mr. Napout, but never to each other. Thus, the CIA did not result in CONMEBOL disclosing more information to Mr. Napout, or Mr. Napout disclosing more information to his personal lawyers. Rather, the CIA simply facilitated conversations among CONMEBOL's and Mr. Napout's lawyers, so CONMEBOL could more efficiently implement its commercial legal strategy and seek approvals of it from the DOJ.

(11) When McDermott was retained in mid-June, Esteban Burt told me that CONMEBOL would collapse if we did not collect \$25 million in approximately 18 days. We had additional financial crises for the next several months. Because of the tight deadlines and time pressures CONMEBOL faced in 2015, and the fact that every change to a commercial contract required disclosure and acceptance by the DOJ, it was imperative to both CONMEBOL and Mr. Napout that every commercial decision we presented to the DOJ was seen by the DOJ as commercially reasonable and not in furtherance of any criminal activity. If not, DOJ would withhold its approval, commercial parties would dispute the new agreement, and Mr. Napout would not be able to manage CONMEBOL's affairs. Thus CONMEBOL and

Mr. Napout shared a common interest in quickly reforming CONMEBOL's corrupted contacts and in communicating these reforms to the DOJ.

(12) In my testimony of the October 25 hearing, I referred to a June 18, 2015 Memorandum (Tr. 38). I believe this Memorandum would assist the Court in understanding Mr. Burt's role as Mr. Napout's counsel, not CONMEBOL's, and it would show that the CIA was focused on communications necessary to untangle the commercial contracts and secure DOJ approval of such changes. I understand that CONMEBOL has chosen not to submit this document to the Court, so I am not going to discuss the contents of this Memorandum in detail. In my view, there is nothing proprietary or contrary to CONMEBOL's interest in this Memorandum and nothing that warrants it being withheld from the Court. In any event, the parts of the Memorandum that make clear both Mr. Burt's role and the common goals of Mr. Napout, Mr. Burt, and CONMEBOL, certainly can and should be disclosed to the Court so it has the relevant facts before it. (I note that CONMEBOL has submitted to the Court (under seal) several documents that the Quinn firm claims show Mr. Burt, communicated directly with CONMEBOL and its counsel. Such direct communications can be consistent with the intent and purpose of the CIA. CONMEBOL's current counsel claims these communications indicate that Mr. Burt represented CONMEBOL, not Mr. Napout. The withheld June 18 Memorandum, to the contrary, accurately describes Mr. Burt's role and the purpose and scope of the CIA.)

(13) The Government's Brief at pp. 20-22 argues that Mr. Burt represented CONMEBOL from January – April, 2016, and not Alejandro Dominguez. Pages 55-57 of the transcript of the October 25 hearing contain my testimony of my March 21, 2015 meeting with AUSA Kristin Mace and others when I disclosed to the DOJ Mr. Burt's role as counsel to Mr. Dominguez. I explicitly told Ms. Mace that Mr. Burt represented Mr. Dominguez personally and did not represent CONMEBOL. She sharply criticized Mr. Burt's representation of Mr. Dominguez, and asked me if it would violate U.S. rules on conflicts of interest for Mr. Burt to represent both Mr. Napout and Mr. Dominguez. We held an extended discussion on this topic. The Government's Brief ignores this part of the March 21 discussion and pretends it did not occur, even though one of its authors was present for it. In this March 21 meeting, I did not explicitly

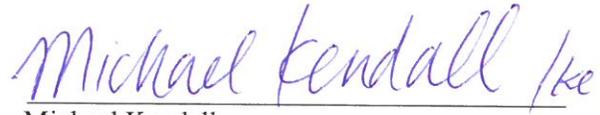
disclose the existence of the CIA because I have always treated such matters as confidential. In addition, contrary to what the Government's Brief claims at p. 20, I did not say that Mr. Burt's and Mr. Pappalardo's names were included in the March 1, 2016 letter in error. Rather, I said in a somewhat diplomatic way that I was sorry Ms. Mace had misunderstood the letter and I wish I had written it in a way that did not leave her with a misimpression.

(14) In March 2016, I reported in writing on this March conversation with Ms. Mace to Mr. Dominguez and Montserrat Jimenez, CONMEBOL's General Counsel. I understand CONMEBOL has chosen to not give this memo to the Court, so I will not discuss its contents. However, neither Mr. Dominguez nor Ms. Jimenez ever contacted me to tell me my description to Ms. Mace of Mr. Burt's personal representation of Mr. Dominguez was incorrect. I respectfully suggest that the Court would better understand the true facts if this March memo were disclosed and that such disclosure, at least of the parts relevant to understanding the relationship between Mr. Burt and Mr. Dominguez, would be consistent with CONMEBOL's interest.

(15) On April 5, 2016, I met with Mr. Dominguez, Ms. Jimenez and a third person at CONMEBOL Headquarters in Asuncion. We discussed the March 21, 2016 meeting with Ms. Mace, and the memo I had sent to them summarizing this meeting. I understand CONMEBOL has not agreed to submit the contents of this meeting to the Court, so I will not discuss its contents. However, during that meeting no one ever told me my description of Mr. Burt's personal representation of Mr. Dominguez was incorrect. Again, a description of the discussion that took place at this meeting would aid the Court's effort to understand the relationship between Mr. Burt, Mr. Dominguez and CONMEBOL, and its disclosure

would be consistent with CONMEBOL's interest.

Signed this 28<sup>th</sup> day of November, 2016

  
Michael Kendall