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11 IN THE UNITED STATES DISTRICT COURT

12 FOR THE DISTRICT OF ARIZONA

13 United States of America,

14 Plaintiff,

15 vs.

16 Thomas Mario Costanzo,

17 Defendant.

CR-17-00585-PHX-GMS

**PROPOSED FORFEITURE JURY
INSTRUCTIONS AND SPECIAL
VERDICT FORM**

18 The United States, by and through undersigned counsel, hereby submits the
19 following proposed forfeiture jury instructions

20 Respectfully submitted this 26th day of March, 2018.

21 ELIZABETH A. STRANGE
22 First Assistant United States Attorney
District of Arizona

23 *s/ Gary Restaino*
24 MATTHEW BINFORD
CAROLINA ESCALANTE
25 GARY M. BINFORD
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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of March 2018, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all counsel of record.

s/Cristina Abramo
U.S. Attorney's Office

INSTRUCTION NO. ____

FORFEITURE: GENERALLY

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3 Ladies and Gentlemen of the Jury, in view of your verdict that Defendant Thomas
4 Mario Costanzo is guilty of offenses as charged in Counts 1 through 5 of the Indictment,
5 you have one more task to perform before you are discharged. I now must ask you to render
6 special verdicts concerning property the United States Government has alleged is subject
7 to forfeiture to the United States, in connection with the offenses for which the Defendant
8 was convicted.

9 As to each item of property for which the Government seeks forfeiture, you must
10 determine whether the Government has established the requisite nexus between the
11 property and the offense or offenses committed by the Defendant. In other words, you must
12 find whether that property is connected to the underlying crime in the way the statute
13 provides.

The particular properties alleged to be forfeitable to the United States are as follows:

- 14 A. \$627.36 in United States currency;
15 B. Assorted Precious Metals, found in Mr. Costanzo's residence;
16 C. Assorted Precious Metals, found on Mr. Costanzo's person; and
17 D. 80.94512167 Bitcoins
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Federal Rules of Criminal Procedure, Rule 32.2(b)(1) and (4).
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2 INSTRUCTION NO. _____

3 **FORFEITURE: BURDEN OF PROOF**

4 As explained above, it is the Government’s burden to establish the required
5 connection between the property and the offenses committed by the Defendant which
6 would make the property subject to forfeiture. You should find that the Government has
7 met its burden if it has established that connection by a “preponderance of the evidence.”

8 This is different from the standard that applied to the guilt or innocence of the
9 Defendant. At that stage of the case, the Government was required to meet its burden
10 “beyond a reasonable doubt.” At this forfeiture stage, however, the Government need only
11 establish its proof by a “preponderance of the evidence.”

12 “Preponderance of the evidence” means that the Government has to produce
13 evidence which, considered in light of all of the facts, leads you to believe that what the
14 Government claims is more likely true than not true. To put it differently, if you were to
15 put the Government’s evidence and the Defendant’s evidence on opposite sides of a
16 balance scale, the Government’s evidence would have to make the scale tip slightly on its
17 side of the balance. If the Government’s evidence fails to do this, then the Government has
18 not met its burden of proof.

19 You may consider any evidence, including testimony, offered by the parties at any
20 time during the guilt phase of the trial and during the forfeiture phase of the trial.
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26 *Libretti v. United States*, 516 U.S. 29, 116 S. Ct. 356 (1995) (criminal forfeiture is part of
27 sentence and not a substantive element of offense, so “preponderance of the evidence”
28 standard applies).

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INSTRUCTION NO. _____

FORFEITURE: JURY’S CONSIDERATION

You are instructed that your previous determination that the Defendant is guilty of the offenses with which he was charged in Counts 1 through ____ is binding on this part of the proceedings, and you must not discuss or determine anew whether he is guilty or not guilty on those charges.

You are also instructed that what happens to any property that you find has a connection to those offenses is exclusively a matter for the Court to decide. You should not consider what might happen to the property in making your determination. You should disregard any claims of ownership that other persons may have to the property. The interests that other persons may have in the property will be taken into account by the court at a later time. Similarly, any claims that the forfeiture of the property would constitute excessive punishment will be taken into account by the court at a later time. Your only concern is to determine whether the property has the required connection to the Defendant’s offenses.

You are further instructed that, other than the standard of proof, all of the instructions previously given to you concerning your consideration of the evidence, the credibility or believability of the witnesses, your duty to deliberate together and the necessity of a unanimous verdict, will all continue to apply during your deliberations concerning the forfeiture claims.

INSTRUCTION NO. _____

FORFEITURE PURSUANT TO 18 U.S.C. § 982(a)(1)

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3 Section 982(a)(1) of Title 18 of the United States Code provides, in part, that
4 whomever is convicted of a money laundering offense (18 U.S.C. § 1956) shall forfeit to
5 the United States any property, real or personal, involved in such offense, or any property
6 traceable to such property.

7 The Government alleges that certain properties are forfeitable because they are real
8 or personal properties that were involved in the commission of a money laundering offense.

9 These properties are set out in a Special Verdict Form which follows at the end of
10 these instructions. As to each such property you must determine whether or not the
11 applicable connection exists.

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26 18 U.S.C. § 982(a)(1).
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2 INSTRUCTION NO. ____

3 **FORFEITURE: PROPERTY OWNERSHIP**

4 Certain properties may be held in the name of a person or entity other than or in
5 addition to that of the Defendant. You may have also noted evidence suggesting a person
6 or persons other than the Defendant may have or claim an interest in some part of a property
7 sought to be forfeited.

8 I charge you that in reaching your decision as to each item of property you should
9 simply disregard any such title or claim of ownership of such property. Instead, you should
10 focus only on deciding, as I have previously charged, whether the property was connected
11 to an offense or offenses in a way or ways that make it forfeitable.

12 Any interest that another person may have or claim to have in such property will be
13 taken into account later by this Court in a separate proceeding and is not for your
14 consideration as jurors.

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27 Rule 32.2(b)(1), (2) and (4), Federal Rules of Criminal Procedure; 21 U.S.C. § 853(c); 18
28 U.S.C. § 982(b)(1) (incorporating by reference specified subsections of 21 U.S.C. §853).

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INSTRUCTION NO. ____

INSTRUCTION FOR SPECIAL VERDICT FORM FOR FORFEITURE

It is your duty to determine what property, if any, is connected to the Defendant’s offenses in one or more ways that make the property forfeitable as the result of the Defendant’s conviction. While deliberating, you may consider any evidence, including testimony, offered by the parties at any time during this trial.

A Special Verdict Form for Forfeiture has been prepared for your use. You may answer by simply putting an “X” or check mark in the space provided next to the words “Yes” or “No” in the space provided. You will take the Special Forfeiture Verdict Form to the jury room and when you have reached unanimous agreement as to each item of property, you will have your foreperson fill in the form and notify the Court Bailiff. The foreperson must then sign and date the Special Forfeiture Verdict Form.

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SPECIAL FORFEITURE VERDICT FORM

We, the jury, return the following Special Verdict, as to Defendant Thomas Mario Costanzo regarding the properties described below

We, the jury, unanimously find by a preponderance of the evidence that this is property, real or personal, that was involved in a money laundering offense (18 U.S.C. § 1956), or any property traceable to such property

A. \$627.36 in United States currency

Yes No

B. Assorted Precious Metals, found in Mr. Costanzo's residence

Yes No

C. Assorted Precious Metals, found on Mr. Costanzo's person

Yes No

D. 80.94512167 Bitcoins

Yes No

This _____ day of March, 2018.

Foreperson