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1 FOR PUBLICATION

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4 **IN THE SUPERIOR COURT**
5 **FOR THE**
6 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

7 **COMMONWEALTH OF THE**
8 **NORTHERN MARIANA ISLANDS,**

9 **Plaintiff,**

10 **v.**

11 **DANIEL EDWARD DURKIN,**

12 **Defendant.**

) **CRIM. CASE NO. 14-0008**

) **ORDER GRANTING DEFENDANT'S**
) **MOTION TO DISMISS FOR DEFICIENT**
) **NOTICE**

13 **I. INTRODUCTION**

14 This matter was heard on April 16, 2014 in Courtroom 220A. Defendant Daniel Durkin was
15 present and represented by Assistant Public Defender Eden Schwartz. The Commonwealth was
16 represented by Assistant Attorney General Chemere McField. Defendant Durkin challenges the
17 sufficiency of the information filed in this case, arguing that it fails to provide him with sufficient
18 notice, and moves to dismiss the information.

19 Based on a review of the filings, oral arguments, and applicable law, the Court grants
20 Defendant's motion and dismisses the information.

21 **II. BACKGROUND**

22 On January 21, 2014, Defendant Durkin was charged with one count of assault with a
23 dangerous weapon and three counts of disturbing the peace. Following the preliminary hearing that
24 same day, the Court dismissed the assault with a dangerous weapon and two counts of disturbing
the peace, finding there was not probable cause to believe that those crimes were committed. On

1 January 27, 2014 the Commonwealth filed an amended information charging Defendant Durkin
2 with one count of Disturbing the Peace in violation of 6 CMC § 3101(a). Count I of the Amended
3 Information read as follows:

4 On or about January 11, 2014, on Saipan, Commonwealth of the Northern Mariana
5 Islands, the Defendant, **DANIEL DURKIN**, did unlawfully and willfully commit an
6 act which unreasonably annoyed or disturbed the peace of Samuel Guaran, Dorothy
7 Guaran and Romeo Franciso, depriving them of their right to peace and quiet, or
which provoked a breach of peace, in violation of 6 CMC § 3101(a), made
punishable by 6 CMC §§ 3101(b) and 4101(d).

8 On February 4, 2014, Defendant Durkin filed a motion for a bill of particulars, which the Court
9 granted on February 5, 2014. In its February 5, 2014 order, the Court found the Amended
10 Information “devoid of ‘a definite statement of the essential facts constituting the offense[s]
11 charged,’” in violation of Rule 7(c)(1) of the Commonwealth Rules of Criminal Procedure. The
12 Court ordered the Commonwealth to file a bill of particulars on or before February 19, 2014.

13 On February 19, 2014 the Commonwealth did not file a bill of particulars, but instead filed a
14 Second Amended Information. Count I of the Second Amended Information read as follows:

15 On or about January 11, 2014, on Saipan, Commonwealth of the Northern Mariana
16 Islands, the Defendant, **DANIEL DURKIN**, did unlawfully and willfully commit an
17 act which unreasonably annoyed or disturbed the peace of Samuel Guaran and
18 Dorothy Guaran; to wit, Defendant used an object to create a loud bang above the
19 roof of Dorothy Guaran and Samuel Guaran’s home while they slept and Defendant
approached Samuel Guaran and Dorothy Guaran with a knife, depriving them of
their right to peace and quiet, in violation of 6 CMC § 3101(a), made punishable by
6 CMC §§ 3101(b) and 4101(d).

20 On March 27, 2014, the Defendant filed the instant motion requesting dismissal of the
21 information based on deficient notice provided by the information and the Commonwealth’s failure
22 to comply with court orders. The Defendant’s original motion argued for dismissal based in part on
23 discovery violations. It was clarified in the Commonwealth’s opposition, filed April 1, 2014, that
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1 the Commonwealth had provided discovery to the Office of the Public Defender. That same day,
2 the Defendant withdrew the motion to dismiss to the extent it relied on failure to provide discovery.

3 Thus, the issue remaining before the Court in the instant motion is the constitutional
4 sufficiency of the Second Amended Information.

5 **III. LEGAL STANDARD**

6 The Sixth Amendment of the United States Constitution,¹ requires that the Defendant “be
7 informed of the nature and cause” of the charges against him. To provide constitutionally adequate
8 notice, an information must (1) contain the elements of the charged offense and fairly inform the
9 defendant of the charge so that he may prepare a defense, and (2) provide enough detail so that the
10 defendant may plead double jeopardy in future prosecution. *United States v. Resendiz-Ponce*, 549
11 U.S. 102, 109 (2007); *and Commonwealth v. Castro*, 2008 MP 18 ¶ 13. Rule 7(c) of the
12 Commonwealth Rules of Criminal Procedure outlines the procedure to follow to ensure that
13 defendants receive such notice. *See United States v. Pirro*, 212 F.3d 86, 91-92 (2d Cir. 2000)
14 (recognizing that the federal counterpart rule does the same). To be constitutionally adequate, the
15 information must be a “plain, concise, and definite written statement of the essential facts
16 constituting the offense charged.” NMI R. Crim. Pro. 7(c)(1). Certain statutes require more specific
17 pleading than others. For example, where a finding of guilt under a statute is dependent on a
18 “specific identification of fact,” the information must provide notice of those facts to the defendant.
19 *Russell v. United States*, 369 U.S. 749, 764-65 (1962).

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23 ¹ The protections of the Sixth Amendment of the United States Constitution apply to the states through the due process
24 clause of the Fourteenth Amendment of the United States Constitution, and to the Commonwealth through Section 501
of the Covenant. *See Cole v. Arkansas*, 333 U.S. 196, 201 (1948); Covenant to Establish a Commonwealth of the
Northern Mariana Islands in Political Union with the United States of America, 48 U.S.C. § 1801 note.

1 **IV. DISCUSSION**

2 As a preliminary issue, the Court notes that the sufficiency of the form of the notice
3 provided to Defendant Durkin was contested by the parties. On February 5, 2014, the Court ordered
4 the Commonwealth to provide a bill of particulars to the Defendant. Instead, the Commonwealth
5 filed a Second Amended Information. The Defendant argues this difference in form is significant
6 because the bill of particulars limits the government to presenting proof within the area of the bill.
7 The Commonwealth argues that the purpose of the bill of particulars has been fully served by filing
8 the amended information.

9 The Court need not analyze whether the second amended information serves the same
10 purpose as a bill of particulars, because the Commonwealth must file a bill of particulars when
11 ordered to do so. As a procedural matter, the Commonwealth must request leave of the Court to
12 amend an information. NMI R. Crim. Pro. 7(e). Furthermore, compliance with court orders is not
13 optional. Thus, filing an amended information, without leave of the Court, instead of filing a bill of
14 particulars as ordered, was a violation of the Court's February 5, 2014 order and was procedurally
15 improper. This procedural issue, however, is not dispositive of the Defendant's motion to dismiss
16 the information for deficient notice.

17 Issues of form aside, the Court considers whether the notice provided in the Second
18 Amended Information is constitutionally sufficient, and finds that it is not.

19 Defendant argues that the notice provided in the Second Amended Information is
20 insufficient because it is not specific enough to allow the defendant to defend himself or avoid
21 double jeopardy. The Defendant argues specifically that he is not on notice concerning the nature of
22 the noise that he is alleged to have made, or how he allegedly made that noise. The Commonwealth
23 provides no argument specific to the constitutional sufficiency of the notice provided to the
24 Defendant, instead focusing its arguments on demonstrating that discovery was provided to the

1 Defendant and that the Commonwealth complied with the substance of the Court’s February 5,
2 2014 order.

3 The statute underlying the charge of disturbing the peace has been recognized by the
4 Commonwealth Supreme Court as having the potential to be impermissibly vague if the person
5 accused of disturbing the peace does not know, or have reason to know, that “his conduct would be
6 annoying or disturbing to a reasonable person.” *Commonwealth v. Inos*, 2013 MP 14 ¶¶ 21; *see also*
7 *Commonwealth v. Mundo*, 2004 MP 13 ¶¶ 18-20.² In addition to the elements listed in the statute,

8 to disturb the peace pursuant to 6 CMC § 3101, a person must willfully and
9 unlawfully commit an act the person either knew or should have known would
10 annoy or disturb a reasonable person under the circumstances. That annoyance or
11 disturbance, in turn, must be more than the typical annoyances and disturbances
resulting from the friction of living in a community. It must instead be of sufficient
magnitude that a reasonable person would conclude the acts warranted criminal
consequences.

12 *Inos*, 2013 MP 14 ¶ 20. Because 6 CMC § 3101(a) is an expansive statute, imposing criminal
13 liability on a wide variety of possible actions, the Court finds that the information charging such an
14 offense must provide enough factual specificity to inform the defendant of the acts and
15 circumstances that are alleged to violate the statute. Without such specificity, the defendant is
16 unable to prepare his defense, which may involve constitutional challenges to the vagueness of the
17 statute as applied to him. *See, e.g., Inos*, 2013 MP 14; *and Mundo*, 2004 MP 13. Similarly, the
18 defendant, having been acquitted of an insufficiently plead charge of disturbing the peace, would be
19 unable to protect himself against double jeopardy should he be accused of the same violation again.

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23 ² “[W]e conclude that to disturb the peace pursuant to 6 CMC § 3101, a person must willfully and unlawfully commit
24 an act the person either knew or should have known would annoy or disturb a reasonable person under the
circumstances. That annoyance or disturbance, in turn, must be more than the typical annoyances and disturbances
resulting from the friction of living in a community. It must instead be of sufficient magnitude that a reasonable person
would conclude the acts warranted criminal consequences.” *Commonwealth v. Inos*, 2013 MP 14 ¶ 20.

1 In this case, the Second Amended Information states that Defendant Durkin “used an object
2 to create a loud bang above the roof of Dorothy Guaran and Samuel Guaran’s home while they
3 slept and Defendant approached Samuel Guaran and Dorothy Guaran with a knife.” As Defendant
4 notes, he could stand accused of any number of actions. For example, he could be accused of setting
5 off fireworks, slamming the door to an upstairs apartment, accidentally dropping a breakable object,
6 or repeatedly slamming a baseball bat into the roof. Some of these actions might be the kind that
7 the Defendant knew or should have known would disturb or annoy a reasonable person, some of
8 them may not be. *See Inos*, 2013 MP 14 ¶¶ 20-22. Absent more specific facts about the acts alleged,
9 or at least the nature of the alleged sound, the Defendant cannot prepare a defense. This is
10 constitutionally insufficient notice.

11 Similarly, the statement “Defendant approached Samuel Guaran and Dorothy Guaran with a
12 knife” is non-specific. As with the noise allegation, this statement has the potential of accusing the
13 Defendant of a variety of actions. The Defendant could stand accused of brandishing a knife while
14 chasing the alleged victims, or of carrying a kitchen knife while walking in the direction of the
15 victims. These two scenarios are very different in the context of the disturbing the peace statute.

16 The Court notes that such specific pleading is not required in all criminal cases. However,
17 because of the expansive nature of the disturbing the peace statute the “essential facts constituting
18 the offense charged” must be more specific than the essential facts constituting a more narrowly
19 defined offense. NMI R. Crim. Pro. 7(c)(1). Moreover, in this case, the Court already found once
20 that the Commonwealth’s pleading was constitutionally insufficient. The Commonwealth, instead
21 of complying with the Court’s February 5, 2014 order and filing a bill of particulars, filed a Second
22 Amended Information. The Second Amended Information added two non-specific clauses. As filed,
23 the Second Amended Information does not provide Defendant Durkin with notice sufficient to
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1 prepare a defense to a charge of disturbing the peace in violation of 6 CMC § 3101(a) or to protect
2 himself from double jeopardy.

3 Accordingly, the Court grants the Defendant's motion to dismiss.

4 **IT IS SO ORDERED** this 28th day of April, 2014.

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JOSEPH N. CAMACHO
Associate Judge