UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	**:**	**Case No: 3:10CR120 (VLB)**
	:	
v.	**:**	
	:	
ANGELO REYES	**:**	**FEBRUARY 27, 2012**

NOTICE OF INTENTION TO USE EVIDENCE

Pursuant to Rule 12(b)(4)(A) of the Federal Rules of Criminal Procedure, and as discussed during the January 12, 2012 telephone status conference in this case, the government hereby gives notice that it intends to introduce "other acts" evidence at trial – specifically, the defendant Angelo Reyes' ("Reyes") directing others to perpetrate certain arsons in addition to those set forth in the Third Superseding Indictment, including those that the government was not able to charge federally, due to, e.g., lack of federal jurisdiction or statute of limitations issues. The government anticipates eliciting this evidence primarily through the testimony of three accomplice witnesses (identified below as AW2, AW3 and AW5) who will testify to perpetrating certain additional arsons at Reyes' behest. Out of an abundance of caution, however, the government is noticing all of the alleged arsons that the federal grand jury investigation revealed, even though the government will ultimately seek to introduce only a smaller subset of the alleged arsons through the three accomplice witnesses that are currently anticipated to testify at trial.

I. THE PRIOR ARSONS

The evidence at issue is summarized below, organized by each alleged arson.

80 ½ Peck Alley, New Haven, Connecticut

On June 19, 1997, August 6, 1997, August 19, 1997 and September 21, 1997, fires occurred at a property known as 80 ½ Peck Alley in New Haven, Connecticut. Accomplices have admitted to perpetrating at least two of these fires at Reyes' behest.

Specifically, according to accomplice witness #1 ("AW1"), sometime in or about the fall of 1997, he was hired by Reyes a/k/a "Tati" to commit an arson at an abandoned home located on Peck Alley in New Haven, Connecticut. AW1 has known Reyes for approximately 25-30 years and grew up with him in the Fair Haven section of New Haven. AW1 stated that "Tati" hired him because he (Reyes) knew AW1 would get the job done. According to AW1, he was "hanging out" in the area of Lloyd and Exchange Streets in New Haven when "Tati" called him over and offered to pay him (AW1) $300.00 to commit an arson at the property on Peck Alley. Reyes told AW1 that the house was condemned and unoccupied and that he (Reyes) wanted to purchase the land on which the house was presently located. According to AW1, "Tati" owned other properties in that neighborhood and expressed a desire to own this additional property. AW1 believe the abandoned home belonged to the City of New Haven.

According to AW1, he hired another individual to assist him with lighting the Peck Alley home on fire. AW1 and the individual used gasoline as an accelerant to quickly spread the fire. The gasoline was dispensed from plastic containers and spread throughout the first floor, basement and basement steps of the abandoned home. AW1 recalled that they possibly used a road flare, that he believed was provided by Reyes, to start the fire. AW1 stated that the arson was committed at night.

According to AW1, a day or two after the fire, he met with "Tati" on Exchange Street in New Haven, at which time "Tati" paid him $300.00 in cash for the job. During the exchange, Reyes told AW1 that "it needs to be done again." Reyes explained that the house did not sustain enough damage from the fire. AW1 subsequently paid the other individual approximately $150.00 in cash for his participation.

According to AW1 about a week or so later, AW1 set fire to the same house on Peck Alley again. AW1 perpetrated the second arson on his own, without the assistance of an accomplice. AW1 recalled using a metal gasoline container to douse the interior of the house with gas. AW1 believed that the metal gas container may have been provided by "Tati." AW1 recalled dousing gas on the walls, floors, basement, and exterior of the house. Once the gas had been spread through the house, AW1 set the fire from outside and then threw the gas container into the house. AW1 then fled the scene on foot.

According to AW1, sometime after the fire, Reyes contacted AW1 on his home telephone and told AW1 to be outside in five minutes. While AW1 was waiting outside his home, an individual drove up to him and handed him $100.00 to $150.00 in cash and stated: "Tati told me to give you this."

41 Market Street, New Haven, Connecticut

On August 28 and September 9, 2002, fires took place at a property known as 41 Market Street in New Haven, Connecticut. Two accomplices who are anticipated to testify at trial, have admitted to participating in at least one of the fires that took place at 41 Market Street, at Reyes' behest.

According to accomplice witness #2 ("AW2"), he participated in the arson of 41 Market Street. AW2 stated that Reyes wanted the house set on fire to make a parking lot for a church located next door to the house. According to AW2, at the time of the fire, the house was abandoned and had "crack heads" using it. AW2 showed law enforcement officers where he had parked his vehicle on Castle Street in New Haven, after which access was obtained through backyards to get to the house on 41 Market Street to set the fire. According to AW2, he and AW3 were paid with money from Reyes for helping set the Market Street fire.

AW3 similarly admitted to his participation in the arson at 41 Market Street, at Reyes' behest. According to AW3, he participated in the arson of a one family house located on Market Street. AW3 did not recall the address, but indicated that the property was near a church. AW3 recalled driving to the house together with AW2. According to AW3, he and AW2 participated in the arson. According

to AW3, gas, which they had brought in laundry detergent containers, was poured through the interior of the residence. AW3 admitted to lighting the match to ignite the fire. According to AW3, he was paid with money from Reyes for his participation in the Market Street arson.

According to AW3, when he entered the residence on Market Street, he believed that the house was attempted to be burned before. Specifically, AW3 recalled seeing prior burn marks from a fire, mostly in the kitchen area of the house.

According to accomplice witness #4 ("AW4") he, AW2 and a third individual participated in the prior arson attempt at 41 Market Street. According to AW4, the two others asked him if he (AW4) wanted to make some money by taking them to a house on Market Street so AW2 and the third individual could set it on fire. AW4 agreed to drive them there; AW2 got into the back seat of AW4's car, and the third individual got into the front seat of the car with a small red gas can containing what AW4 estimated to be about $5.00 worth of gasoline.

According to AW4, he parked the car facing the wrong way on the one way street so that when the house was set on fire they could get out of the area quickly. According to AW4, his job was to look out for police and others while AW2 and the third individual poured the gas and set the house on fire. When they arrived at the house AW2 and the third individual got out of the car and approached the house. After the fire was set, AW2 and the third individual returned to AW4's car. AW4 drove them to the corner of Exchange and Bltachley

Streets, at which point all three got into AW2's vehicle. According to AW4, all three then returned in AW2's vehicle to the house on Market Street, where they watched the fire department fight the fire.

According to AW4, "Tati" had wanted to purchase the property on Market Street that they had set on fire. Since the sale was not working out, "Tati" wanted to have the building set on fire so that he (Reyes) could get the property at a lower price.

According to AW4, a few days after the fire, the third individual gave AW4 money, provided by Reyes, for AW4's participation in the fire at 41 Market Street. According to AW4, "Tati" did not want to pay for this fire at 41 Market Street because "Tati" believed that they had "fucked up the fire." According to AW4, Tati relented, after which the third individual gave AW4 his money, provided by Reyes, for AW4's participation in the fire at 41 Market Street.

The Halloween 2002 Incidents: 137 Wolcott Street and 391 Lombard Street

On October 31, 2002, a fire took place at 137 Wolcott Street in New Haven. The same night, AW2, at Reyes' behest, deliberately crashed a vehicle into the garage door of a residence located at 391 Lombard Street in New Haven. AW2 admitted to his participation in both incidents, at Reyes' behest, with the assistance of an unidentified drug addict. According to AW2, both incidents involved Fair Haven politicians with whom Reyes was having issues.

Specifically, according to AW2, Reyes asked him to damage the property of a City Councilor's home, and also set fire to a "barn" or storage shed owned by

another Fair Haven politician. According to AW2, Reyes wanted this done because of "politics" and because Reyes believed that the two politicians were responsible for having Reyes arrested for ballot or fraud related crimes. According to AW2, Reyes wanted to get back at them for having Reyes arrested.

According to AW2, who was living rent-free at a home owned by Reyes, he felt obligated to do what Reyes asked of him. According to AW2, when Reyes wanted him to do something illegal, such as a fire, Reyes would often say to AW2 "get it done."

According to AW2, Reyes devised the plan to damage both the garage door and set fire to the "barn." Reyes and AW2 spoke about it a few days prior to the incidents. The discussion centered around how AW2 should damage the garage door and set the barn on fire. A day before, Reyes and AW2 drove by the locations and Reyes pointed out the garage door he wanted damaged and the barn to be set on fire.

On the night the garage door was damaged and the barn set on fire, AW2 recruited what AW2 referred to as a "crack head" as a partner to assist him in carrying out Reyes' plan. According to AW2, he recruited the "crack head," who had been hanging out in front of Lou's Lounge in Fair Haven, by offering him money to participate.

According to AW2, AW2 was in his own vehicle while the "crack head" drove an old Oldsmobile or Buick provided by AW2, which AW2 had picked up for approximately $150.00. AW2 and the "crack head" first went to the area of 391

Lombard Street. AW2 parked his vehicle and watched as the "crack head" backed the Oldsmobile or Buick directly into the garage door at 391 Lombard.

Afterwards, AW2 and the "crack head" went to a gas station located on Chapel and Ferry Streets in Fair Haven. AW2 purchased about $1.50 worth of gasoline and pumped it into a one-gallon container that AW2 had brought with him.

AW2 recalled it was dark out and that it was late at night. According to AW2, as AW2 waited in his vehicle, the "crack head" walked into the barn, poured the gasoline in the barn and started the fire. The "crack head" then walked out, got into the car, and left. AW2 couldn't recall how much he paid the "crack head" for his assistance, but he believed it was somewhere in the vicinity of $50.00 to $60.00.

186 Wolcott Street

On April 15, 2003, a fire occurred at 186 Wolcott Street in New Haven. AW2 admitted to his participation in this arson, at Reyes' behest, as well. According to AW2, Reyes wanted this residence burned because of the number of "crack" users that were living in and/or hanging around the residence.

Specifically, according to AW2, where a vacant lot now sits on Wolcott Street with concrete barricades in front of it, near the intersection of Murray Place, there used to be a large blue building that contained six (6) apartments. According to AW2, at the time of the fire, the building had been abandoned. According to AW2, Reyes told AW2 that this house needed to be set on fire

because Fair Haven was getting "messed up" with all the "crack heads." According to AW2, Reyes stated that Fair Haven needed to get better, so this house on Wolcott Street needed to be set on fire. According to AW2, the building was set on fire, per Reyes' request. AW2 believed that at the time of the fire, the building may have been owned by the City of New Haven.

According to AW3, AW2 and AW3 discussed how best to set a fire at this property. According to AW3, AW2 asked him a lot of questions about how to burn a six apartment building. According to AW3, AW3 suggested bringing trash into the building and then setting it on fire. According to AW3, after the fire the building was demolished and currently, there is a vacant lot there with two cement pillars in front.

According to another witness who has agreed to testify, in or about 2003 or 2004, the witness owned a home located at 2 Murray Place in New Haven. When the witness owned the Murray Street property, Reyes expressed a strong desire to purchase the property from the witness, but the witness declined Reyes' offer. According to the witness Reyes wanted to purchase a number of properties on and around Murray Place because the City of New Haven was preparing to build a new public school nearby on James Street. According to the witness, Reyes believed that if he could purchase the properties on Murray Place, he could then develop the area with new houses and possibly arrange a deal in which school buses would utilize Murray Place as a direct access route to the new school. According to the witness, Reyes believed it was imperative that he purchase the

properties on Murray Place and that Reyes' goal would fail if he was unable to buy out the remaining homeowners on Murray Place.

According to the witness, Reyes attempted to purchase properties on and around Murray Place, including the uninhabited and dilapidated 4-6 family home at 186 Wolcott Street, which the witness believed was owned by the City of New Haven.

According to the witness, sometime in or about 2003 or 2004, AW3 asked the witness how much he should charge to burn down a house. The witness was unsure whether the fire had already been set or if AW3 was involved in the planning stages of the arson. According to the witness, in his discussions with AW3, AW3 described the house at issue as a large blue abandoned home, located on Murray Place in Fair Haven, with 4-6 apartments. According to the witness, AW3 discussed Reyes and AW2's involvement in the arson plot and Reyes' having paid to have the job done. The witness believed that Reyes and AW2 took advantage of AW3 because AW3 suffered from narcotics addiction and lack of employment or income.

According to the witness, a day before the fire, the witness reviewed blueprints on the overall Murray Place project being proposed by Reyes. A day after the arson, the fire damaged structure was knocked down, the property was razed and the land cleared. According to the witness, shortly after the fire occurred, Reyes was at the location with employees from the City of New Haven and, on a different date, the witness recalled seeing Reyes and a city employee reviewing proposals and/or blueprints associated with the contemplated project.

248 Grand Avenue, New Haven, Connecticut

On September 30, 2007, a fire occurred at a grocery / convenience store located at 248 Grand Avenue, at the corner of Grand Avenue and Poplar Street, in New Haven, Connecticut. AW2 and another accomplice witness ("AW5") admitted to their participation in the fire, again at Reyes' behest.

According to AW2, he and AW5 perpetrated the fire at 248 Grand Avenue, New Haven, at Reyes' behest. AW2 indicated that this was the first fire that he and AW5 perpetrated together. According to AW2, he believed that AW3 was incarcerated around the time of this fire. Reyes owned a number of properties on this Grand Avenue block, as well as a People's Laundromat location on Grand Avenue, directly across Poplar Street from the grocery store located at the corner of Grand Avenue and Poplar Street, at 248 Grand Avenue.

Reyes told AW2 that he (Reyes) had made an offer to purchase the 248 Grand Avenue property "as is" for approximately $50,000.00. The offer was made approximately a couple months prior to the fire being set. The offer, however, was turned down by the owner.

According to AW2, Reyes wanted the building set on fire so he could purchase the property at a lower price. Reyes wanted to buy the building and then knock it down to put in a parking lot for his commercial properties that Reyes owned next door. Reyes also wanted the store burned down because drug dealers and drug addicts were constantly hanging out in front of the store.

According to AW2, Reyes also asked AW2 on a few different occasions when the grocery store was going to be taken care of / set on fire. AW2 stated that he "knew this place was gonna go" because Reyes had spoken to him about the problems Reyes believed the store had been creating.

According to AW2, the fire was set when the grocery store was closed at night, per Reyes' request. According to AW2, Reyes believed it was safer to do it at night, ensuring that there wouldn't be any injuries to customers or the store owners. AW2 believed the fire was set somewhere between the hours of 11:00 p.m. and 12:00 a.m.

According to AW2, access to the grocery store was gained by throwing a red cylinder block through one of the three windows located on the top portion of the rear door, adjacent to Poplar Street. Gasoline was then poured through the broken window. AW2 recalled thinking that they had not used enough gasoline to spread the anticipated fire, so they left, went to a gas station located at the corner of Chapel and Ferry Streets, where they purchased more gasoline. AW2 stated that the grocery store was fairly large, and it took two gas cans worth of gasoline for this particular arson.

When they returned to the grocery store, AW2 parked his vehicle at the intersection of Woolsey Street and Blatchley Avenue. The additional gasoline was poured into the broken window and the fire was set by igniting some sort of "smoke bomb" that had been provided by Reyes and throwing it into the grocery store through the broken window. According to AW2, AW5 ignited the fire. AW2 further stated "there's always an explosion when we do this" type of arson.

According to AW2, Reyes provided approximately $200.00 in payment for the arson at the grocery store.

AW5 similarly admitted his participation in the arson of the 248 Grand Avenue store. According to AW5, Reyes told AW5 that he wanted the building located at the corner of Grand Avenue and Poplar Street, which housed a convenience store, burned down. In addition to this building, Reyes indicated that he (Reyes) also wanted the adjacent building to sustain some minor fire damage, but only minimal amounts of damage.

Reyes told AW5 that the reason he (Reyes) wanted the building burned down was because the owners of the convenience store, which Reyes referred to as the "Indians," were allowing what Reyes referred to as black drug dealers to sell drugs from inside as well as outside the store. In addition, Reyes told AW5 that the "Indians" also owned the building immediately adjacent to the sore, and he (Reyes) wanted to own both buildings. Reyes told AW5 that the activity in and around the store was bringing the property values down in the area, and was also affecting his (Reyes') laundromat business, which was located next door.

AW5 asked Reyes whether the building, if burned, would then be an eyesore in the neighborhood. According to AW5, Reyes responded words to the effect of: "A brand-new house sells for $200,000 and a 'crack head' house sells for $40,000. If you buy a 'crack head' house and renovate it, you can make as much money as if you were to buy a new house." AW5 understood Reyes to mean that if the building was burned down the value would be less, therefore

Reyes would be able to purchase it at a much lower price. Reyes told AW5 that he (Reyes) had plans to put over forty apartments in one of the buildings and that he (Reyes) would then be able to obtain between $800 and $1000 per month for rent for each apartment.

AW5 also asked Reyes about the apartments located above the store at 248 Grand Avenue. Reyes responded that the apartments were empty, and as for the apartments in the adjacent building, Reyes stated that he would pull some type of alarm to ensure that the buildings tenants were evacuated.

According to AW5, Reyes provided him with specific instructions about how to set the fire. Reyes instructed AW5 to use approximately $20.00 worth of gasoline to ignite the building. Reyes instructed AW5 not to enter the building, but instead to go to the rear of the building where a door was located. Reyes explained that the door had windows, which he (AW5) should break, and after breaking one of the windows, AW5 should pour the gas inside the window. According to AW5, Reyes also provided a "cherry bomb" (referring to some type of firework), and instructed AW5 to use it as an ignition source for the fire.

Reyes told AW5 that AW2 would drive him (AW5) to the area and that AW2 would drop him off and then wait for him at a pre-determined location.

According to AW5, he and AW2 made multiple trips to the gas station located at the corner of Ferry Street and Chapel Street, to fill the gasoline can. According to AW5, this was because the gasoline can was a relatively small one, which was not able to hold $20.00 worth of gasoline, so multiple trips to the gas station were necessary.

According to AW5, the night of the fire, he broke the right side window of the rear door with a hammer. AW5 believed that approximately two (2) gallons of gasoline were emptied into the store, and another two (2) gallons were eventually poured into the store before setting the fire. AW5 also described the small firework / incendiary device that he used to light the fire, and said that after igniting the wick there was a puff of smoke, a boom and a flash of light.

According to AW5, AW2 parked on Woolsey Street while he waited for AW5 to finish the job.

According to AW5, the day after the fire he received approximately $300.00 from AW2 for setting the fire at 248 Grand Avenue. According to AW5, he knew the money came from Reyes because AW2's money came from Reyes, AW2 never had money of his own nor did he have a bank account.

The Arson of a Ford F-150 at Chapel & Blatchley, New Haven, Connecticut

On February 12, 2008 a Ford F-150 was burned at Chapel and Blatchley Streets in New Haven. Both AW5 and AW2 admitted their participation in the arson of this vehicle. During the grand jury investigation, the owner of the vehicle admitted to deliberately having his vehicle burned because he was behind in the financing payments, and a co-worker who helped broker the arson admitted to his participation in the arson plan as well. According to AW5, Reyes helped broker the arson and provided AW5 with instructions on when, where and how to do it.

According to AW5, Reyes approached him in front of the apartment AW5 rented, rent free, from Reyes, and Reyes told AW5 that there was a relatively brand new Ford F-150, black in color, that he (Reyes) wanted burned. Reyes told AW5 not to worry about who the truck belonged to, because it was insured.

Reyes told AW5 that the truck would be parked in the area of Humphrey's restaurant, located underneath a highway bridge on East Street and Humphrey Street in New Haven. Reyes told AW5 that the keys would be in the ignition. Reyes instructed AW5 to use gasoline to ignite the truck and that the gasoline should be poured down into the dashboard of the truck as well as on the seats. In addition, Reyes told AW5 to make sure, prior to igniting the fire, that the windows were rolled halfway down. Reyes gave AW5 a "cherry bomb" and instructed him to throw it inside the truck to ignite the fire. AW5 could not recall, but he believed he may have used newspaper to light the fire instead.

Reyes asked AW5 where he would burn the truck, and AW5 said Front Street. Reyes told him instead of Front Street, AW5 should drive the truck to the area of Chapel Street and Blatchley Avenue, New Haven, and park the truck in the parking lot. AW5 described the parking lot as having some type of factory. (AW2 described the location where the Ford F-150 fire was set as where the New Haven Awning Company is currently located, and where a ladder company existed in the past). Reyes told AW5 that the truck should be parked close to the building.

According to AW5, AW2 drove him to the area to retrieve the truck on the night AW5 set it on fire. (AW2 also admitted to his involvement in the arson of the

Ford F-150 in the area of Chapel Street and Blatchley Avenue in New Haven as well). The following day, AW2 gave AW5 approximately $100.00 for the arson of the F-150. AW5 knew the money came from Reyes because AW2's money came from Reyes, AW2 never had money of his own

211 Lloyd Street, New Haven, Connecticut

On October 4, 2008, a fire took place at 211 Lloyd Street in New Haven. AW2 admitted causing this arson on behalf of Reyes as well. According to AW2, Reyes wanted the house burned to the ground because "crack heads" were hanging around the area. According to AW2, Reyes stated that once you "light it up" the crack heads leave or you end up "chasing them out." According to AW2, the house was abandoned and boarded up at the time. According to AW2, after removing a piece of plywood, entry was made, the interior of the house was doused with gasoline and the fire was set. According to AW2, Reyes generally did not comment on the arson fires after the job was done. According to AW2, Reyes would tell him "don't be talking about this."

95 Downing Street, New Haven, Connecticut [1]

On October 9, 2008, a fire took place at 95 Downing Street in New Haven. AW2 and AW5 admitted to perpetrating this arson on Reyes' behalf as well.

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[1] **On February 23, 2012, Reyes was arrested and charged by the State of Connecticut with one count of Conspiracy to Commit Arson in the Second Degree, and one count of Conspiracy to Commit Criminal Mischief in the First Degree, in connection with this arson.**

According to AW2, the owner of the property owed Reyes approximately $15,000 to $30,000 and Reyes wanted to buy the house back. According to AW2, the owner and Reyes had a "beef" over this loan, and Reyes hired AW2 and AW5 to burn the building. According to AW2, Reyes told him that if the house was burned Reyes could at least buy the property. According to AW2, after the fire the owner was upset with Reyes because the owner believed Reyes had something to do with the house having been set on fire.

According to AW2, AW5 gained access through the back door of the building, poured gasoline everywhere and set the fire. Reyes paid AW2 approximately $200.00 in cash for the 95 Downing Street fire.

AW5 also admitted to his participation in the arson of 95 Downing Street, which was done at Reyes' direction. According to AW5, Reyes approached him in front of an apartment owned by Reyes in which he was living, rent free. Reyes was operating one of his People's Laundromat's vans. After AW5 entered and sat in the passenger's seat of the van, Reyes told AW5 that he wanted 95 Downing Street burned down. According to AW5, Reyes claimed that the house was "half his," but Reyes did not elaborate further. According to AW5, when he asked Reyes what "the numbers" would be (referring to the money AW5 would receive) for setting the fire, Reyes told him that AW2 would explain "the numbers" to AW5.

According to AW5, Reyes told him that the house was under renovation and the other purported "half owner" did not have the money to finish the repairs, so it had to be burned down. Reyes told AW5 not to worry about setting the fire

because no one lived in the house. According to AW5, Reyes instructed him to set the fire "really late at night."

According to AW5, Reyes told him that the floorboards inside the main level of the house were not intact, and therefore AW5 should be careful when he entered the house, lest he fall into the basement. Reyes instructed AW5 to use gasoline to ignite the fire, and he told AW5 that when he transported the gasoline container to the house he should conceal it underneath a shirt, to make it look like he was carrying an animal cage. Reyes instructed AW5 to approach the front of the house and enter through a hole in a wooden fence that led to the rear of the house. Reyes said that when AW5 reached the rear of the house, AW5 should break out one of the panes of glass in the rear door and reach inside to unlock the door. Reyes instructed that once inside, AW5 was to pour gasoline along the interior – and specifically, along the left rear corner of the house, because there was an opening in the floor that would allow gasoline to seep into the basement. Upon exiting the home, AW5 was to pour gasoline through the interior of the house and make a gasoline trail from inside the house back outside, where, Reyes instructed, AW5 should use a lighter and "rolled up newspaper" to ignite the fire. Reyes told AW5 that after the gasoline trail was ignited, AW5 should exit through the rear yard into the adjacent property, and proceed through the neighborhood before arriving back at his (AW5's) home.

According to AW5, on the night of the fire, he wore black clothing and carried a Bic lighter, a hammer, newspaper and a gas can. AW5 entered the

property and proceeded as per Reyes' instructions. After igniting the gasoline trail, he carried the gas can back to his residence where he threw it into an area alongside the house where he and AW2 would repair cars.

According to AW5, the day after the fire, AW2 handed him approximately $300.00, which AW5 knew came from Reyes because AW2 was unemployed, his money came from Reyes, and AW2 never had money of his own. AW5 recalled AW2 asking to have approximately $150.00 of the $300.00 payment, so AW5 gave AW2 approximately $150.00.

The Arson of a BMW at 979 Quinnipiac Avenue, New Haven, Connecticut [2]

On May 25, 2009, a BMW was set ablaze at a residence located at 979 Quinnipiac Avenue in New Haven. Both AW2 and AW5 admitted to their participation in this arson.

According to AW5, he was paid by Reyes for setting fire to a BMW, Series 5, at a Quinnipiac residence. According to AW5, Reyes told him that he (Reyes) having "problems" with the "guy" who owned the house, but he did not explain further.

According to AW5, Reyes contacted him on his cellular phone and Reyes asked AW5 to meet with AW5 and AW2. The same day, Reyes, AW5 and AW2 met

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[2] **On February 23, 2012, Reyes was arrested and charged by the State of Connecticut with one count of Conspiracy to Commit Arson in the Second Degree, and one count of Conspiracy to Commit Criminal Mischief in the First Degree, in connection with this arson.**

at Reyes' laundromat on Grand Avenue in New Haven. The three got into Reyes' purple People's Laundromat minivan and Reyes proceeded to drive up Quinnipiac Avenue. Reyes stopped short of, but identified the target location where he pointed out a green, four door, BMW 5 Series that he wanted burned. Reyes warned that the outside lights of the house were on sensors.

Reyes instructed AW5 to break one of the rear windows of the BMW, pour gas through the broken window, then put "the thing" in the window. AW5 explained that "the thing" was a firework with a long wick, a box of which Reyes had provided prior to the incident. Reyes instructed AW5 to set the car on fire late at night to ensure that the owner of the car would be asleep. Reyes gave AW5 $10.00 to purchase gas.

According to AW5, the arson was carried out with AW2 that same night, and it took place prior to the arson they perpetrated at Reyes' 83 Lombard Street Laundromat (the subject of Counts One through Four of the Third Superseding Indictment). AW2 and AW5 purchased gas from the gas station at the corner of Ferry and Chapel Streets in New Haven, using a small red gas can that did not take the entire $10.00. AW2 drove AW5 to the vicinity of the Quinnipiac Avenue address and parked on Hemingway Street near an "old folks home" down the street from the targeted location. AW2 stayed in the vehicle and waited for AW5 to complete the arson.

AW5 carried the gas container with him, as well as a hammer. As AW5 walked up towards the house and the car, lights outside the house turned on.

AW5 returned to AW2 who reminded AW5 what Reyes had said about the lights being on a sensor. After returning to the target vehicle, AW5 smashed one of the rear windows of the BMW with the hammer, put the 3hammer on the ground and dumped gasoline into the BMW. AW5 believes he may have pushed the gas can into the rear of the BMW as well. AW5 picked up the hammer, started the fire with the firework, ran from the area and met up with AW2 down the street.

According to AW5, the morning after the fire Reyes stopped by his home to see him. Reyes gave AW5 approximately $150.00 in cash for setting the BMW on fire the night before. AW5 did not know whether AW2 was also paid for his participation in the BMW fire, but he stated that AW2 usually received money from Reyes whenever AW2 completed a task for Reyes.

II. DISCUSSION

At the trial of this matter, the government hereby notices its intention to introduce, consistent with the case law and principles set forth below, evidence regarding Reyes' participation in the arsons that took place at 80 ½ Peck Alley; 41 Market Street; 186 Wolcott Street; 248 Grand Avenue; 211 Lloyd Street; and 95 Downing Street. As explained in greater detail below, such evidence not only completes the story and is inextricably intertwined with the government's theory that Reyes intended, planned and ultimately perpetrated arsons, in part, to further "urban development by arson" schemes or to relieve debt, but such evidence may also be admitted for the entirely permissible purposes of showing: (1) the background, formation and development of the illegal relationship between the

co-conspirators and the basis for the co-conspirators' relationship of mutual trust; (2) Reyes' knowledge and intent, and to rebut anticipated defenses; and (3) Reyes' identity and his knowing participation in a common, continuing and connected plan or scheme – namely, his development of the Fair Haven section of New Haven through arson.

The government does *not* intend to introduce the evidence of Reyes' alleged participation in arsons or other acts for other purposes, such as retaliation. Specifically, the government does not intend to introduce evidence of: (1) the Halloween 2002 incidents at 137 Wolcott Street (the deliberate damage done to a New Haven City Councilman's garage door); and 391 Lombard Street (the arson of a Fair Haven politician's barn); (2) the arson of the Ford F-150; and (3) the arson of the BMW at 979 Quinnipiac Avenue. *Cf. United States v. Varoudakis*, 233 F.3d 113 (1st Cir. 2000) (in prosecution arising from arson of defendant's restaurant, reversing and remanding for new trial because evidence of defendant's prior arson of a leased car was not admissible to show plan, knowledge and intent for arson of restaurant); *see also United States v. Utter*, 97 F.3d 509 (11th Cir. 1996) (reversing and remanding arson charges for new trial where admission of defendant's involvement in prior arsons to demonstrate "how the defendant reacts to financial stress" or to show that the defendant "uses fire to solve his problems" were not deemed permissible purposes under Rule 404(b)).

A. General Principles

Rule 404(b) of the Federal Rules of Evidence provides, in pertinent part:

> **Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident. . . .**

***See* Rule 404(b) Fed. R. Evid.; *see also United States v. Pipola*, 83 F.3d 556, 565 (2d Cir. 1996).**

The Second Circuit follows the "inclusionary" approach to the admission of other act evidence, so that evidence of prior crimes, wrongs or acts, is admissible for any purpose other than to show a defendant's criminal propensity if the court determines that the probative value of the evidence is not substantially outweighed by its potential for unfair prejudice. *See, e.g., United States v. Carboni*, 204 F.3d 39, 44 (2d Cir. 2000); *United States v. Pascarella*, 84 F.3d 61, 69 (2d Cir. 1996); *United States v. Stevens*, 80 F.3d 60, 67 (2d Cir. 1996); *Pipola*, 83 F.3d at 565; *United States v. Muniz*, 60 F.3d 65, 69 (2d Cir. 1995); *United States v. DeVillio*, 983 F.2d 1185, 1194 (2d Cir. 1993); *United States v. Pitre*, 960 F.2d 1112, 1118-19 (2d Cir. 1992).

In *Huddleston v. United States*, 485 U.S. 681, 687 (1988), the Supreme Court outlined the test for admissibility of other act evidence under Rule 404(b). First,

to be admissible the evidence must be offered for a proper purpose. Second, the offered evidence must be relevant to an issue in the case. Third, the probative value of the similar act evidence must substantially outweigh the potential for unfair prejudice. Fourth, if requested to do so, the court must give an appropriate limiting instruction to the jury. *Id.; see also United States v. Agudelo*, 141 Fed. Appx. 13, 15 (2d Cir. 2005); *United States v. Ramirez*, 894 F.2d 565, 568 (2d Cir. 1990) (before admitting such evidence, a district court must insure that it is: "[1] advanced for a proper purpose; [2] relevant to the crime for which the defendant is on trial; [3] more probative than prejudicial; and, [4] if requested, admitted with limiting instruction to the jury.") (citing *Huddleston*, 485 U.S. at 691-92). As set forth below, the similar act evidence proposed in this case satisfies every aspect of the *Huddleston* test for admissibility.

B. The Similar Act Evidence is Offered for a Proper Purpose.

The government's proposed similar act evidence is offered for the following proper purposes: (1) it is inextricably intertwined with the government's theory that Reyes perpetrated arsons, in part, to further "urban development by arson" schemes or to relieve debt: (2) it shows the background, formation and development of the illegal relationship between the co-conspirators and demonstrates the basis for the co-conspirators' relationship of mutual trust; (3) it relates to the question of Reyes' knowledge and intent, and will rebut anticipated defenses; and (4) it relates to the question of identity insofar as it shows Reyes' participation in a common, continuing and connected plan or scheme – namely, his development of the Fair Haven section of New Haven through arsons.

1. Inextricably Intertwined / Completes the Story of the Crime on Trial

Under the "inclusionary approach" adopted by the Second Circuit, uncharged bad acts may be admitted into evidence for any relevant purpose other than propensity, provided that the probative value of the evidence outweighs the danger of unfair prejudice. *See, e.g., United States v. Graziano*, 391 Fed. Appx. 965, 966, 2010 WL 3467173 at *1 (2d Cir. 2010); *United States v. Mercado*, 573 F.3d 138, 141-42 (2d Cir. 2009). One of the permissible purposes is where the uncharged acts are "'inextricably intertwined with the evidence regarding the charged offense,' and admissible 'to complete the story of the crime on trial.'" *Graziano*, 391 Fed. Appx. at 966 (quoting *United States v. Carboni*, 204 F.3d 39, 44 (2d Cir. 2000)).

In Counts One through Four, Reyes is charged with one count of conspiracy to destroy property used in interstate commerce by fire, one count of destruction of property used in interstate commerce by fire, one count of insurance fraud, and one count of using fire to commit wire and insurance fraud. Those charges stem from the July 2009 arson of People's Laundromat, which Reyes owned and operated at 83 Lombard Street in New Haven, and Reyes' alleged efforts to subsequently collect on an insurance policy covering the laundromat.

In Counts Five and Six, Reyes is charged with one count of insurance fraud and one count of using fire to commit insurance fraud for a March 2005 arson of a single-family residence Reyes owned at 42 Lombard Street, and his alleged

receipt of proceeds from an insurance policy covering the property, after which Reyes developed the property into a six family apartment building which he thereafter sold for $515,000.00.

In Counts Six and Seven, Reyes is charged with one count of wire fraud and one count of using fire to commit wire fraud for an October 2008 arson of a residence located at 238 Poplar Street. The indictment alleges that Reyes instructed an accomplice to set fire to this property so that a wider driveway could be developed where the house sat in order to allow better access to Reyes' adjacent commercial properties on Grand Avenue.

Finally, in Count Nine, Reyes is charged with one count of using fire to commit wire fraud for a September 2002 arson at 139 Lloyd Street. The indictment alleges that Reyes had the house burned down so that he could acquire the property at low cost, obtain mortgage and construction loans, build a driveway to a landlocked property he owned behind it, after which he developed a multiple family apartment building on the landlocked parcel, which Reyes then sold.

Among the government's theories for Reyes' knowing involvement in the charged arsons is that Reyes directed the arsons in order to further his commercial and real estate development plans in the Fair Haven section of New Haven – in short, "urban development by arson." Among other things, the other act evidence the government seeks to introduce would be properly admitted for the permissible purpose of completing the story of the crime on trial.

Several of the uncharged acts were similarly done to further Reyes' commercial and real estate development plans. For example, 80 ½ Peck Alley was allegedly burned so that Reyes could purchase the land on which the house was then located; Reyes owned other properties in the neighborhood; and he wanted to own this property as well. 41 Market Street was allegedly burned because Reyes wanted to buy the property and his efforts to do so had been unsuccessful, so he directed that the property be burned so that he could purchase the property at a lower price and then make a parking lot for a church located next door to the house. 186 Wolcott Street was allegedly burned because Reyes wanted to clear the area of the uninhabited and dilapidated 4-6 family home at 186 Wolcott Street (which he said was being used by "crack heads"), as part of Reyes' plan to purchase a number of properties in the area because the City of New Haven was preparing to build a new public school nearby. Reyes believed that if he could purchase the properties, he could then develop the area with new houses and possibly arrange a deal in which school buses would use the area as a direct access route to the new school. The grocery / convenience store located at 248 Grand Avenue was allegedly burned so Reyes could purchase the property at a lower price. Reyes wanted to buy the building and then knock it down to put in a parking lot for his commercial properties that Reyes owned next door. Reyes also wanted the store burned down because drug dealers and drug addicts were constantly hanging out in front of the store. Reyes stated that the activity in and around the store was bringing the property values

down in the area, and was also affecting his (Reyes') laundromat business, which was located next door. Reyes also wanted the adjacent building to sustain some damage as well, because Reyes wanted to own both buildings. Reyes allegedly had plans to put over forty apartments in one of the buildings and Reyes claimed that he would then be able to obtain between $800 and $1000 per month for rent for each apartment. 211 Lloyd was allegedly burned to clear "crack heads" and improve the area. 95 Downing Street was allegedly burned because the owner of the property owed Reyes approximately $15,000 to $30,000 and Reyes wanted to buy the house back. Reyes allegedly stated that if the house was burned Reyes could at least buy the property.

Accordingly, each of these uncharged acts are properly admissible because they are "inextricably intertwined" with the evidence regarding Reyes' participation in the charged arsons as part of his "urban development by arson" efforts in the Fair Haven section of New Haven. Because the uncharged acts complete the story of the crime on trial," they are properly admissible.

2. Background and Development of the Illegal Relationship Between Co-Conspirators and the Basis for their Mutual Trust

Prior bad acts may also be admitted in conspiracy cases under Rule 404(b) if they explain the background, formation and development of the illegal relationship. *See, e.g., United States v. Magnano*, 543 F.2d 431, 435 (2d Cir. 1976); *see also United States v. Holley*, 57 Fed. Appx. 639, 2003 WL 192127 (6th Cir. 2003); *Varoudakis*, 233 F.3d at 118. Along the same lines, prior bad act

evidence is admissible to prove conspiracy in cases "where the earlier crime involved the same participants as the charged crime." *Varoudakis*, 233 F.3d at 119; *see also United States v. Gonzalez-Sanchez*, 825 F.2d 572, 581 (1st Cir. 1987) ("the evidence of [defendant's] involvement with the same people in past arson and fraud schemes is especially probative of the issue whether he was . . . a knowing participant in the conspiracy.").

In *United States v. Pipola*, 83 F.3d 556 (2d Cir. 1996), the Second Circuit upheld the admission, through testimony from cooperating accomplice witnesses, of prior illegal activities perpetrated by the defendant and the cooperating witnesses because it showed how the relationship between the defendant and the cooperating witnesses evolved, which made their joint participation in the charged offenses more plausible. Although not an arson case, the facts and circumstances of *Pipola* are highly analogous here.

In *Pipola*, the defendant Pipola was charged with various crimes for orchestrating and directing others to perpetrate two armed robberies. Pipola came up with the plan; enlisted the help of certain co-conspirators; gathered the co-conspirators at his house to discuss and direct the robberies; and distributed shares of the crimes' proceeds at his house to the participants. Pipola, however, did not personally go out to participate in the armed robberies.

At trial, three cooperating accomplice witnesses testified about the roles of each participant, including Pipola, in the charged crimes. The cooperating witnesses were also permitted to testify about their having committed, other,

prior armed robberies at the direction of Pipola. *Id*. at 559-61, 565. Specifically, the cooperating witnesses testified to the following activities Pipola had engaged in with his co-conspirators: "making various loans and collecting debts, committing crimes including armed robberies and a burglary, and using and selling stolen and counterfeit credit cards." *Id*. at 565. The district court ruled that such evidence was relevant "because it helped explain the background of the conspiracy and the development of the relationships between defendant and other conspirators . . . ." *Id*.

In upholding the admission of the cooperating witnesses' testimony about their participation in prior armed robberies with Pipola, the Second Circuit stated:

> **One legitimate purpose for presenting evidence of extrinsic acts is to explain how a criminal relationship developed; this sort of proof furnishes admissible background information in a conspiracy case, *United States v. Lasanta*, 978 F.2d 1300, 1307–08 (2d Cir. 1992). Such proof may also be used to help the jury understand the basis for the co-conspirators' relationship of mutual trust, *see United States v. Rosa*, 11 F.3d 315, 334 (2d Cir. 1993) . . . .**
>
> **When the government seeks to introduce such extrinsic evidence, the trial court must first determine whether it is admissible under Rule 404(b). If so, it must then determine whether the probative value of the evidence is substantially outweighed by the risk of unfair prejudice. *See* Fed. R. Evid. 403. If the evidence is ruled admissible, the trial**

court, when the defendant so requests, must give a limiting instruction. *See* Fed. R. Evid. 105. Broad discretion resides in the district court regarding the admissibility of evidence of extrinsic acts, *see Berkovich*, 922 F.2d at 1022, and such rulings are reversed only for a clear abuse of discretion. *See United States v. Sappe*, 898 F.2d 878, 880 (2d Cir. 1990). To find such an abuse we must be persuaded that the trial judge ruled in an arbitrary and irrational fashion. *See United States v. Pitre*, 960 F.2d 1112, 1119 (2d Cir.1992).

The district court did not abuse its discretion in the present case. In its pretrial ruling and at various times during the trial, it ruled the evidence was relevant as background information to make the story of the crimes charged complete and to enable the jury to understand how the illegal relationship between the co-conspirators developed. The government undertook to show that Pipola played a leadership role in organizing two armed robberies involving a number of other individuals, each of whom performed assigned functions. The evidence of prior illicit activities involving Pipola and his co-conspirators explained to the jury how the relationship between Pipola and his underlings evolved. The challenged testimony made the 1992 conspiracies to commit armed robberies, in which Small and Loizzo also played key parts, more plausible.

> **This evidence was relevant and was offered for a purpose other than to show propensity, and it therefore cannot be said to be an abuse of discretion to rule it admissible under Rule 404(b). Nor can we see any reason to disturb the ruling that the evidence was not unduly prejudicial. In addition to considering the prejudicial impact of the evidence before the trial, the trial judge delivered limiting instructions when the defendant's counsel so requested, warning the jury not to infer from the evidence of other crimes that Pipola was guilty of the conspiracy, the robberies, or the firearms charges. *See* Fed. R. Evid. 105. In short, the district court's rulings under Rule 404(b) provide no basis for overturning Pipola's convictions.**

***Pipola*, 83 F.3d at 566.**

Like *Pipola*, this case similarly involves the defendant's allegedly orchestrating and directing co-conspirators to perpetrate certain crimes at his behest. And as in *Pipola*, the trial will similarly involve testimony from Reyes' co-conspirators regarding their perpetration of criminal acts (here, arsons) at his behest. Consistent with the Second Circuit's decision in *Pipola*, the testimony of those co-conspirators regarding other arsons that they also perpetrated at Reyes' direction and behest are properly admissible under Rule 404(b) to show how the illegal relationship between Reyes and the co-conspirators developed.

In Count One of the Third Superseding Indictment, Reyes is charged with conspiring with AW2 and AW5 to set fire to the People's Laundromat in July 2009.

The indictment further alleges that prior to the fire on July 30, 2009, participation in the People's Laundromat arson was offered to AW3, who declined to participate.[3] Accordingly, and consistent with *Pipola*, testimony from these witnesses regarding prior arsons that they also perpetrated at Reyes' behest are properly admissible as background information regarding the charged conspiracy. *See, e.g.*, *United States v. Guang*, 511 F.3d 110, 121 (2d Cir. 2007) ("In a conspiracy case, 'other acts' evidence is admissible as background information, to demonstrate the existence of a relationship of mutual trust, or to 'enable the jury to understand how the illegal relationship between the co-conspirators developed.'); *United States v. Diaz*, 176 F.3d 52, 79 (2d Cir.1999) ("Where . . . the indictment contains a conspiracy charge, uncharged acts may be admissible as direct evidence of the conspiracy itself."); *United States v. Thai*, 29 F.3d 785, 812 (2d Cir. 1994) ("When the indictment contains a conspiracy charge, uncharged acts may be admissible as direct evidence of the conspiracy itself."

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[3] **The July 2009 People's Laundromat arson also forms the basis for Counts Two through Four. The indictment further alleges that Reyes, AW2 and AW3 participated in uncharged conspiracies to commit: (1) the March 2005 arson of 42 Lombard Street, which forms the basis of Counts Five and Six; and (2) the September 2002 arson of 138 Lloyd Street, which forms the basis of Count Nine. The indictment further alleges that Reyes and AW2 participated in an uncharged conspiracy to commit the October 2008 arson of 238 Poplar Street, which forms the basis of Counts Seven and Eight.**

(citations omitted; collecting cases)); *Rosa*, 11 F.3d at 334 ("it is within the court's discretion to admit evidence of prior acts to inform the jury of the background of the conspiracy charged, in order to help explain how the illegal relationship between participants in the crime developed"). As it did in *Pipola*, "[t]he evidence of prior illicit activities involving [the defendant] and his co-conspirators explain[s] to the jury how the relationship between [the defendant] and his underlings developed." *Pipola*, 83 F.3d at 566; *see also United States v. Ihmoud*, 454 F.3d 887, 891-92 (8th Cir. 2006) (upholding – in prosecution for defendants' arsons and the filing of fraudulent insurances claims – the admission of evidence that defendants previously hired same arsonists to burn a car because it was "highly probative" to the establishment and structure of the charged conspiracy, as defendants "chose the same people to carry out similar criminal acts for the same pay"); *United States v. Holley*, 57 Fed. Appx. 639, 640-41, 2003 WL 192127 at *1-2 (6th Cir. 2003) (upholding – in prosecution for arson at a commercial company – testimony from co-conspirators about prior arson and other crimes because it was offered for the "legitimate purpose of showing the background and development of the conspiracy."):

> **[the] testimony concerning the prior arson . . . was presented to describe the relationship between [the defendant] and [a cooperating witness] . . . . Likewise, [another cooperating witness's] testimony concerning his prior activities with [the defendant] helped to explain why [the defendant] would attempt to recruit [the cooperating witness]**

into a conspiracy to commit the current arson.

. . . .

While the evidence was undoubtedly prejudicial to [the defendant] it was highly relevant to establishing his preparation and planning for the current arson and to demonstrating his relationship and influence over [the two cooperating witnesses].

***Holley*, 57 Fed. Appx. at 641; *see also Gonzalez-Sanchez*, 825 F.2d at 581 (upholdnig admission of evidence of defendant's "involvement with the same people in past arson and fraud schemes"; gang members played the same roles in committing the prior arsons as they did in the arson for which the defendant was charged); *United States v. Magnano*, 543 F.2d 431, 435 (2d Cir. 1976); *United States v. Alex*, 790 F. Supp. 801 (N.D. Ill. 1992) (finding evidence of co-defendants' participation in a similar, uncharged arson scheme admissible because, among other things, it would "demonstrate the working relationship between [them] . . . the evidence is highly probative because it reveals a pattern of past dealings between [the co-conspirator defendants] which involve the same type of activities as charged in the indictment.").**

3. Knowledge and Intent

The proposed other act evidence is also properly admissible under Rule 404(b) because it bears upon the question of Reyes' knowledge and intent, which are anticipated to be contested issues at trial.

Rule 404(b) provides that other act evidence is also admissible to prove knowledge and intent. Knowledge is put in issue when a defendant claims that he was unaware that a criminal act was being perpetrated. *See, e.g., United States v. Arango-Correa*, 851 F.2d 54, 60 (2d Cir. 1988); *United States v. Fernandez*, 829 F.2d 363, 367 (2d Cir. 1987). Knowledge is also in issue where, as here, it is an element that the United States must prove because of the statutory definition of the crimes charged. *See* Title 18 U.S.C. §§ 844(i) and (n) and Third Superseding Indictment (defendant alleged to have knowingly, willfully and maliciously damaged or destroyed or conspired or attempted to damage or destroy building by fire)[4]; Title 18 U.S.C. § 1343 and Third Superseding Indictment

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[4] **The term "maliciously" as used in this statute means to intentionally cause damage without just cause or reason. *Cf.* O'Malley Sample Instructions for 18 U.S.C. § 81 (arson within the special maritime or territorial jurisdiction of the United States) ("As used in these instructions, the term "willfully and maliciously" means either to knowingly set fire to or knowingly burn a building . . . deliberately and intentionally ["on purpose"], or to act with the knowledge that burning a building . . . is practically certain to result."). To act with malicious intent means "to act either intentionally or with willful disregard of the likelihood that damage will result, and not mistakenly or carelessly." In order to find that a defendant acted maliciously, a jury "must find that the defendant set the fire with the intent to cause damage, or that he did so recklessly and without regard to the likelihood that damage would result." *See* Sand, 30-5 (Malicious Intent).**

(defendant alleged to have knowingly and willfully participated in the scheme or artifice to defraud with knowledge of its fraudulent nature and with the specific intent to defraud); Title 18 U.S.C. § 844(h) and Third Superseding Indictment (defendant alleged to have knowingly used fire to commit a felony).

In this case, it is anticipated that knowledge and intent will be critical issues at trial. It is also anticipated that the defendant may pursue any number of defenses suggesting that he did not knowingly participate in the alleged arsons or the charged conspiracy, such as: (1) the defendant may claim that he purportedly has several alleged enemies who may have alleged motives to target him or his properties; (2) the defendant may claim that the government's cooperating witnesses perpetrated the alleged arsons on their own and are now simply pointing the finger at Reyes to reduce their own exposure; (3) the defendant may claim that the fires may have had other, alternate, even accidental origins and/or were perpetrated by people other than Reyes, etc. In addition, Reyes has made public statements in which he has suggested that he is a victim of the fires, claimed that there are people who "don't like [him]," and stated that he did not have any insurance at all on his People's Laundromat that burned in July 2009, and that he was upside down on its mortgage, so he would not have had any motivation to burn the laundromat. *See, e.g.,* "Reyes: I'm not #3," *New Haven Independent*, June 15, 2010. Accordingly, it is anticipated that the questions of knowing participation, motive and intent will be central issues at any trial.

In *United States v. Gonzalez-Sanchez*, 825 F.2d 572 (1st Cir. 1987), the First Circuit upheld the admission of a defendant's prior participation in past arsons and schemes to defraud because it bore upon the question whether the defendant knowingly participated in the charged arson conspiracy and schemes to defraud.

In *Gonzalez-Sanchez*, the defendants were charged with conspiracy and mail fraud in connection with the burning of a wholesale dry goods business in Bayamon, Puerto Rico and their subsequent efforts to collect fire insurance proceeds. At trial, the court admitted evidence that the same defendants had participated in three other uncharged fires and resulting insurance claims. In upholding its admission, the First Circuit stated:

> **The evidence of [the defendant's] involvement in the past arsons is probative of the elements of the charge against him in this case. [The defendant] was indicted for conspiring with others to burn R & S and defraud its insurer. The issue at trial was not just whether [the defendant] committed arson. The broader issue was whether [the defendant] knowingly participated in a common scheme to defraud. We have often upheld the admissibility of evidence of past crimes in later trials for conspiracies to commit identical or similar crimes. In such circumstances, the evidence of past similar crimes is helpful to show [the defendant's] mode of operation, intent, and knowing participation in the alleged conspiracy. The relevance is especially strong when, as**

> **in this case, the prior crimes involved the same participants. Here, the evidence of [the defendant's] involvement with the same people in past arson and fraud schemes is especially probative of the issue whether he was an innocent "tool" of others or a knowing participant in the conspiracy.**

***Gonzalez-Sanchez*, 825 F.2d at 581; *see also United States v. Moore*, 25 F.3d 1042, 1994 WL 251174 (4th Cir. 1994) (upholding, in prosecution for arson of residence to collect insurance proceeds, testimony about defendant's participation in subsequent arson; "the defendant's plea of not guilty place[d] his state of mind at issue . . . [a]s the evidence went to another, similar arson, there is little doubt that it [wa]s relevant and necessary to the government's efforts to demonstrate that the defendant had the necessary intent to commit the present offense. This evidence [wa]s particularly relevant to showing intent in the conspiracy charge since defendant asserted that he never agreed to commit arson."); *Alex*, 790 F. Supp. at 803 (co-conspirator's testimony about prior arson committed with defendant would be admitted under Rule 404(b) because it established, among other things, knowledge).**

Courts have also upheld the admission of such evidence where, as here, it rebuts defenses. *See, e.g.*, *United States v. Stevens*, 303 F.3d 711 (6th Cir. 2002) (upholding – in prosecution of defendant on twelve counts of arson and related offenses – the admission of defendant's involvement in previous fires and his solicitation of others who turned him down; finding that the evidence of the

defendant's "participation in past fires was quite appropriate to anticipate and rebut potential defenses – for example, that he had been merely joking with those witnesses, that the fire was set by a neighboring building owner, or was caused by the contractors at work in the building just before the fire broke out."; "The series of fires in buildings owned by [the defendant was] highly probative evidence of defendant's intent – that he knew what he was doing, and did it on purpose," particularly given "the similar circumstances surrounding the [previous] fire.").

4. Identity and Common Preparation, Plan and Design

Yet another permissible purpose for the government's evidence of Reyes' participation in prior arsons is its tendency to show his identity, planning, preparation and participation in a common scheme or plan.

In *United States v. Neary*, 733 F.2d 210 (2d Cir. 1984), the Second Circuit reversed and remanded an arson case for a new trial following the admission of evidence of prior fires. The Second Circuit did so, however, because it found that the prior fires and the defendant's collection of insurance as a result of them were the *only* similarities between those prior matters and the acts charged. *See id.* at 216 ("there [wa]s no evidence that any of the prior fires were incendiary in origin, much less that they were set by Neary."). Finding a lack of evidence that the prior fires were incendiary, the Second Circuit found that the mere fact that the defendant had collected insurance proceeds from those fires was not relevant to the issue whether the defendant had set the fire that was the subject of the

arson charged in the indictment. Under those circumstances, the Second Circuit further found that any probative value of the prior fires was substantially outweighed by unfair prejudice under Rule 403. *Id*. at 216-17.

In so holding, however, the Second Circuit noted that, under appropriate circumstances, evidence of other crimes may be properly admitted to show identity, and a common plan or design. Specifically, the Second Circuit stated:

> **The district court admitted the evidence of the prior fires for the purpose of showing "knowledge and intent." However, the threshold question was not one of knowledge or intent but rather of identity, i.e., whether the appellant committed the criminal act alleged in the indictment against him. The evidence was clear that whoever set the fire in the defendant's restaurant was an arsonist and had the requisite intent to destroy property. Evidence of a person's prior similar acts is probative on the issue of identity, only when his commission of other acts tends to show that he had a design or plan to commit the act alleged. For the prior similar acts to be probative of identity there must be "a high degree of similarity . . . [leading] to the logical inference, by virtue of the combination of common features, that a common plan or design was at the basis for all the [criminal acts] and hence that it was the [defendant] who committed this [criminal act]." *United States v. Danzey*, 594 F.2d 905, 913 (2d Cir.), *cert. denied*, 441 U.S. 951, 99 S. Ct. 2179, 60 L. Ed. 2d 1056 (1979). Indeed, as we have previously noted,**

> **"evidence of other crimes offered to prove identity or common plan or design must be more similar than when those crimes are offered to prove intent." *Id*. at 913 n. 6. The more unique and unusual are the common characteristics of the similar acts involved, the more probative become the prior acts, since they then are sufficiently distinctive to be viewed as "fingerprints" or "signatures" of the person charged. *United States v. Benedetto*, 571 F.2d 1246, 1249 (2d Cir.1978).**

***Neary*, 733 F.2d at 216.**

Similarly, a number of appellate courts have upheld, in arson prosecutions, the admission of evidence of other, uncharged arsons when they show a commonality of preparation and planning, or where such arsons otherwise fit into an overall common plan, design, scheme or method of operation. *See, e.g., Varoudakis*, 233 F.3d at 119 (describing the admission of three prior arsons of business properties in *Gonzalez-Sanchez* 825 F.2d 572 as part of a "common scheme rationale" and indicating that admission of prior fires would be permissible where a common plan or scheme linked the prior arsons to the charged ones); *see also Alex*, 790 F. Supp. at 803 (co-conspirator's testimony about prior arson committed with defendant would be admitted under Rule 404(b) because it established, among other things, their "*modus operandi*" and "a common scheme or plan").

As noted above, among the government's theories is that Reyes directed the charged arsons in order to further his commercial and real estate

development plans in the Fair Haven section of New Haven – in short, "urban development by arson." Also as set forth above, the government alleges that several of the uncharged acts were similarly done to further Reyes' commercial and real estate development plans – for example, the arsons perpetrated at 80 ½ Peck Alley, 41 Market Street, 186 Wolcott Street, 248 Grand Avenue, 211 Lloyd Street and 95 Downing Street. Because all of these fires were perpetrated, at Reyes' direction, by the same universe of actors, because they all share a commonality of how they were accomplished; and because they were all perpetrated as part of the same common plan or design for which the charged arsons were perpetrated in part – namely, to further Reyes' commercial and real estate development plans ("urban development by arson"), the prior arsons are properly admissible to show identity and a common plan or design.

Appellate courts have upheld the admission of prior uncharged arsons in an arson prosecution where, as here, there is "a high degree of similarity . . . [leading] to the logical inference, by virtue of the combination of common features, that a common plan or design was at the basis for all the [criminal acts] and hence that it was the [defendant] who committed this [criminal act]." *Neary*, 733 F.2d at 216 (quoting *Danzey*, 594 F.2d at 913). In such cases, the appellate courts have relied upon such factors as the use of similar techniques, accelerants or devices.

Here, the proffered evidence will also show a commonality of technique – in each and every one of the charged fires, and in each and every one of the prior

uncharged arsons, the government's evidence will show that gasoline was the designated accelerant that Reyes directed be used and that the accomplice witnesses will testify to using in each arson. Indeed, certain of the evidence above regarding how Reyes specifically instructed accomplice witnesses on how to perpetrate the arson is consistent with, if not the same as, the manner in which Reyes instructed the same accomplice witnesses who perpetrated the charged arsons. In addition, each arson involved the use of gasoline cans or laundry detergent bottles as the vehicle to deliver the accelerant to the scene; the gasoline accelerant was poured throughout each location; and the fire was ignited – often by either a small firework or rolled up newspaper. Each arson also occurred in the Fair Haven section of New Haven – at properties either owned by Reyes, that Reyes subsequently bought and developed, or which Reyes wanted to purchase and develop.

Because the charged arsons and the uncharged prior arsons all share a commonality of preparation, purpose, plan and design, they are properly admissible to show identity, preparation and plan as permitted by Rule 404(b). *Cf. Neary*, 733 F.2d at 210; *Gonzalez-Sanchez*, 825 F.2d 572 (affirming the admissibility of other fires for the purpose of showing a common scheme to defraud using arson of property); *cf. also United States v. DeCicco*, 370 F.3d 206, 212-13 (1st Cir. 2004) (reversing, on interlocutory government appeal, district court's preclusion of evidence of prior unsuccessful arson attempts at defendant's property; "The degree of resemblance of the crimes also favors

inclusion of the evidence. Both the 1992 fire and the final fire were set in the same manner: an accelerant was poured on the base of the support pillars on the first floor of the Heard Street warehouse. They are the same type of crime, and, more importantly, the object of all fires was the same property. These factors tend to show that the previous offense leads in progression to the two charged fires, or, put more simply, that DeCicco had one common scheme to burn the Heard Street warehouse, which had previously proven financially unsuccessful . . . The evidence is probative of a common scheme or plan and should be introduced to that effect."); *United States v. Scott*, 795 F.2d 1245, 1251-52 (5th Cir. 1986) (upholding admission of evidence about defendant's involvement in prior, uncharged arsons at lounge and duplex home because devices used to burn those two prior buildings were identical to devices used to burn charged arsons at restaurant and beauty shop).

C. The Similar Act Evidence is Relevant to Issues in the Case

Under Rule 401 of the Federal Rules of Evidence, all evidence is relevant that makes the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. *See* Fed. R. Evid. 401. "Under Rule 402, all evidence that is relevant -- that is logically probative -- is admissible." *United States v. Ramirez*, 894 F.2d 565, 569 (2d Cir. 1990); *see also United States v. Gonzalez*, 110 F.3d 936, 941 (2d Cir. 1997). A district court is accorded wide latitude in its determinations of relevance, and on appeal the trial court's determination will not be disturbed absent an abuse of discretion. *Id., Pipola*, 83 F.3d at 566; *Rosa*, 11 F.3d at 334.

Here, as discussed above, the proffered evidence is inextricably intertwined with, relevant to, and highly probative of, the government's theory that Reyes perpetrated the charged arsons, in part, to further his "urban development by arson" schemes. In addition, the evidence is relevant to showing (1) the background, formation and development of the illegal relationship between the co-conspirators and the basis for the co-conspirators' relationship of mutual trust; (2) Reyes' knowledge and intent, and to rebut anticipated defenses; and (3) Reyes' identity and his knowing participation in a common, continuing and connected plan or scheme – namely, his development of the Fair Haven section of New Haven through arson.

Moreover, the uncharged act evidence is not "so dissimilar from the [charged] arson[s] as to render it irrelevant." *Graziano*, 391 Fed. Appx. at 967, 2010 WL 3467173 at *2; *see also United States v. Brand*, 467 F.3d 179, 197 (2d Cir. 2006) (holding uncharged prior conduct generally admissible to prove state of mind and government required to show "only a similarity or some connection to establish that a prior act is relevant.").

Reyes' participation in the uncharged arsons and the charged arsons were similar in who participated; they were similar in their reliance on similar accelerants and techniques, and they were perpetrated to achieve common purposes, such as urban development by arson or two relieve debt. Accordingly, the proffered evidence is relevant to a number of anticipated issues at trial. *See, e.g., United States v. Hermes*, 847 F.2d 493, 497 (8th Cir. 1988) ("We agree with

the government that Hermes' admission that he was involved in a prior arson scheme was relevant to his intent. The prior act was essentially identical to the object of the conspiracy . . . . The prior arson was highly probative of his intent . . ."); *Moore*, 1994 WL 251174 at *2 (upholding, in prosecution for arson of residence to collect insurance proceeds, testimony of defendant's participation in subsequent arson; "This evidence [wa]s particularly relevant to showing intent in the conspiracy charge since defendant asserted that he never agreed to commit arson."); *Gonzalez-Sanchez*, 825 F.2d at 581 (evidence of past, similar arsons "helpful to show [defendant's] mode of operation, intent and knowing participation in the alleged conspiracy. The relevance is especially strong when, as in this case, the prior crimes involved the same participants. Here, the evidence of [defendant's] involvement with the same people in past arson and fraud schemes is especially probative of the issue whether he was . . . a knowing participant in the conspiracy."); *Ihmoud*, 454 F.3d at 891-92 (upholding – in prosecution for defendants' arsons and the filing of fraudulent insurances claims – the admission of evidence that defendants previously hired same arsonists to burn a car because it was "highly probative" to the establishment and structure of the charged conspiracy, as defendants "chose the same people to carry out similar criminal acts for the same pay"); *Holley*, 57 Fed. Appx. at 640-41, 2003 WL 192127 at *1-2 (upholding – in prosecution for arson at a commercial company – testimony from co-conspirators about prior arson and other crimes; "While the evidence was undoubtedly prejudicial to [the defendant] it was highly relevant to

establishing his preparation and planning for the current arson and to demonstrating his relationship and influence over [the two cooperating witnesses]."); *Stevens*, 303 F.3d at 717 ("The series of fires in buildings owned by Stevens is highly probative evidence of defendant's intent – that he knew what he was doing, and did it on purpose."); *DeCicco*, 370 F.3d at 213 ("[t]he evidence is probative of a common scheme or plan and should be introduced to that effect."); *Alex*, 790 F. Supp. at 803 (evidence of cooperating co-defendant's participation in prior arson with defendant was "highly probative because it reveal[ed] a pattern of past dealings between [them] which involve the same type of activities as charged in the indictment.").

D. The Probative Value of the Similar Act Evidence Substantially Outweighs its Potential for Unfair Prejudice

Once evidence is found to be relevant to a material issue in dispute, the court must determine whether the risk of *unfair* prejudice substantially outweighs the probative value of the evidence. *See* Fed. R. Evid. 403, 404; *Huddleston*, 485 U.S. at 686. The Advisory Committee defines "unfair prejudice" as an "undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." Along the same lines, the Second Circuit has stated that "[e]vidence is prejudicial [within the meaning of Rule 403] only when it tends to have some adverse effect upon a defendant beyond tending to prove the fact or issue that justified its admission into evidence." *Figueroa*, 618 F.2d at 943.

A trial court's ruling after a conscientious balancing of probative value versus unfair prejudice will not be reversed on appeal absent a clear showing of abuse of discretion. *See Pipola*, 83 F.3d at 566; *United States v. Gelzer*, 50 F.3d 1133, 1139 (2d Cir. 1995); *United States v. Ramirez*, 894 F.2d 565 (2d Cir. 1990). Indeed, "the appellate court 'must look at the evidence in the light most favorable to its proponent, maximizing its probative value and minimizing its prejudicial effect.' To find abuse, the appellate court must find that the trial court acted arbitrarily or irrationally." *United States v. Jamil*, 707 F.2d 638, 642 (2d Cir. 1983) (citations omitted); *see also Pipola*, 83 F.3d at 566 ("To find such an abuse we must be persuaded that the trial judge ruled in an arbitrary and irrational fashion." (citing *United States v. Pitre*, 960 F.2d 1112, 1119 (2d Cir.1992)).

A number of courts have upheld the admission of prior uncharged arsons as highly probative and not unfairly prejudicial where, as here, the evidence is offered for proper purposes under Rule 404(b), such as (1) to complete the story of the offenses on trial; (2) to show the background, formation and development of the illegal relationship between the co-conspirators and the basis for the co-conspirators' relationship of mutual trust; (3) to show a defendant's knowledge and intent, and to rebut anticipated defenses; and (4) to show identity and knowing participation in a common, continuing and connected plan or scheme. *See, e.g., United States v. Mare*, — F.3d —, 2012 WL 400364 at *5 (1st Cir. 2012) (upholding, in arson prosecution, admission of defendant's statement to co-conspirator that he had previously perpetrated similar arson; district court did

not err in balancing probative value and prejudicial effect); *Gonzalez-Sanchez*, 825 F.2d at 581 (prejudicial effect of past, similar arsons was "small considering its probative value. Of course, the evidence is incriminating; but all highly probative evidence is highly prejudicial in this sense. The question is whether the defendant suffers *unfair* prejudice. This is not a case in which the evidence is so 'shocking or heinous [that it is] likely to inflame the jury. Nor is the evidence so tangential to the case that the jury was certain to be confused and misdirected. Finally, the trial judge's instruction to the jury to consider the evidence only as evidence of knowledge and intent and for no other purpose, lessened the danger of unfair prejudice. We find no abuse of discretion in the admission of this evidence."); *Holley*, 57 Fed. Appx. at 641, 2003 WL 192127 at *2 ("The district court properly admitted the government's 'other acts' evidence. Any unfair prejudicial effect of the witnesses' testimony did not outweigh its probative value. While the evidence was undoubtedly prejudicial to Holley, it was highly relevant to establishing his preparation and planning for the current arson and to demonstrate his relationship and influence over Kuhn and Cheney. The record does not reflect that Holley's prior acts or his prior dealings with Kuhn and Cheney were so old that they lacked any relevance to his planning for the current arson . . . Furthermore, the record does not reflect that there was any less 'prejudicial' evidence that the government could have used to establish Holley's planning for the current arson or to establish his relationship with Kuhn and Cheney."); *Alex*, 790 F. Supp. at 803 ("Based on our review of the government's

404(b) proffer, the tendered evidence concerns similar acts and is not unduly prejudicial or inflammatory."); *DeCiccio*, 370 F.3d at 213 ("The risk here is not too great as to surpass the probative value of the evidence, which, if found credible by a properly instructed jury, would show that the defendant had a common plan . . . ."); s*ee also Pipola* ("This evidence was relevant and was offered for a purpose other than to show propensity, and it therefore cannot be said to be an abuse of discretion to rule it admissible under Rule 404(b). Nor can we see any reason to disturb the ruling that the evidence was not unduly prejudicial. In addition to considering the prejudicial impact of the evidence before the trial, the trial judge delivered limiting instructions when the defendant's counsel so requested, warning the jury not to infer from the evidence of other crimes that Pipola was guilty of the conspiracy, the robberies, or the firearms charges. *See* Fed. R. Evid. 105."); *but see Varoudakis*, 233 F.3d at 123-26; *Neary*, 733 F.2d at 216-17.

E. <u>The Court Should Give an Appropriate Limiting Instruction</u>

As set forth above, if requested to do so, the district court must give a limiting instruction to the jury explaining the purpose for which the evidence may be considered. *See, e.g., Huddleston v. United States*, 485 U.S. 681, 691-92 (1998). The Government respectfully suggests that the Court do so, both at the time of the admission of any such evidence, and in the Court's final instructions. *See, e.g., Gonzalez-Sanchez*, 825 F.2d at 581; *Ihmoud*, 454 F.3d at 892 ("[a]ny prejudice from the evidence of the 2000 fire was limited by the court's instruction to the jury"); *Holley*, 57 Fed. Appx. at 641, 2003 WL 192127 at *2 ("Lastly, the

record indicates that the court gave a limiting instruction concerning the use of the challenged testimony."); *Pipola*, 83 F.3d at 566. To that end, the Government respectfully submits the following proposed instruction in connection with this submission:

> **There are some occasions in which evidence is offered and admitted for a limited purpose. The admission of evidence for a limited purpose occurs in different trials for different reasons. In this trial, the Government [is about to offer / has offered] evidence against Angelo Reyes, which if believed, tends to show that on different occasions, he engaged in conduct similar to that charged in the indictment.**
>
> **The defendant is not on trial for any acts not alleged in the indictment. Accordingly, you may not consider the evidence of the prior acts as a substitute for proof that Angelo Reyes committed the charged offenses. Nor may you consider this evidence as proof that the defendant has a criminal personality or a bad character. The evidence of the previous acts [is being admitted / was admitted] for much more limited purposes – specifically, as background evidence regarding the formation and development of the alleged relationship between Mr. Reyes and the cooperating witnesses and the basis for their alleged relationship of mutual trust; as evidence whether Mr. Reyes' acted with the state of mind, knowledge or intent necessary to commit the crimes charged in the indictment; and as evidence whether Mr. Reyes' knowingly**

participated in common or connected preparations, or in a common or connected plan, design or scheme when he allegedly committed the crimes charged in the indictment. You must consider the similar act evidence only for those limited purposes.

If you determine that Angelo Reyes committed the acts charged in the indictment and the prior acts as well, then you may, but need not draw an inference that in doing the acts charged in the indictment, Mr. Reyes acted knowingly and intentionally, in other words, with the state of mind, knowledge or intent necessary to commit the crimes charged in the indictment; or that he acted according to common or connected preparations, or a common or connected plan, design or scheme.

Evidence of similar acts may not be considered by you for any other purpose. Specifically, you may not use this evidence to conclude that if Angelo Reyes committed the other acts, he must also have committed the acts charged in the indictment.

***See, e.g.,* Sand, Instruction 5-25 (adapted); *see also* Pattern Crim. Jury Instr. 1st Cir. § 2.05; Mod. Crim. Jury Instr. 3d Cir. §§ 2.23, 4.29; Model Crim. Jury Instr. 9th Cir. §§ 2.10, 4.3; Pattern Crim. Jury Instr. 11th Cir. §§ SI 4, TI 1.**

III. CONCLUSION

For the foregoing reasons, the government respectfully urges the court to find that the proffered evidence is admissible for all of the following reasons: (1) because it completes the story and is inextricably intertwined with the

government's theory that Reyes perpetrated arsons, in part, to further "urban development by arson," (2) because it shows the background, formation and development of the illegal relationship between the co-conspirators and the basis for the co-conspirators' relationship of mutual trust; (3) because it relates to Reyes' knowledge and intent, and rebuts anticipated defenses; and (4) because it tends to show Reyes' identity and preparation and his knowing participation in a common, continuing and connected plan or scheme – namely, his development of the Fair Haven section of New Haven through arsons.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on this 27th day of February 2012, the foregoing Notice was filed with the Court electronically and served by regular first class mail, postage prepaid, upon anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

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