UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	
ALFRED L. WOLFF GMBH,	)	**Case No. 08 CR 417-12, 13, 15, 16**
ALFRED L. WOLFF HONEY GMBH,	)	
ALFRED L. WOLFF (BEIJING)	)	**Judge Amy J. St. Eve**
TRADE CO. LTD., CHINA,	)	
ALFRED L. WOLFF COMPANY	)	
LTD., HONG KONG, CHINA	)	
	)	

GOVERNMENT'S OPPOSITION TO MOTION TO QUASH
SERVICE OF SUMMONS ON THE INDICTMENT

The UNITED STATES OF AMERICA, by PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, respectfully opposes the Motion of defendants Alfred L. Wolff GmbH; Alfred L. Wolff Honey GmbH; Alfred L. Wolff (Beijing) Trade Co. Ltd., China; and Alfred L. Wolff Company Ltd, Hong Kong, China (collectively, the "Objectors") to Quash Service of Summons on the Indictment (hereinafter "Def. Motion"). The Objectors raise only one argument to support their motion to quash: that the Government did not satisfy the procedural requirements of the Federal Rules of Criminal Procedure to effectuate valid service upon them. But the Objectors – in conjunction with their United States counterpart, Alfred L. Wolff, Inc. – were a closely-controlled, carefully-coordinated, integrated, international, unitary criminal enterprise. As such, proper service upon Alfred L. Wolff, Inc. and its authorized representative is effective service upon the entire corporate organization, including the Objectors. Because the Objectors have been formally served as required by Criminal Rules 4 and 9, the Objectors must answer before this Court

for the extensive criminal conduct with which they have been charged.

I. BACKGROUND

As alleged in the Indictment, for seven years, at Chicago and elsewhere, corporate defendants (i) Alfred L. Wolff GmbH ("ALW Germany"); (ii) Alfred L. Wolff Honey GmbH ("ALW Honey"); (iii) Alfred L. Wolff, Inc. ("ALW USA"); (iv) Alfred L. Wolff (Beijing) Trade Co. Ltd., China ("ALW Beijing"); and (v) Alfred L. Wolff Company Ltd, Hong Kong, China ("ALW Hong Kong") (collectively, defendants "ALW Food Group") and their executives and others, engaged in a worldwide conspiracy to "fraudulently import and enter Chinese-origin honey into the United States to avoid the payment of antidumping duties by falsely declaring that the honey originated from countries other than China, . . . submit[ed] false documents to the Department of Commerce, and [sold] fraudulently-imported honey to United States customers, including honey of different origins adulterated with antibiotics." Indictment ("Ind.") at ¶ 42. In total, ALW Food Group and its co-defendants and co-conspirators defrauded the United States of nearly $80 million in antidumping duties owed on Chinese-origin honey.[1] Ind. at ¶ 44.

To perpetrate this scheme, ALW Germany controlled and directed ALW Food Group, which consisted of "subsidiaries, affiliates, and representative offices located throughout the world," including Germany, the United States, Beijing, and Hong Kong. Ind. at ¶ 2. As set forth in Special Agent Gauder's Affidavit ("Gauder Aff."), each of the ALW Food Group business units "operated for the benefit and on behalf of ALW Germany," which controlled the entirety of the ALW Food Group. Gauder Aff. at ¶ 8.

[1] As the Objectors correctly assert, the Government's investigation into ALW Food Group has lasted for years, *see* Def. Motion at 3. But, the fraud uncovered by the Government was not random or isolated; ALW Food Group's business model was predicated on fraud.

In turn, "ALW Germany exercised control over ALW Food Group through its managers, executives, and employees," Ind. at ¶ 3, each of whom had a role and function within the ALW Food Group enterprise. *See* Ind. at ¶ 8-17; *see also* Gauder Aff. at ¶¶ 15-24. Specifically, defendants Alexander Wolff, Jürgen Becker, Tom Weickert, Marcel Belten, Yi Liu, Sven Gehricke, Thomas Marten, Thomas Gerkmann, Stefanie Giesselbach, and Magnus Von Buddenbrock (collectively, defendants "ALW Food Group Executives") "operated and managed ALW Food Group's honey business, and held various executive positions at the ALW Food Group entities between approximately 1999 and 2008 from which they coordinated and directed ALW Food Group's business affairs." Ind. at ¶ 3.

II. ARGUMENT

A. *The Application of Criminal Rules 4 and 9 to the Government's Service of Process*

Rule 9 of the Federal Rules of Criminal Procedure provides that "at the government's request," a "court must issue" a "summons [] for each defendant named in an indictment." Fed. R. Crim. P. 9(a). The summons "must be in the same form as a warrant except that it must require the defendant to appear before the court at a stated time and place." Rule 9(b). And, it must be "served as provided in Rule 4(c)(1), (2), and (3)." Rule 9(c)(1)(A). In turn, Rule 4(c)(1) provides that "[a]ny person authorized to serve a summons in a federal civil action may serve a summons." A summons may be served "within the jurisdiction of the United States or anywhere else a federal statute authorizes an arrest." Rule 4(c)(2). Finally, Rule 4(c)(3)(C) provides that a "summons is served on an organization by delivering a copy to an officer, to a managing or general agent, or to another agent appointed or legally authorized to receive service of process." In addition, under Rule 4(c)(3)(C), "[a] copy [of the summons] must also be mailed to the organization's last known address within the

district or to its principal place of business elsewhere in the United States."

The Objectors challenge only the manner in which the Government summoned[2] them to Court pursuant to Rule 4(c)(3)(C). Specifically, according to the Objectors, the Government "failed to show that it has satisfied" either of Rule 4(c)(3)(C)'s procedural requirements, namely, service upon an authorized agent and a valid mailing. Def. Motion at 5. As such, the Objectors contend that they are not subject to this Court's jurisdiction and that the Government's summonses must be quashed. *Id.* The Objectors are mistaken and their arguments are without merit.

The Objectors acknowledge that Mr. Donald DeLucca personally was served with summonses for each of them. *See* Def. Motion at 4, 8, 13. With respect to the Objectors' assertion that their respective summonses were not mailed to them at a last known address within the district or to each of their principal places of business elsewhere in the United States, Special Agent Gauder confirmed that he "personally sent by Certified Mail summonses properly issued by the Clerk of this Court" to the following persons: (i) Mr. DeLucca, the appointed corporate representative of ALW USA; (ii) Mr. Thomas Stein, ALW USA's "temporary general manager" registered with the Illinois Secretary of State as of February 4, 2010; and (iii) Mr. William Cook, attorney for ALW USA. Gauder Aff. at ¶ 4. Special Agent Gauder further confirmed that with respect to each of the summonses served on the recipients, he received a return receipt. Gauder Aff. at ¶ 4.

[2] Twice the Objectors state in passing that they were served with something short of summonses – once referring to this Court's summonses as "papers" and another time stating that the Government "[h]and[ed] a copy of the indictment to ALW, Inc.'s [*i.e.*, ALW USA's] limited corporate representative." The Government did not serve the Objectors or ALW USA with a copy of the indictment and the "papers" in this matter were four summonses issued by this Court to ALW Germany, ALW Honey, ALW Beijing, and ALW Hong Kong. *See* Gauder Aff. at ¶ 4.

B. ***The Objectors were Properly Served in Accordance with Rule 4(c)(3)(C)***

The Government sufficiently served the Objectors by serving Mr. DeLucca in the United States as an authorized agent of ALW Food Group's United States business unit and subsidiary – ALW USA. But the Objectors claim that the Government's service methodology is invalid for two reasons:

First, according to the Objectors, their alleged adherence to "corporate formalities" serves as a bar to the Government's form of service. *See* Def. Motion at 6-8. In this regard, the Objectors invoke the blackletter principle that "service on a subsidiary does not constitute service on the corporate parent where separate corporate identities are maintained, even if the subsidiary is wholly-owned by the parent." Def. Motion at 6 (citing *Cannon Mfg. Co. v. Cudahy Packing Co.*, 267 U.S. 333, 336-37 (1925). To this end, the Objectors assert that ALW USA's[3] "corporate existence has always been completely distinct from ALW Hong Kong, ALW Beijing, and ALW Honey." Def. Motion at 6. As to these sister entities, the Objectors claim that the Government "has not alleged and cannot allege that the corporate structure of these entities was ever anything but separate and distinct from that of either ALW [USA] or ALW [Germany]." Def. Motion at 6; *see also* Def. Motion at 1-2 (ALW USA has "no corporate relation at all to any" of the sister Objectors); *id.* at 2 ("ALW Honey GmbH . . . has no corporate relationship with ALW, Inc."); *id.* ("ALW Hong Kong has no corporate relationship with ALW, Inc."). As to ALW Germany (*i.e.*, ALW Food Group's parent company), the Objectors claim that "there is no allegation that ALW [USA] and ALW [Germany] failed to follow all corporate formalities to ensure that the subsidiary is, in fact, a separate

[3] The Objectors claim that ALW USA is in "good standing." Def. Motion at 2. But ALW USA lacks any officers or directors, as required by Delaware law. 8 Del. C. § 141, 142.

and distinct entity from the parent." Def. Motion at 6. Based on an argument of supposed corporate separateness, the Objectors claim that the Government has failed to satisfy Criminal Rule 4(c)'s service requirements.

Second, the Objectors assert that the Government has "not alleged, and cannot demonstrate, that ALW [USA's] separate legal existence should be disregarded because it was somehow a sham or a mere front for any of the movants." Def. Motion at 8. More specifically, the Objectors claim that the Government has "not alleged the extraordinary circumstances" present in *United States v, Chitron Elec. Co.*, 668 F. Supp. 2d 298 (D. Mass. 2009), or *United States v. Public Warehousing Co. K.S.C.*, No. 09-CR-490, 2011 WL 112633 (N.D. Ga. Mar. 28, 2011), to warrant a finding that ALW USA operated as the Objectors' "mere conduit" or "alter ego." Def. Motion at 10, 12. As such, according to the Objectors, this Court should not "disregard[] the corporate separation between ALW [USA] and any of the [Objectors], including ALW [Germany]" for purposes of Rule 4(c) service. Def. Motion at 12.

The Objectors are mistaken as a matter of law and fact on both arguments, which are addressed seriatim. First, though, it is necessary to put this litigation in the context of the overall case. At this litigative stage, the Government is addressing only the Objectors' challenge to service (and, inextricably, jurisdiction),[4] which is "different from the question of ultimate liability." *Captain*

[4] The Objectors claim to "reserve their respective rights to challenge jurisdiction on other grounds." Def. Motion at 5 n.3. But as a practical matter, "though personal jurisdiction and service of process are distinguishable, they are inextricably intertwined, since service of process constitutes the vehicle by which the court obtains jurisdiction." *United Elec., Radio and Mach. Workers of Am. v. 163 Pleasant St. Corp.*, 960 F.2d 1080, 1085 (1st Cir. 1992); *cf. Freeman v. Northwest Acceptance Corp.*, 754 F.2d 553, 558 (5th Cir. 1985) ("[r]ecognizing fusion as fusion for all jurisdictional purposes and holding that it would be "irrational to hold that a parent and a subsidiary have been fused for purposes of *in personam* jurisdiction . . . but remain separate for purposes of subject matter jurisdiction").

Int'l Indus., Inc. v. Westbury Chicago, Inc., 416 F. Supp. 721, 722 (N.D. Ill. 1975); *see also Illinois Bell Tel. Co. v. Global NAPs Illinois, Inc.*, 551 F.3d 587, 598 (7th Cir. 2008) (distinguishing between the disregard of corporate form for purposes of liability versus resolving the "preliminary issue to be resolved summarily by the judge" of whether "there is enough evidence to bring [a parent company] within the personal jurisdiction of the district court"). As such, the Objectors' efforts to attack the Indictment, *see* Def. Motion at 8 (claiming that the Indictment's "conspiracy charge [ ] *depends* on the fact that ALW [USA] was a separate and distinct actor from each of the [Objectors]"), to defeat service falls flat.[5]

Next, as a matter of choice-of-law, the issues presented in this briefing are resolved as a matter of federal law – not state law – although, in this case, the distinction is without a difference. *See Illinois Bell*, 551 F.3d at 598 (stating in a civil case arising out of a federal cause of action that "we doubt that there will be any need in this case to depart from the Delaware standard" on corporate disregard). The reason for this is because whatever the standard, the pervasiveness and totality of the ALW Food Group's criminal activities forecloses an attempted adherence to corporate fiction. *See Chicago, M. & St. P. Ry. Co. v. Minneapolis Civic & Commerce Ass'n*, 247 U.S.490, 498 (1918) (it would be "sheer sophistry to argue that, because it is technically a separate legal entity, the [one company] is an independent public carrier, free in the conduct of its business from the control of the

[5] The Indictment charges each of the ALW Food Group entities and the Food Group Executives for their "own actions" on a theory of "direct liability." *United States v. Bestfoods*, 524 U.S. 51, 65 (1998). Nothing in the Indictment or in this Response "displace[s] the rule" that each charged defendant – "whether a natural person or a corporation" – may be "liable on the ground that such [person's] activity [or that of their agents'] resulted in the liability." *Id.* (internal quotation marks omitted). *Cf. Marc Rich & Co. v. Unites States*, 707 F.2d 663, 668 (2d Cir. 1983).

two companies which own it and therefore free to impose separate carrying charges upon the public").

Generally, as a matter of civil practice, courts apply the law of the state of incorporation of the controlled corporation to determine whether corporate form should be disregarded, which in the case of ALW USA would be Delaware. *See Stromberg Metal Works, Inc. v. Press Mech., Inc.*, 77 F.3d 928, 932 (7th Cir.1996) ("Efforts to 'pierce the corporate veil' are governed by the law of the state of incorporation."); *Kalb, Voorhis & Co. v. American Fin. Corp.*, 8 F.3d 130, 132 (2d Cir.1993) (same); *accord Koch Refining v. Farmers Union Cent. Exchange, Inc*., 831 F.2d 1339, 1344 (7th Cir. 1987); *see also* Ind. at ¶ 5. But this is not a civil case; this is a criminal action brought by the United States to punish wrongdoers and vindicate the rights of the sovereign. In such matters, the "'policy underlying a federal statute may not be defeated by . . . an assertion of state power.'" *Illinois Bell*, 551 F.3d at 598 (quoting *Anderson v. Abbott*, 321 U.S. 349, 365 (1944)). As the Seventh Circuit held in *Illinois Bell*, "a state's restrictive law of veil piercing is not allowed to undermine the effectiveness of a federal statute that provides remedies for persons who may find it impossible to vindicate their federal rights if opposed by such a law." 551 F.3d at 598 (collecting cases). In a federal criminal case – much less one involving a worldwide illegal conspiracy – the logic and thrust of that holding is more, not less, compelling. Thus, because ALW Food Group's criminal conduct was so pervasive and ALW Germany's control of it so dominant, whether informed by federal law or Delaware law the result is the same: The semblance of form must yield to the strength of operational reality.

C. *Corporate Form Does Not Override the Grand Jury's Findings: ALW Food Group is a Criminal Enterprise Whose Fraud Subjects the Objectors to Service Through ALW USA*

The Objectors seek to elevate form over substance. But the federal courts have long disapproved of this practice. As the Supreme Court stated in an analogous context involving railroad companies, "the courts will not permit themselves to be blinded or deceived by mere forms or law but, regardless of fictions, will deal with the substance of the transaction involved as if the corporate agency did not exist and as the justice of the case may require." *Chicago, Milwaukee, & St. Paul Railway Co. v. Minneapolis Civic & Commerce Assoc.*, 247 U.S. at 501. Similarly, the Court has emphasized that "corporate form may be disregarded in the interests of justice where it is used to defeat an overriding public policy." *Bangor Punta Operations v. Bangor & A.R. Co.*, 417 U.S. 703, 713 (1974). And, in the context of jurisdiction, venue, and service of process "courts have become more willing to look beyond the form to the substance of a corporate relationship and find venue over a foreign parent where the local subsidiary is merely an agent through which the parent conducts business in the jurisdiction and with no real semblance of individual identity." *Stanley Works v. Globemaster, Inc.*, 400 F. Supp. 1325, 1331-32 (D. Mass. 1975). As the court succinctly put it in *Stanley Works*, "where parent and subsidiary have disregarded all but the formalities of separation, their paper independence must be ignored for purposes of venue" and service of process. 400 F. Supp. at 1333, 1335-36.

More specifically, a "fundamental principle of corporate law, applicable to the parent-subsidiary relationship as well as generally, [is] that the corporate veil may be pierced and the shareholder held liable for the corporation's conduct when, *inter alia*, the corporate form would otherwise be misused to accomplish certain wrongful purposes," including fraud. *Bestfoods*, 524

U.S. at 62 (collecting cases); *see also International Controls Corp. v. Vesco*, 490 F.2d 1334, 1349-51 (2d Cir.1974) (Court of Appeals affirmed district court's finding of jurisdiction over Vesco & Co., a corporation fraudulently formed to receive assets from judgment debtor Vesco, even though Vesco & Co. had no contacts with forum state, under alter ego principles). Similarly, under Delaware law "a court can pierce the corporate veil of an entity where there is fraud. . . ." *Geyer v. Ingersoll Publ'n Co*., 621 A.2d 784, 793 (Del. Ch.1992); *see also Pauley Petroleum Inc. v. Continental Oil Co*., 231 A.2d 450, 452-53 (De. Ch. 1967), *aff'd*, 239 A.2d 629, 633 (Del. Supr. 1968) ("There is, of course, no doubt that upon a proper showing corporate entities as between parent and subsidiary may be disregarded and the ultimate party in interest, the parent, be regarded in law and fact as the sole party in a particular transaction." In this regard, "[i]t may be done only in the interest of justice, when such matters as fraud, contravention of law or contract, public wrong, or where equitable consideration among members of the corporation require it, are involved."); *see also generally Illinois Bell*, 551 F.3d at 597-98.

For purposes of corporate disregard, under both federal law and Delaware law, a finding of fraud is not required in tort cases, although proof of fraud or the functioning of a corporation as a "facade for a dominant shareholder" is necessary in contract cases. *Illinois Bell*, 551 F.3d at 597 (fraud is not a necessary element in tort corporate-disregard cases otherwise it would enable companies to "insulate themselves from tort liability by operating through shell corporations"); *see also United States v. Jon-T Chemicals, Inc.*, 768 F. 2d 686, 692-93 (5th Cir. 1985) ("we do not require a finding of fraud in tort cases" because the victim has not "voluntarily chosen to deal with the subsidiary; instead, the creditor relationship is forced upon" the victim). *See generally Lakota Girl Scout Council, Inc. v. Havey Fund-Raising Management, Inc.*, 519 F.2d 634, 637 (8th Cir.

1975). In contrast, in contract cases "the creditor has willingly transacted business with the subsidiary. . . . Unless the subsidiary misrepresents its financial condition to the creditor, the creditor should be bound by its decision to deal with the subsidiary; it should not be able to complain later that the subsidiary is unsound" and that it "wants to be able to hold the parent liable for the subsidiary's debts," when it could have contracted for such a result. *Jon-T Chemicals, Inc.*, 768 F. 2d at 693; *see also Illinois Bell*, 551 F.3d at 597 (undertaking a similar analysis). As the Seventh Circuit put it, the "plaintiff argues that it was misled by the shell's appearing to be a real firm. If that is right it is entitled to pierce the corporate veil . . ., and if not, not." *Illinois Bell*, 551 F.3d at 598-99 (internal citations omitted).

Here, the very formation and operation of the constituent members of the ALW Food Group – including the Objectors – was to perpetrate a fraud on the United States, the Food Group's U.S. customers, the marketplace, and others. Specifically, as the grand jury charged, the "purpose of the conspiracy was to fraudulently import and enter Chinese-origin honey into the United States to avoid the payment of antidumping duties by falsely declaring that the honey originated from countries other than China, and by submitting false documents to the Department of Commerce, and to sell fraudulently-imported honey to United States customers, including honey of different origins adulterated with antibiotics." Ind. at ¶ 42. Moreover – and unlike the facts of *Jon-T Chemicals* – there is a necessary causal link between ALW Food Group's fraud and the harm suffered by the United States and ALW Food Group's contractual third parties. *Cf. Jon-T Chemicals*, 768 F.2d at 693 (noting that in that case, the harm suffered was more akin to a tort because the "Government did not voluntarily enter into the relationship" with the subsidiary; under the federal program "it was obligated to subsidize applicants who purportedly qualified"). Thus, the crimes committed by ALW

Food Group are more aligned with a contract corporate-disregard theory, as opposed to a tort claim.

As alleged in the Indictment, "[t]he United States Department of Homeland Security, Bureau of Customs and Border Protection ("CBP"), was responsible for, among other things, the examination of merchandise entering the United States to ensure that it was admissible under and in compliance with United States laws, and the assessment and collection of taxes, fees, and duties on imported merchandise, including antidumping duties." Ind. at ¶ 31. As part of CBP's *discretion* to allow goods to enter the United States, the Indictment also stated that "CBP entry forms 3461 (Entry/Immediate Delivery) and 7501 (Entry Summary) required importers to provide specific and truthful information relating to imported merchandise, including a description of the merchandise and the merchandise's manufacturer, value, and country of origin." Ind. at ¶ 32. The proper functioning by which merchandise entered the United States was dependent on accurate and truthful reporting by those providing information at a United States customshouse. Similarly, the Food, Drug, and Cosmetic Act ("FDCA"), 21 U.S.C. § 301 *et seq*., "prohibited the delivery and introduction, and causing the delivery and introduction, into interstate commerce of 'adulterated' food," including food containing antibiotics. Ind. at ¶ 33.

And, as alleged in the portion of the Indictment relating to the new shipper scheme, under certain conditions, "[e]xporters and producers of Chinese-origin honey that sold honey to the United States market . . . could request a "new shipper" review from the DOC [Department of Commerce] in order to obtain an individual antidumping duty deposit rate. That individualized rate was based on the exporter or producer's own sales information rather than the default antidumping duty deposit rate on Chinese-origin honey." Ind. at ¶ 35. "If the DOC approved a "new shipper" petition, it issued a preliminary individualized antidumping duty deposit rate. . . .If the DOC determined that the sale

was not based on normal commercial considerations, or was atypical of the applicant's other sales of comparable merchandise, the DOC could refuse approval and end the review." Ind. at ¶ 40.

ALW Food Group's false and fraudulent statements misled the United States and the Food Group's contractual third-parties (*i.e.*, its customers) and enabled ALW Food Group to illegally import, enter, and sell honey without paying the mandatory antidumping duty on Chinese honey– and, in certain cases, to sell adulterated honey that by law the Food Group was not allowed to sell. *See, e.g.,* Ind. at ¶ ¶ 43 - 63 (describing the manners and means of the conspiracy). As the grand jury found, ALW Food Group "acted in concert" to commit the charged crimes. Ind. at ¶ 2; *see also* Ind. at ¶ 41 (setting out the triple-object conspiracy). In order to carry out its criminal objectives, the grand jury found, among other things, that ALW Food Group and the Food Group Executives:

> Ind. at ¶ 43 a: purchased and sourced Chinese-origin honey from various producers and brokers located in China and caused the Chinese-origin honey to be transshipped through other countries where it was mislabeled and shipped to the United States;
>
> Ind. at ¶ 43 b: acquired, used, submitted, and caused others to use fraudulent bills of lading, invoices, packing lists, and country of origin certificates;
>
> Ind. at ¶ 43 c: created and used shell and front companies to obtain, supply, ship, and fraudulently import and enter Chinese-origin honey into the United States, including: Wuhan Shino; CRC Foodstuff; Vistta; Blue Action; 7 Tiger; Honey World; Glory Spring; Nefelon; Huaqi-Mercury Liability Corporation Limited; MGL Yung Sheng Honey Co. Ltd.; Fresh Honey Co. Ltd.; Kentwe; Garland International Inc.; and Farworld Inc.;
>
> Ind. at ¶ 51 a: authored, transmitted, received, and approved emails, including emails containing code words dealing with the conspiracy;
>
> Ind. at ¶ 51b: sought to limit their use of emails when discussing transshipping and honey adulteration-related matters and instead purposefully communicated by telephone and in foreign languages, including German, to avoid detection by United States law enforcement authorities;
>
> Ind. at ¶ 51c: communicated using instant messaging, including Skype, and personal

email accounts rather than official business email accounts;

Ind. at ¶ 51d: purposefully deleted emails and instant messaging chats dealing with the conspiracy;

Ind. at ¶53 a: caused honey en route to the United States to be tested by German Laboratory and after learning that the honey contained antibiotics, filed and caused to be filed CBP entry forms 3461 and 7501 for the adulterated honey and sold and caused to be delivered adulterated honey to United States customers;

Ind. at ¶53 b: sold and caused to be delivered adulterated honey to United States customers that ALW FOOD GROUP learned after importation contained antibiotics; and

Ind. at ¶53 c: re-sold and caused to be delivered to United States customers adulterated honey that had been rejected by other customers due to the presence of antibiotics.

These grand jury findings *alone* make plain that under the case law discussed above, the Objectors have been served through summonses delivered to ALW USA. For the Objectors to have benefitted for years from a business model predicated on fraud and corruption upon the U.S. marketplace by, through, and with ALW USA – only now to escape judicial process – would be an injustice. *See First Nat. City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 629-30, 632 (1983) (collecting cases; "declin[ing] to adhere blindly to the corporate form where doing so would cause . . . an injustice" of permitting the Government of the Republic of Cuba "to obtain relief in our courts that it could not obtain in its own right without waiving its sovereign immunity and answering for the seizure of Citibank's assets – a seizure previously held by the Court of Appeals to have violated international law"); *see also generally Chitron Elec. Co.*, 668 F. Supp. 2d at 301 (personal jurisdiction and service valid in case where Chinese parent company "circumvented export laws by falsely listing" its branch office in Hong Kong as the end-user of the shipped products when in reality the parent company's headquarters in China or another of its branch offices in

mainland China was the ultimate destination point); *cf. Marc Rich & Co. v. United States*, 707 F.2d 663, 667-68 (2d Cir. 1983) (Grand jury subpoena enforceable upon parent company through its wholly-owned subsidiary because if crime was committed, it would have occurred in cooperation with its co-conspiring subsidiary). On its own, the crimes orchestrated by the Objectors – by, through, and with ALW USA – and for the benefit and under the supervision of ALW Germany and the Food Group Executives, makes service upon ALW USA effective upon the Objectors for purposes of Rule 4(c)(3)(C)'s authorized-agent requirement.

D. *ALW Food Group and the Objectors Were Served Through Their Conduit, ALW USA*

Similarly – and as a *separate* basis – as a matter of federal and Delaware law, the "the fiction of corporate entity may be disregarded, where one corporation is so organized and controlled and its affairs are so conducted that it is, in fact, a mere instrumentality or adjunct of another corporation." *Lakota Girl Scout Council*, 519 F.2d at 637; *Van Dorn Co. v. Future Chemical and Oil Corp.*, 753 F.2d 565, 569-70 (7th Cir.1985) (stating that under Illinois law for corporate form to be disregarded (i) "there must be such unity of interest and ownership that the separate personalities of the corporation and the individual [or other corporation] no longer exist;" and (ii) "circumstances must be such that adherence to the fiction of separate corporate existence would sanction a fraud or promote injustice"); *Sea-Land Serv., Inc. v. Pepper Source*, 941 F.2d 519 (7th Cir. 1991) (same); *Captain Int'l*, 416 F. Supp. at 722 (non-resident parent company that financed, supervised and dominated its wholly-owned subsidiary was "present in [the Northern District of Illinois] through the activities of [its subsidiary] as an agent"). In fact, in *Public Warehousing*, the court turned to Federal Rule of Criminal Procedure 2 to support its finding that a U.S. subsidiary was the alter ego

of its parent company. *See* 2011 WL 112633, at *7 (explaining that Rule 2 "dictates" that the criminal rules "be interpreted to provide for the just determination of every criminal proceeding, to secure simplicity in procedure and fairness in administration, and to eliminate unjustifiable expense and delay").

In fact, in *Van Dorn*, the Seventh Circuit affirmed a district court's disregard of corporate form resulting in a solvent corporation being liable for the debts of its insolvent *sister corporation* under the alter ego doctrine. 753 F.2d at 572; *see also Lakota Girl Scout Council*, 519 F.2d at 637 (holding that "even a non-owned corporation may act as agent for another corporation"); *Leach Co. v. General Sani-Can Mfg. Corp*., 393 F.2d 183, 185 (7th Cir. 1968) (out-of-state and local company properly treated as the same corporation for purposes of jurisdiction, venue, and service of process, notwithstanding fact that the "corporations have no common owners, directors or officers" and "their books and records are separate"). And, as a matter of Delaware law, courts may also disregard corporate form "where a subsidiary is in fact a mere instrumentality or alter ego of its owner." *Geyer*, 621 A.2d at 793.

The reason for this is because *control* – not corporate formality – is the dispositive inquiry. *See Freeman*, 754 F.2d at 557-58 (collecting cases; holding that when the "parent corporation exerts such domination and control over its subsidiary 'that they do not in reality constitute separate and distinct corporate entities but are one and the same corporation for purposes of jurisdiction'"); *see also Chung v. Tarom, S.A.*, 990 F. Supp. 581, 584 (N.D. Ill. 1998) (stating that under Illinois law, a "list of factors" – not a "bright-line test" – is used to determine "how much control a foreign parent corporation must have over its domestic subsidiary before the subsidiary will be deemed its agent for purposes of service of process," but still noting that the standard does *not* require a plaintiff to

"show that the two corporations are essentially one or that the subsidiary is an alter ego or a mere department of the parent"); *Akari Imeji Co. v. Qume Corp.*, 748 F. Supp. 588, 591-92 (N.D. Ill. 1990) (same).[6] As the court held in *Stanley Works*, "service on a foreign parent through proper service on a local subsidiary [is recognized] where (1) the local subsidiary has minimum contacts with the forum, and (2) where the relationship between parent and subsidiary is such that the subsidiary is a mere conduit for the activities of its parent." 400 F. Supp. at 1335.

Thus, the Objectors miss the mark in their repeated assertion that the "indictment contains no allegation that any of the [Objectors], at any time, were not separate legal and corporate entities from [ALW USA] and/or that [ALW USA] failed to maintain all corporate formalities." Def. Motion at 8. Moreover, the Objectors necessarily misapprehend the grand jury's findings – otherwise they would not claim that *Chitron*, 668 F. Supp. 2d at 298 "provides absolutely no support for its service of ALW [Germany] or the Sister Entities." Def. Motion at 10; *see also id.* at 12 (the Government "has not alleged the extraordinary circumstances present in *Chitron* or *Public Warehousing* to warrant disregarding the corporate separation between ALW [USA] and any of the [Objectors], including ALW [Germany]"). Not only do *Chitron* and *Public Warehousing* support the Government's approach to service of process, both expressly endorse that methodology in

[6] The Objectors rely heavily on *In re Subpoena to Huawei Tech.. Co., Ltd.*, 720 F. Supp. 2d 969, 975 (N.D. Ill. 2010), to challenge the Government's Rule 4 service of process. Def. Motion at 6-7. But *Huawei* involved the application of Illinois law – not Delaware law or federal law. And, in any event, *Huawei* itself endorsed the hornbook proposition that a "subsidiary may be its parent's agent for service of process when the parent 'so controls the affairs of [the subsidiary] that the two entities are essentially one' or when the subsidiary 'exercises no free will of its own in . . . any . . . aspect of its relationship with its parent." 720 F. Supp. 2d at 975. Thus, *Huawei* supports – not defeats – the Government in its service methodology.

criminal cases with highly analogous facts.[7] *See Chitron*, 668 F. Supp. 2d at 300-01, 305-06; *Public Warehousing*, 2011 WL 1126333, at *1-3 (relying on *Chitron* to effectuate service on a foreign parent corporate through its indirectly-owned U.S. subsidiary).

In *Chitron*, the court held that based on a "sufficient interrelationship" between a Chinese parent corporation and its U.S. subsidiary, service of a Rule 4 criminal summons on the subsidiary's agent was "sufficient to effect service on the foreign parent corporation." 668 F. Supp. at 306. In so concluding, the *Chitron* court relied on the same "carefully-sewn web of interrelationships and interdependence between parent and subsidiary," *Stanley Works*, 400 F. Supp. at 1332-33, also found by the grand jury in this case, *see* Ind. at ¶¶ 1, 4-7, and described by Special Agent Gauder in his Affidavit. *See Chitron*, 668 F. Supp. 2d at 300-01, 305-06; *see also Public Warehousing*, 2011 WL 1126333, at *1-3; *Stanley Works*, 400 F. Supp. at 1332-33 (holding in civil case with analogous facts that for purposes of service of process and venue "surface appearance [had been] exposed as a mere cloak for a far more intimate and symbiotic relationship").

Similar to the facts here,[8] *Chitron* involved a foreign parent distributor with overseas offices, in addition to branch offices in mainland China, Hong Kong, and the United States. 668 F. Supp.

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[7] *Chitron and Public Warehousing* are particularly instructive because "there is little precedent dealing with service in criminal cases." *Public Warehousing*, 2011 WL 1126333, at *5 n.3; *Chitron*, 668 F. Supp. 2d at 302 ("The case law discussing the specific issue of personal jurisdiction over foreign corporations in the criminal context is surprisingly sparse and poorly developed."). In *Chitron*, the court borrowed from the line of cases that enforce against the parent company grand jury subpoenas served upon its U.S. subsidiary. *See Marc Rich & Co.*, 707 F.2d at 668.

[8] The Objectors cite to *United States v. Johnson Matthey Plc*, No. 06 CR 169, 2007 WL 634269, at *1 (D. Utah Feb. 26, 2007) (not reported), wherein the court found that service upon a subsidiary was insufficient to effectuate service upon a foreign parent company. But *Johnson Matthey* is inapposite because unlike the situation here, in *Johnson Matthey* there was no "evidence that the subsidiary was the alter ego of the parent." *Public Warehousing*, 2011 WL 1126333, at *6.

2d at 300; *see* Ind. ¶ 2 ("ALW Germany had subsidiaries, affiliates, and representative offices located throughout the world," including in Germany; the United States; Beijing, China; and Hong Kong, China). Whereas this case involves fraudulent *imports* by ALW Food Group into the United States, *Chitron* involved illegal *exports* of electronics commodities and components by a U.S. subsidiary to its Chinese parent company. 668 F. Supp. 2d at 300; *see* Ind. ¶ at 42. Just as in this case, in *Chitron* the parent and subsidiary (i) had a common ownership, 668 F. Supp. 2d at 300; *see also* Ind. at ¶¶ 1-7; (ii) maintained one shared website, 668 F. Supp. 2d at 300; *see also* Gauder Aff. at ¶¶ 9-12; (iii) had the same person serve as general manager and president of both entities, 668 F. Supp. 2d at 301; *see also* Ind. at ¶¶ 8-17 (describing the various – and simultaneous – positions held by ALW Food Group Executives); and (iv) shared an "elaborate telephone system" where calls directed to the U.S. subsidiary where forwarded to the Chinese parent, 668 F. Supp. 2d at 300; *see also* Gauder Aff. at ¶ 12 ("[T]he website captioned 'ALFRED L. WOLFF Who is Who' listed names, telephone numbers, and in some cases email addresses, of employees and executives of ALW Food Group's business units, including '[c]ontact persons throughout ALFRED L. WOLFF group in China, Hong Kong, Hungary, Romania, Mexico, Argentina and the USA.'"); *cf.* Gauder Aff. at ¶ 9 ("[I]nternet traffic or searches directed to any ALW component was sent or forwarded automatically to ALW Food Group's website.").

In addition, in the same manner that ALW USA "reported to, and [was] required to continuously consult with and obtain approval from, Alex Wolff and ALW Germany regarding day-to-day activities, decisions, and functions," Gauder Aff. at ¶ 31, in *Chitron* the Chinese parent was "integrally involved in the daily operations" of the U.S. subsidiary. 668 F. Supp. 2d at 301. In fact, similar to ALW Germany, the *Chitron* parent company "controlled what work was being performed"

at the U.S. subsidiary "each day by sending 'tasking lists' from its Chinese offices to its U.S. offices. *Id.*; *see, e.g.*, Gauder Aff. at ¶¶ 3, 31-77 (describing in detail the control exercised by Alex Wolff and ALW Germany); Ind. at ¶ 3 ("ALW Germany exercised control over ALW Food Group."). And in the same way that ALW USA wired money to ALW Honey and ALW Hong Kong, the Chinese parent in *Chitron* wired money from China to the U.S. 668 F. Supp. 2d at 301; *see also* Gauder Aff. at ¶8. Based on this totality of the evidence, the *Chitron* court agreed with the Government that for purposes of criminal jurisdiction and service of process, the U.S. subsidiary was a "conduit" or "front company" for its Chinese-parent company's misconduct in the U.S., and as such exercised jurisdiction. 668 F. Supp. 2d at 303; *see Public Warehousing*, 2011 WL 1126333, at *6, *8 (employing a "totality of the circumstances" test to criminal service of process).

Undertaking a virtually identical analysis – also focused on "sufficient interrelationship[s]" among corporate entities – the court in *Public Warehousing* likewise found that the Government properly summoned a Kuwaiti parent company under Criminal Rule 4(c) by serving the parent's *indirect*[9] U.S. subsidiary. 2011 WL 1126333, at *6 & n.4. In upholding this form of service, the court relied on many of the same allegations also present in the instant case. *Id.* at *5-8. For instance, just as is the case here, in *Public Warehousing*, the parent company and its subsidiaries (i) began using a particular trade name, (ii) referred to themselves as a "singular 'company,'" and (iii) announced that "employees and offices around the world will be working in unison as one team to become market leaders." *Id.* at *1, *6-7; *see* Gauder Aff. ¶¶ 9-12 (ALW Food Group held itself out

[9] The Kuwaiti parent company's ownership of its U.S. subsidiary was indirect in that it owned 99% of a Dutch subsidiary, which in turn owned 100% of the U.S. subsidiary. 2011 WL 1126333, at *6 & n.4. Similarly, ALW Germany's ownership of all of the ALW Food Group entities is entirely direct as to all the Objectors. *See* Def. Motion at 2-3; *see also* Gauder Aff. at ¶ 74.

to the public as "ALFRED L. WOLFF COMPANY," "ALFRED L. WOLFF group," "ALFRED L. WOLFF INTERNATIONAL," and "ALFRED L. WOLFF's international network" and marketed the fact that "[a]ll departments and units within ALFRED L. WOLFF's international network cooperate closely to secure ALW high Quality Standard from sourcing to selling");[10] Gauder Aff. ¶ 12 (quoting the "ALFRED L. WOLFF History" section of the website stating "*[a]ll operations are coordinated between the head office*, *the subsidiaries and production units* in Germany, China, Hong Kong, Hungary, Romania, Mexico, Argentina, and the US of America") (Emphasis added).

Also, in the same way that ALW USA was the U.S. operating unit for the ALW Food Group, *see* Ind. at ¶ 5, in *Public Warehousing* the U.S. subsidiary "handled government contracts for [the Kuwaiti parent company] in the U.S." 2011 WL 1126333, at *7. Further, as with ALW Food Group, the *Public Warehousing* group of companies "consistently held itself out as a single entity" and "maintained a joint website." *Id.*; *see also* Gauder Aff. ¶ 9 ("The ALW Food Group operated and maintained one common internet website" and that site "marketed the ALW Food Group to the worldwide food industry as a single, vertically integrated enterprise."). And, finally, in the same way that in joint financial statements the parent company in *Public Warehousing* "asserted that it had the 'power directly or indirectly to govern the financial and operating policies'" of its U.S. subsidiary "to obtain benefits from its activities," here ALW Food Group's website made a virtually identical claim: "[b]ased on our international infrastructure to manage, trade, produce and *control* our range of natural products, we are in a position to fulfill the needs and requirements of the worldwide food

[10] Indeed, striking is ALW Food Group's repeated use of words such as "our," "we," "family-owned," "company," "enterprise," "group," "network," "trader," "producer," "ALW," among others. Gauder Aff. ¶ 9-12.

manufacturers."[11] Gauder Aff. ¶ 11.

Here, the control exercised by – and interrelatedness among – ALW Germany, Alex Wolff, and other ALW Germany executives on the operation of the ALW Food Group even exceeds the factual benchmarks set by *Chitron* and *Public Warehousing*. *See* Gauder Aff. at ¶¶ 14-15, 26, 28, 30, 31, 32, 33, 35-38, 40-56, 58-59, 61-76 (explicating on the near total control Alex Wolff – acting through ALW Germany – exercised over the operations of ALW Food Group and the management of the ALW Food Group executives). Beyond the factual parallels of this case already discussed in relation to *Chitron* and *Public Warehousing*:

> Gauder Aff. at ¶ 26: [I]n order to manage the operations of ALW Food Group, ALW Germany trained its executives in Germany for several years, and then dispatched them to their respective international units, where they took orders and directions to execute the conspiracy from the German headquarters and its principal executives, particularly from Alex Wolff, Jürgen Becker, and Thomas Marten (upon his return to ALW Germany in August 2007).
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> Gauder Aff. at ¶ 28: [W]hen [Giesselbach] was assigned to ALW USA by ALW Germany, she overlapped with Thomas Gerkmann for approximately two months, during which time he taught her the details of ALW Food Group's illegal transshipping activities, particularly the aspect of the scheme that he and Thomas Marten had been conducting in the United States for the prior three years at Alex Wolff's direction.
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> Gauder Aff. at ¶ 31: Von Buddenbrock and Giesselbach [ ] reported to, and were required to continuously consult with and obtain approval from, Alex Wolff and ALW Germany regarding day-to-day activities, decisions, and functions of ALW USA, including routine matters such as ordinary contract arrangements and disputes with customers.
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> Gauder Aff. at ¶ 31: [A]lthough as a matter of a 2006 company policy Alex Wolff was required to personally approve ALW USA business transactions of $1 million or more, in practice he routinely was consulted on and approved dozens of transactions as small as $26,000.

[11] The Objector's recitation of independence on the part of ALW USA, *see* Def. Motion at 8-9, is belied by the grand jury's findings and Special Agent Gauder's Affidavit.

> Gauder Aff. at ¶ 32: Alex Wolff (i) had to be consulted on customer contracts and disputes; (ii) had to personally approve the creation of any new employee position and other staffing matters; (iii) required ALW USA's General Manager to send for his review and approval weekly financial reports and annual budgets; (iv) approved all ALW Food Group strategic planning decisions, including any potential shift in market focus; (v) personally negotiated bank credit terms; (vi) set ALW Food Group executive salaries; (vii) conducted year-end ALW Food Group executive performance evaluations; (viii) determined annual ALW Food Group executive bonuses; (ix) made ALW Food Group executive firing decisions; and (x) made decisions regarding intra-company ALW Food Group executive transfers.
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> Gauder Aff. at ¶ 32: Alex Wolff traveled regularly to the different ALW Food Group offices to meet with customers, conduct business, and perform employee reviews. Alex Wolff and ALW Germany controlled the ALW Food Group operations "from A to Z" and . . . the . . . ALW Food Group Executives were "like marionettes on a string."
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> Gauder Aff. at ¶¶ 34-43: Alex Wolff directed and controlled ALW Food Group executives in illegal activities relating to the conspiracy.
>
> Gauder Aff. at ¶¶ 64-65: Alex Wolff personally approved future business opportunities.
>
> Gauder Aff. at ¶¶ 66-69: Alex Wolff personally approved credit extensions to U.S. customers.
>
> Gauder Aff. at ¶ 74: "Wolff & Olsen Group" was the holding company of "the Alfred Wolff Group" and set up ALW USA in 1999 by providing loans totaling over $2,481,788 as investment capital.
>
> Gauder Aff. at ¶ 77: [F]rom June 2008 through at least November 2010 ALW Germany made approximately 27 wire payments totalling approximately $1.7 million to the law firm . . . in Chicago, Illinois [] defend[ing] ALW USA in this investigation and prosecution.

In the civil context, the *Chitron* and *Public Warehousing* forms of analysis have been used by other federal courts – including the Seventh Circuit and this Court – to reach similar conclusions. For example, the Seventh Circuit in *Leach Co.*, 393 F.2d at 185, refused to disturb the district court's treatment of *unrelated* entities "as the same corporation for purposes of jurisdiction, venue, and

service," under circumstances where an out-of-state entity (i) manufactured containers that it only shipped to its in-state distributor, which took title and paid the freight; (ii) extended to distributor liberal and lax credit not applied to its other distributors; (iii) regularly was owed money by its distributor, which paid when convenient; and (iv) referred prospective distributors to its in-state distributor, whose executives it referred to as "our Chicago representative."

Also, in *Captain Int'l*, 416 F. Supp. at 722-23, this Court found jurisdiction, venue, and service over an out-of-district parent corporation that (i) "financed its subsidiary;" (ii) "exercised continuous supervision over the activities of the subsidiary" and in a "real sense managed" the subsidiary; (iii) allowed its name to be used by the subsidiary; (iv) provided employee services without cost; and (v) kept a reservation office for the subsidiary in Chicago. And in *Cotton v. BST Rockford, Inc.*, No. 95 C 50205, 1996 WL 607004, at *3 (N.D. Ill. Oct. 21, 1996) (Attached as Exhibit A), service upon a German company through its U.S. subsidiary was "overwhelmingly" deemed proper because, among other considerations: the German parent (i) wholly owned the subsidiary; (ii) executives did "all the hiring and firing" at the subsidiary and "controlled the workforce;" (iii) had a de facto CEO who was also the president and sole officer of the subsidiary; and (iv) established the subsidiary[12] to provide services and spare parts to parent company's customers and for the purpose of performing sales functions. Accordingly, based on the totality of the evidence from this investigation, and the grand jury charges, ALW Food Group's individual business units – including the Objectors – were *not* in fact independent. As such, the Government's Rule 4 service of process on ALW USA and its authorized agent should suffice as to service upon

[12] Although the memorandum opinion states that the subsidiary established the parent to perform customer service functions in the United States, based on the context of the analysis, that appears to be a typographical error. *See Cotton*, 1996 WL 607004, at *3.

the Objectors.

E. *ALW Food Group Was a Commonly-Owned Enterprise Subject to Service Through ALW USA*

As a closely related analysis – and, most often as an application of New York law – courts have also found the existence of control and jurisdiction in cases in which "two separate corporate entities have been established" but "only one commonly-owned enterprise exists which relies on the joint endeavors of each constituent part and each corporation functions as an integral part of a united endeavor."[13] *Titu–Serban Ionescu v. E.F. Hutton & Co.*, 434 F.Supp. 80, 83 (S.D.N.Y.1977), *aff'd without opinion*, 636 F.2d 1202 (2d Cir.1980) (parent's description of subsidiary as a "branch or international division office operated by" parent was a factor in the court's exercise of jurisdiction); *see also Freeman v. Gordon & Breach, Science Publishers, Inc.*, 398 F.Supp. 519, 522 (S.D.N.Y. 1975) (court exercised personal jurisdiction over a British subsidiary through its New York parent company because (i) the subsidiary and parent were commonly owned and had common directors and officers; (ii) the subsidiary carried out production, sales, and advertising; (iii) the parent sold its inventory to the subsidiary through contracts; and (iv) the subsidiary used the money to create product for the parent).

Here, the gravamen of the Government's allegation is that as a matter of practice and operation, ALW Food Group was a closely intertwined criminal enterprise whose very existence depended on the individual actions and cooperation of each constituent member – all of which shared

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[13] For purposes of diversity jurisdiction, the Seventh Circuit has analogously held that where one corporation is formed by consolidation of two or more corporations, the consolidated corporation – which for purposes of this litigation would be akin to the corporate enterprise – is citizen of *each* state in which any constituent corporation was citizen. *See Starke v. New York, Chicago & St. Louis R. Co.*, 180 F.2d 569, 571 (7th Cir.1950).

a common criminal purpose: to illegally import Chinese-origin honey into the United States. Ind. at ¶ 42; Gauder Aff. at ¶ 7. As the grand jury specifically found, ALW Food Group "*acted in concert* to acquire and purchase honey from China and other countries, import and enter the honey into the United States, and sell it to United States customers." Ind. at ¶ 2 (emphasis added). And, as detailed in the Indictment, *see* Ind. at ¶¶ 1, 4-7, and summarized by Special Agent Gauder in his Affidavit, each Objector within the ALW Food Group "operated for the benefit and on behalf of ALW Germany and at the direction of and control by defendant Alex Wolff and other ALW Germany executives" and served an important function in the criminal enterprise. Gauder Aff. at ¶ 8.

Specifically, ALW Beijing "had its principal place of business in Beijing, China, *and arranged on behalf of ALW Food Group* to obtain Chinese-origin honey from suppliers in China for importation and sale to the United States." Ind. at ¶ 6 (emphasis added); *see also* Gauder Aff. at ¶ 8 ("ALW Beijing acquired raw Chinese-origin honey from honey producers and traders located in China."). ALW Hong Kong "had its principal place of business in Hong Kong, China, *and coordinated on behalf of ALW Food Group* the purchase, finance, and shipment of honey and related products of Chinese origin for importation to the United States." Ind. at ¶ 7 (emphasis added); *see also* Gauder Aff. at ¶ 8 ("ALW Hong Kong arranged financing and shipping of the honey to the United States."). ALW USA "was incorporated in Delaware, had its principal place of business in Park Ridge, Illinois and later Chicago, Illinois; *was the United States operating unit for ALW Food Group*; . . . [and] imported and caused to be imported into the United States full container loads ("FCLs") of honey and related commodities from China and other countries that it sold to United States domestic customers, including food manufacturers, processors, distributors, and packers." Ind. at ¶ 5 (emphasis added); *see also* Gauder Aff. at ¶ 8 ("ALW USA fraudulently imported the

honey into the United States, sold and delivered the honey (including honey contaminated with antibiotics) to United States customers, and wired money back to ALW Honey and ALW Hong Kong as proceeds from the sale of the honey."). And ALW Honey had its principal place of business in Hamburg, Germany and *operated ALW Food Group's honey business in Europe*." Ind. at ¶ 4 (emphasis added); *see also* Gauder Aff. at ¶ 8 ("ALW Honey processed and resold raw honey, including Chinese honey, for distribution in Europe and/or the United States.").

Under factual paradigms analogous to that alleged in the Indictment, courts have found corporate entities to be "mere departments" within another controlling company, notwithstanding their separate corporate existence. *Volkswagenwerk Aktiengesellschaft v. Beech Aircraft Corp*., 751 F.2d 117, 120 (2d Cir.1984). That is, where a subsidiary's business is dependent on the parent's business, or vice versa, courts have often found sufficient control to treat a subsidiary as a "department" of the parent. *Boryk v. deHavilland Aircraft Co.*, 341 F.2d 666 (2d Cir. 1965) (finding a subsidiary to be a mere department of British parent company where, among other things, "[s]ubstantially all of [the subsidiary's] income derive[d] from the sale and servicing of products manufactured by [the parent] or other . . . subsidiaries"). As one court put it, the case law generally treats "principal and subsidiary as one for jurisdictional purposes where parent and subsidiary are part of a 'single economic entity.'" *Bulova Watch Co., Inc. v. K. Hattori & Co., Ltd.*, 508 F. Supp. 1322, 1334 (E.D.N.Y. 1981); *id.* at 1344 (court had jurisdiction over Japanese parent corporation that was expanding into new market by establishing "marketing and service networks and [ ] formulat[ing] and implement[ing] distribution systems" for timepieces manufactured by parent); *DCA Food Industries Inc. v. Hawthorn Mellody, Inc.*, 470 F.Supp. 574, 584 (S.D.N.Y.1979) (holding that subsidiary was mere department of parent where subsidiary's business was processing

and production of all of parent's brand products).

Here, the ALW Food Group functioned as an integrated and unified organization that conducted its activities in different geographical locales with one single, overriding criminal purpose: to fraudulently import Chinese-origin honey into the United States to avoid anti-dumping duties. Accordingly, service of process upon any constituent part of the whole should suffice as service upon the entire enterprise. This is especially true when ALW USA's authorized agent was appointed by ALW Germany through its present-day sole Managing Director. With service having been properly effectuated upon ALW USA and its authorized agent, the totality of the ALW Food Group enterprise should be deemed as a matter of fact and law to have been properly served.

F. ***The Government has Complied with Rule 4(c)(3)(C)'s Mailing Requirement***

As stated earlier, the second requirement under Rule 4(c)(3's) corporate service provision is that a copy of the summons "must also be mailed to the organization's last known address within the district or to its principal place of business elsewhere in the United States." Fed. R. Crim. P. 4(c)(3)(C). Contrary to the Objector's assertion, *see* Def. Motion at 13, the Government has complied with this provision of the rule.

Special Agent Gauder personally sent by Certified Mail validly-issued summonses to each Objector by delivering copies to: (i) Mr. DeLucca, the appointed corporate representative of ALW USA; (ii) Mr. Stein, ALW USA's "temporary general manager" registered with the Illinois Secretary of State as of February 4, 2010; and (iii) Mr. Cook, attorney for ALW USA. Gauder Aff. at ¶ 4. Special Agent Gauder also received confirmation receipts for each summons. Gauder Aff. at ¶ 4.

The Objectors claim, however, that the Government's mailing is invalid because "none of the [Objectors] currently have – nor, indeed, have ever had – an office or principal place of business

in the United States, much less in the Northern District of Illinois." Def. Motion at 13 (relying on *Johnson Matthey*, 2007 WL 634269, at *1, which found a subsidiary not to be the alter ego of its parent). But the Objectors' argument necessarily assumes that ALW USA is a separate and distinct entity immune from service on their behalf. Since ALW USA is in fact an integrated component of a closely-intertwined criminal enterprise lacking in separateness from the entirety of the ALW Food Group organization as a whole (and the individual Objectors that comprise the Food Group), *a fortiori* the Government's mailing to the business addresses of ALW USA's general agent, authorized agent, and lawyers necessarily satisfies Rule 4(c)(3)(C)'s mailing requirement. This is because by, through, and with ALW USA, each of the Objectors is "present" in the United States – and, ALW USA's business address in the U.S. is one and the same as theirs'. *See Public Warehousing*, 2011 WL 1126333, at *5 (finding valid service on a parent company and another of its subsidiaries, notwithstanding the fact that neither had an office in the United States); *Chitron*, 668 F. Supp. 2d at 306 (explaining that since the Chinese parent company was a mere conduit for its U.S. subsidiary, it necessarily "follows that service of a copy of the summons at the address" of the U.S. subsidiary is "sufficient to satisfy the 'last-known-address' requirement of the Rule).

III. CONCLUSION

For the foregoing reasons, the Objectors' Motion to Quash Service of Summons on the Indictment should be denied in its entirety as to each of the Objectors.

Respectfully submitted,

PATRICK J. FITZGERALD
United States Attorney

By: /s Andrew S. Boutros
ANDREW S. BOUTROS
WILLIAM R. HOGAN, JR.
Assistant United States Attorneys

CERTIFICATE OF SERVICE

The undersigned Assistant United States Attorney hereby certifies that the following document:

GOVERNMENT'S OPPOSITION TO MOTION TO QUASH SERVICE OF SUMMONS ON THE INDICTMENT

was served on June 17, 2011 in accordance with FED. R. CRIM. P. 49, FED. R. CIV. P. 5, LR 5.5, and the General Order on Electronic Case Filing (ECF) pursuant to the district court's system as to ECF filers.

/s Andrew S. Boutros

Andrew S. Boutros
Assistant United States Attorney
United States Attorney's Office
219 South Dearborn Street
Chicago, Illinois 60604
(312) 886-7641