NAVY-MARINE CORPS TRIAL JUDICIARY
_____ JUDICIAL CIRCUIT
SPECIAL/GENERAL COURT-MARTIAL

UNITED STATES **v.** **NAME** **RANK/RATE** **USN/USMC**	**DEFENSE/GOVT MOTION FOR APPROPRIATE RELIEF** **(Continuance Request)** **DD MMM YY**

MOTION

Pursuant to RCMs 307(c)(4) and 907(b)(3)(B), the defense moves this Court to dismiss Specification 2 of Charge II and merge it with Specification 1 of Charge II, and to dismiss Charge III and its Specification. The defense does request an Article 39(a), UCMJ, session.

SUMMARY

SSgt Accused faces three specifications stemming from an alleged single uninterrupted altercation with the complaining victim. The Government unreasonably has charged assault with a loaded firearm (Ch II, Spec 1), simple assault (Ch II, Spec 2), and drunk and disorderly conduct (Ch III). First, for the alleged assaults, this constitutes an impermissible "blow by blow" charging scheme under *Morris*. Second, the underlying facts supporting the allegation of drunk and disorderly conduct overlap exactly with the facts supporting the alleged assaults, a practice specifically frowned upon in *Doss*. Finally, all the *Quiroz* factors point to an unreasonable multiplication, requiring relief in the form of dismissal and merger of specifications.

FACTS

1. [Procedural background of the case. Generally, one paragraph is sufficient.]

2. [Facts relevant for resolution of the motion. Several paragraphs may be used.]

BURDEN

3. The burden of proof and persuasion rests on the Defense for this motion. The standard as to any factual issue necessary to resolve this motion is to a preponderance of the evidence. RCM 905(c)(1).

LAW

4. The concept of unreasonable multiplication of charges stems from "those features of military law that increase the potential for overreaching in the exercise of prosecutorial discretion." *United States v. Quiroz*, 55 M.J. 334, 337 (CAAF 2001); see also RCM 307(c)(4), Discussion ("What is substantially one transaction should not be made the basis for an unreasonable multiplication of charges against one person.").

5. [More law, including the full citations for any cases referenced in the summary. Several paragraphs may be used.]

ARGUMENT

6. [Use the facts and law to convince the military judge to agree with your position. Several paragraphs may be used.]

RELIEF REQUESTED

7. Appellate courts have dealt with unreasonable multiplication of charges through combinations of dismissal and consolidation of specifications. Such action is appropriate here. The defense offers the following recommended action to aid the Court: dismiss Charge III and its Specification, and dismiss Specification 2 of Charge II and consolidate it with Specification 1 of Charge II as follows:

In that Staff Sergeant John Q. ACCUSED, United States Marine Corps, Headquarters and Service Battalion, Camp Pendleton, California, did, at or near, Oceanside, California, on or about 2 December 2018, commit an assault upon Corporal Mark A. VICTIM by displaying to him a dangerous weapon, to wit: a loaded firearm, and striking at him with his fist.

8. The defense requests an Article 39(a), UCMJ, hearing to present additional evidence and argument on this motion.

Respectfully submitted,

(Signature Block)

I certify that I have served a true copy (via e-mail) of the above on Judge (Name) and (Trial Counsel's name) on XX Jan XX.

(Signature Block)