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 9 United States of America

10 UNITED STATES DISTRICT COURT
 11
 12 CENTRAL DISTRICT OF CALIFORNIA
 13
 14 SOUTHERN DIVISION

14 UNITED STATES OF AMERICA,

15
 16 Plaintiff,

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 18 v.

19 MOSES ONCIU,

20 Defendant.
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Case No. SA CR 08-180-DOC

JOINT PROPOSED JURY
 INSTRUCTIONS
 (UNANNOTATED SET)

Date: September 17, 2013
 Time: 2:00 p.m.
 Place: Courtroom of the
 Honorable David O. Carter

22
 23 The parties respectfully submit the attached proposed joint
 24 jury instructions. The parties are separately filing additional
 25 proposed jury instructions as to which they do not agree for the
 26 court's consideration. The parties request leave to propose such

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1 COURT'S INSTRUCTION NO. 1

2 Members of the jury, now that you have heard all the evidence,
3 it is my duty to instruct you on the law that applies to this case.
4 A copy of these instructions will be available in the jury room for
5 you to consult.

6 It is your duty to weigh and to evaluate all the evidence
7 received in the case and, in that process, to decide the facts. It
8 is also your duty to apply the law as I give it to you to the facts
9 as you find them, whether you agree with the law or not. You must
10 decide the case solely on the evidence and the law and must not be
11 influenced by any personal likes or dislikes, opinions, prejudices,
12 or sympathy. You will recall that you took an oath promising to do
13 so at the beginning of the case.

14 You must follow all these instructions and not single out some
15 and ignore others; they are all important. Please do not read into
16 these instructions or into anything I may have said or done any
17 suggestion as to what verdict you should return -- that is a matter
18 entirely up to you.

COURT'S INSTRUCTION NO. 2

1
2 This is a criminal case brought by the United States
3 government. The government charges defendant with conspiracy and
4 wire fraud. The charges against defendant are contained in the
5 indictment. The indictment simply describes the charges the
6 government brings against defendant. The indictment is not evidence
7 and does not prove anything.

8 Defendant has pled not guilty to the charge and is presumed
9 innocent unless and until the government proves him guilty beyond a
10 reasonable doubt. In addition, defendant has the right to remain
11 silent and never has to prove his innocence or to present any
12 evidence.

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COURT'S INSTRUCTION NO. 3

The evidence you are to consider in deciding what the facts are consists of:

- (1) the sworn testimony of any witness;
- (2) the exhibits which are received in evidence; and
- (3) any facts to which the parties agree.

COURT'S INSTRUCTION NO. 4

The following things are not evidence, and you must not consider them as evidence in deciding the facts of this case:

- (1) statements and arguments of the attorneys;
- (2) questions and objections of the attorneys;
- (3) testimony that I instruct you to disregard; and
- (4) anything you may see or hear when the court is not in session even if what you see or hear is done or said by one of the parties or by one of the witnesses.

COURT'S INSTRUCTION NO. 5

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which one can find another fact.

You are to consider both direct and circumstantial evidence. Either can be used to prove any fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

COURT'S INSTRUCTION NO. 6

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2 There are rules of evidence that control what can be received
3 in evidence. When a lawyer asks a question or offers an exhibit in
4 evidence and a lawyer on the other side thinks that it is not
5 permitted by the rules of evidence, that lawyer may object. If I
6 overrule the objection, the question may be answered or the exhibit
7 received. If I sustain the objection, the question cannot be
8 answered, or the exhibit cannot be received. Whenever I sustain an
9 objection to a question, you must ignore the question and must not
10 guess what the answer would have been.

11 Sometimes I may order that evidence be stricken from the record
12 and that you disregard or ignore the evidence. That means that when
13 you are deciding the case, you must not consider the evidence that I
14 told you to disregard.

COURT'S INSTRUCTION NO. 7

1
2 In reaching your verdict you may consider only the testimony
3 and exhibits received in evidence. The following things are not
4 evidence and you may not consider them in deciding what the facts
5 are:

6 1. Questions, statements, objections, and arguments by the
7 lawyers are not evidence. The lawyers are not witnesses. Although
8 you must consider a lawyer's questions to understand the answers of
9 a witness, the lawyer's questions are not evidence. Similarly, what
10 the lawyers have said in their opening statements, closing arguments
11 and at other times is intended to help you interpret the evidence,
12 but it is not evidence. If the facts as you remember them differ
13 from the way the lawyers state them, your memory of them controls.

14 2. Any testimony that I have excluded, stricken, or
15 instructed you to disregard is not evidence. In addition, some
16 evidence was received only for a limited purpose; when I have
17 instructed you to consider certain evidence in a limited way, you
18 must do so.

19 3. Anything you may have seen or heard when the court was not
20 in session is not evidence. You are to decide the case solely on the
21 evidence received at the trial
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COURT'S INSTRUCTION NO. 8

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

- (1) the witness's opportunity and ability to see or hear or know the things testified to;
- (2) the witness's memory;
- (3) the witness's manner while testifying;
- (4) the witness's interest in the outcome of the case, if any;
- (5) the witness's bias or prejudice, if any;
- (6) whether other evidence contradicted the witness's testimony;
- (7) the reasonableness of the witness's testimony in light of all the evidence; and
- (8) any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify about it.

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COURT'S INSTRUCTION NO. 9

The parties have agreed to certain facts that have been stated to you. You should therefore treat these facts as having been proved.

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COURT'S INSTRUCTION NO. 10

The indictment is not evidence. Defendant has pled not guilty to the charges. Defendant is presumed to be innocent unless and until the government proves defendant guilty beyond a reasonable doubt. In addition, defendant does not have to testify or present any evidence to prove innocence. The government has the burden of proving every element of each charge beyond a reasonable doubt.

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COURT'S INSTRUCTION NO. 11

The defendant has testified. You should treat this testimony just as you would the testimony of any other witness.

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COURT'S INSTRUCTION NO. 12

Proof beyond a reasonable doubt is proof that leaves you firmly convinced that defendant is guilty. It is not required that the government prove guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that defendant is guilty, it is your duty to find defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that defendant is guilty, it is your duty to find defendant guilty.

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COURT'S INSTRUCTION NO. 13

You are here only to determine whether defendant is guilty or not guilty of the charges in the indictment. Defendant is not on trial for any conduct or offense not charged in the indictment.

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COURT'S INSTRUCTION NO. 14

A separate crime is charged against the defendant in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count.

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COURT'S INSTRUCTION NO. 15

You have heard testimony that defendant made a statement. It is for you to decide (1) whether defendant made the statement, and (2) if so, how much weight to give to it. In making those decisions, you should consider all the evidence about the statement, including the circumstances under which defendant may have made it.

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COURT'S INSTRUCTION NO. 16

You have heard evidence of the defendant's character for truthfulness. In deciding this case, you should consider that evidence together with and in the same manner as all the other evidence in the case.

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COURT'S INSTRUCTION NO. 17

You have heard testimony from an undercover agent who was involved in the government's investigation in this case. Law enforcement officials may engage in stealth and deception, such as the use of informants and undercover agents, in order to investigate criminal activities. Undercover agents may use false names and appearances.

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COURT'S INSTRUCTION NO. 18

You have heard testimony from persons who, because of education or experience, were permitted to state opinions and the reasons for their opinions.

Such opinion testimony should be judged like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

COURT'S INSTRUCTION NO. 19

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2 Defendant is charged in Count One of the indictment with
3 conspiring to commit wire fraud in violation of Section 371 of Title
4 18 of the United States Code. In order for defendant to be found
5 guilty of that charge, the government must prove each of the
6 following elements beyond a reasonable doubt:

7 First, beginning on or about November 29, 2006, and ending on
8 or about March 7, 2007, there was an agreement between two or more
9 persons to commit at least one crime as charged in the indictment;
10 and

11 Second, the defendant became a member of the conspiracy knowing
12 of at least one of its objects and intending to help accomplish it;
13 and

14 Third, one of the members of the conspiracy performed at least
15 one overt act on or after November 29, 2006 for the purpose of
16 carrying out the conspiracy, with all of you agreeing on a
17 particular overt act that you find was committed.

18 A conspiracy is a kind of criminal partnership -- an agreement
19 of two or more persons to commit one or more crimes. The crime of
20 conspiracy is the agreement to do something unlawful; it does not
21 matter whether the crime agreed upon was committed.

22 For a conspiracy to have existed, it is not necessary that the
23 conspirators made a formal agreement or that they agreed on every
24 detail of the conspiracy. It is not enough, however, that

1 they simply met, discussed matters of common interest, acted in
2 similar ways, or perhaps helped one another. You must find that
3 there was a plan to commit at least one of the crimes alleged in the
4 indictment as an object of the conspiracy with all of you agreeing
5 as to the particular crime which the conspirators agreed to commit.

6 One becomes a member of a conspiracy by willfully participating
7 in the unlawful plan with the intent to advance or further some
8 object or purpose of the conspiracy, even though the person does not
9 have full knowledge of all the details of the conspiracy.

10 Furthermore, one who willfully joins an existing conspiracy is as
11 responsible for it as the originators. On the other hand, one who
12 has no knowledge of a conspiracy, but happens to act in a way which
13 furthers some object or purpose of the conspiracy, does not thereby
14 become a conspirator. Similarly, a person does not become a
15 conspirator merely by associating with one or more persons who are
16 conspirators, nor merely by knowing that a conspiracy exists.

17 An overt act does not itself have to be unlawful. A lawful act
18 may be an element of a conspiracy if it was done for the purpose of
19 carrying out the conspiracy. The government is not required to prove
20 that the defendant personally did one of the overt acts.

COURT'S INSTRUCTION NO. 20

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2 A conspiracy may continue for a long period of time and may
3 include the performance of many transactions. It is not necessary
4 that all members of the conspiracy join it at the same time, and one
5 may become a member of a conspiracy without full knowledge of all
6 the details of the unlawful scheme or the names, identities, or
7 locations of all of the other members.

8 Even though the defendant did not directly conspire with
9 another member of the conspiracy in the overall scheme, the
10 defendant has, in effect, agreed to participate in the conspiracy if
11 the government proves each of the following beyond a reasonable
12 doubt that:

13 (1) the defendant directly conspired with one or more
14 conspirators to carry out at least one of the objects of the
15 conspiracy;

16 (2) the defendant knew or had reason to know that other
17 conspirators were involved with those with whom the defendant
18 directly conspired; and

19 (3) the defendant had reason to believe that whatever
20 benefits the defendant might get from the conspiracy were probably
21 dependent upon the success of the entire venture.

22 It is not a defense that a person's participation in a
23 conspiracy was minor or for a short period of time.
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COURT'S INSTRUCTION NO. 21

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2 Defendant is charged in Counts Two through Six of the
3 indictment with wire fraud in violation of Section 1343 of Title 18
4 of the United States Code. In order for defendant to be found
5 guilty of that charge, the government must prove each of the
6 following elements beyond a reasonable doubt:

7 First, the defendant knowingly participated in a scheme or plan
8 to defraud, or a scheme or plan for obtaining money or property by
9 means of false or fraudulent pretenses, representations, or
10 promises;

11 Second, the statements made or facts omitted as part of the
12 scheme were material; that is, they had a natural tendency to
13 influence, or were capable of influencing, a person to part with
14 money or property;

15 Third, the defendant acted with the intent to defraud; that is,
16 the intent to deceive or cheat; and

17 Fourth, the defendant transmitted, or caused to be transmitted,
18 a wire communication in interstate commerce to carry out or attempt
19 to carry out an essential part of the scheme.

20 In determining whether a scheme to defraud exists, you may
21 consider not only defendant's words and statements, but also the
22 circumstances in which they are used as a whole.

23 A "wire communication" as that term is used in these
24 instructions includes e-mail messages, faxes, and telephone calls.

1 A wire communication is caused when one knows that the wire
2 communication will be used in the ordinary course of business or
3 when one can reasonably foresee such use. It does not matter
4 whether the material wired was itself false or deceptive so long as
5 the wire communication was used as a part of the scheme, nor does it
6 matter whether the scheme or plan was successful or that any money
7 or property was obtained.

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Page Two of Two Pages

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COURT'S INSTRUCTION NO. 22

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2 If you decide that defendant was a member of a scheme to
3 defraud and that defendant had the intent to defraud, defendant may
4 be responsible for other co-schemers' actions during the course of
5 and in furtherance of the scheme, even if defendant did not know
6 what they said or did.

7 For defendant to be guilty of an offense committed by a co-
8 schemer in furtherance of the scheme, the offense must be one that
9 defendant could reasonably foresee as a necessary and natural
10 consequence of the scheme to defraud.

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COURT'S INSTRUCTION NO. 23

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2 Defendant may be found guilty of wire fraud, even if defendant
3 personally did not commit the act or acts constituting the crime but
4 aided and abetted in its commission. To prove defendant guilty of
5 aiding and abetting, the government must prove beyond a reasonable
6 doubt:

7 First, wire fraud was committed by someone;

8 Second, the defendant knowingly and intentionally aided,
9 counseled, commanded, induced or procured that person to commit each
10 element of wire fraud; and

11 Third, the defendant acted before the crime was completed.

12 It is not enough that the defendant merely associated with the
13 person committing the crime, or unknowingly or unintentionally did
14 things that were helpful to that person, or was present at the scene
15 of the crime. The evidence must show beyond a reasonable doubt that
16 the defendant acted with the knowledge and intention of helping that
17 person commit wire fraud.

18 The government is not required to prove precisely which person
19 actually committed the crime and which person aided and abetted.

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COURT'S INSTRUCTION NO. 24

An act is done knowingly if the defendant is aware of the act and does not act through ignorance, mistake, or accident. The government is not required to prove that the defendant knew that his or her acts or omissions were unlawful. You may consider evidence of the defendant's words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

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COURT'S INSTRUCTION NO. 25

The intent of a person or the knowledge that a person possesses at any given time may not ordinarily be proved directly because there is no way of directly scrutinizing the workings of the human mind. In determining the issue of what a person knew or what a person intended at a particular time, you may consider any statements made or acts done by that person and all other facts and circumstances received in evidence which may aid in your determination of that person's knowledge or intent.

You may infer, but you are certainly not required to infer, that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. It is entirely up to you, however, to decide what facts to find from the evidence received during this trial.

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COURT'S INSTRUCTION NO. 26

An intent to defraud is an intent to deceive or cheat.

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COURT'S INSTRUCTION NO. 27

The indictment charges that the offenses alleged were committed "on or about" a certain date. Although it is necessary for the government to prove beyond a reasonable doubt that the offenses were committed on a date reasonably near the dates alleged in the indictment, it is not necessary for the government to prove that the offenses were committed precisely on the dates charged.

COURT'S INSTRUCTION NO. 28

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2 When you begin your deliberations, elect one member of the jury
3 as your foreperson who will preside over the deliberations and speak
4 for you here in court.

5 You will then discuss the case with your fellow jurors to reach
6 agreement if you can do so. Your verdict, whether guilty or not
7 guilty, must be unanimous.

8 Each of you must decide the case for yourself, but you should
9 do so only after you have considered all the evidence, discussed it
10 fully with the other jurors, and listened to the views of your
11 fellow jurors.

12 Do not be afraid to change your opinion if the discussion
13 persuades you that you should. But do not come to a decision simply
14 because other jurors think it is right.

15 It is important that you attempt to reach a unanimous verdict
16 but, of course, only if each of you can do so after having made your
17 own conscientious decision. Do not change an honest belief about the
18 weight and effect of the evidence simply to reach a verdict.

COURT'S INSTRUCTION NO. 29

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2 Because you must base your verdict only on the evidence
3 received in the case and on these instructions, I remind you that
4 you must not be exposed to any other information about the case or
5 to the issues it involves. Except for discussing the case with your
6 fellow jurors during your deliberations:

7 Do not communicate with anyone in any way and do not let anyone
8 else communicate with you in any way about the merits of the case or
9 anything to do with it. This includes discussing the case in
10 person, in writing, by phone or electronic means, via email, text
11 messaging, or any Internet chat room, blog, website or other
12 feature. This applies to communicating with your family members,
13 your employer, the media or press, and the people involved in the
14 trial. If you are asked or approached in any way about your jury
15 service or anything about this case, you must respond that you have
16 been ordered not to discuss the matter and to report the contact to
17 the court.

18 Do not read, watch, or listen to any news or media accounts or
19 commentary about the case or anything to do with it; do not do any
20 research, such as consulting dictionaries, searching the Internet or
21 using other reference materials; and do not make any investigation
22 or in any other way try to learn about the case on your own.

23 The law requires these restrictions to ensure the parties have
24 a fair trial based on the same evidence that each party has had an
25 opportunity to address. A juror who violates these
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1 restrictions jeopardizes the fairness of these proceedings, and a
2 mistrial could result that would require the entire trial process to
3 start over. If any juror is exposed to any outside information,
4 please notify the court immediately.

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COURT'S INSTRUCTION NO. 30

Some of you have taken notes during the trial. Whether or not you took notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by your notes or those of your fellow jurors.

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COURT'S INSTRUCTION NO. 31

The punishment provided by law for this crime is for the court to decide. You may not consider punishment in deciding whether the government has proved its case against the defendant beyond a reasonable doubt.

COURT'S INSTRUCTION NO. 32

A verdict form has been prepared for you. After you have reached unanimous agreement on a verdict, your foreperson should complete the verdict form according to your deliberations, sign and date it, and advise the clerk that you are ready to return to the courtroom.

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COURT'S INSTRUCTION NO. 33

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2 If it becomes necessary during your deliberations to
3 communicate with me, you may send a note through the clerk, signed
4 by any one or more of you. No member of the jury should ever
5 attempt to communicate with me except by a signed writing, and I
6 will respond to the jury concerning the case only in writing or here
7 in open court. If you send out a question, I will consult with the
8 lawyers before answering it, which may take some time. You may
9 continue your deliberations while waiting for the answer to any
10 question. Remember that you are not to tell anyone -- including
11 me -- how the jury stands, numerically or otherwise, on any question
12 submitted to you, including the question of the guilt of the
13 defendant, until after you have reached a unanimous verdict or have
14 been discharged.