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14 United States of America

15 UNITED STATES DISTRICT COURT
16 FOR THE CENTRAL DISTRICT OF CALIFORNIA
17 SOUTHERN DIVISION

18 UNITED STATES OF AMERICA,) NO. SA CR 09-00077-JVS
19 Plaintiff,)
20 v.) GOVERNMENT'S PROPOSED JURY
21 STUART CARSON, et al.,) INSTRUCTIONS REGARDING
22 Defendants.) "INSTRUMENTALITY" AND SCIENTER;
23) EXHIBITS
Hearing: August 12, 2011, 1:30 p.m.

24 Plaintiff United States of America, by and through its
25 attorneys of record, the United States Department of Justice,
26 Criminal Division, Fraud Section, and the United States Attorney
27 for the Central District of California (collectively, "the
28 government"), hereby files its proposed jury instructions
regarding the term "instrumentality" in the Foreign Corrupt

1 Practices Act ("FCPA") and regarding the FCPA's scienter
2 requirement. The government's submission is based upon the
3 authorities cited herein, the attached exhibits, the files and
4 records in this matter, as well as any evidence or argument
5 presented at any hearing on this matter.

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7 DATED: June 30, 2011

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Respectfully submitted,

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/s/

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Attorneys for Plaintiff
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COURT'S INSTRUCTION NO. ___

"FOREIGN OFFICIAL" AND "INSTRUMENTALITY"

The term "foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization.

An "instrumentality" of a foreign government is any entity through which a foreign government achieves an end or purpose, and can include state-owned entities. In determining whether an entity is an instrumentality of a foreign government, you should consider the following:

- (1) the circumstances surrounding the entity's creation;
- (2) the foreign government's characterization of the entity and the entity's employees, and whether the entity is widely perceived and understood to be performing official (i.e., governmental) functions;
- (3) the foreign government's control over the entity, including the foreign government's power to appoint key directors or officers of the entity;
- (4) the purpose of the entity's activities, including whether the entity provides a service to the citizens of the jurisdiction;
- (5) the entity's obligations and privileges under the foreign country's law, including whether the entity exercises exclusive or controlling power to administer its designated functions;
- (6) the extent of the foreign government's ownership of the entity, including the level of financial support by the foreign government (e.g., subsidies, special tax treatment, and loans);

1 These factors are not exclusive, and no single factor is
2 dispositive. In addition, in order to conclude that an entity is
3 an instrumentality of a foreign government, you need not find
4 that all of the factors listed above weigh in favor of such a
5 determination.

6 Authority:

7 15 U.S.C. § 78dd-2(h)(2)(A) (defining "foreign
8 official"); Blacks Law Dictionary (9th ed. 2009)
9 (defining instrumentality as "[a] thing used to achieve
10 an end or purpose"); Merriam-Webster's Dictionary of
11 Law (1996 ed.) (defining instrumentality as "something
12 through which an end is achieved or occurs"); United
13 States v. Carson, 09-CR-77, DE 373 at 5 (C.D. Cal.
14 May 18, 2011); United States v. Aguilar, 10-CR-1031,
15 DE 474 at 9 (C.D. Cal. Apr. 20, 2011) (setting forth
16 non-exclusive list of "various characteristics of
17 government agencies and departments"); United States v.
18 Jefferson, 07-CR-209, DE 684 at 75-87 (E.D. Va. July
19 30, 2009) (defining instrumentality as including
20 government-owned or government-controlled companies,
21 such as commercial carriers, airlines, railroads,
22 utilities, and telecommunications companies); United
23 States v. Bourke, 1:05-CR-518 (S.D.N.Y. 2009) (Trial
24 Tr. at 3366:10-11(July 8, 2009)) ("An instrumentality
25 of a foreign government includes government-owned or
26 government-controlled companies."); Patrickson v. Dole
27 Food Co., 251 F.3d 795, 807 (9th Cir. 2001), *aff'd* in
28 relevant part, dismissed in part, 538 U.S. 468 (2003)
(establishing six factors, in addition to ownership, to
be considered in determining whether a foreign entity
is an "agency or instrumentality").

COURT'S INSTRUCTION NO. ___

"CORRUPTLY," "WILLFULLY," AND "KNOWLEDGE"

An act is done "corruptly" if it is done voluntarily and intentionally, and with a bad purpose or evil motive of accomplishing either an unlawful end or result, or a lawful end or result but by some unlawful method or means. In the Foreign Corrupt Practices Act ("FCPA"), the term "corruptly" is intended to connote that the offer, payment, or promise was intended to induce the recipient to misuse his or her official position.

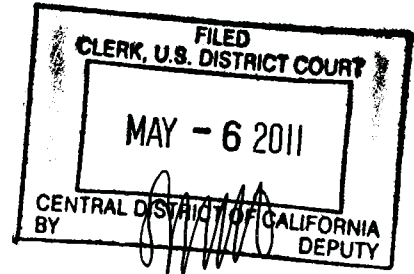
An act is done "willfully" if it is done deliberately and with the intent to do something that the law forbids, that is, with a bad purpose to disobey or disregard the law. A person need not be aware of the specific law and rule that his or her conduct may be violating, but the person must have acted with the intent to do something that the law forbids.

For the purposes of the FCPA, a person's state of mind is "knowing" with respect to conduct, a circumstance, or a result if (1) such person is aware that such person is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur, or (2) such person has a firm belief that such circumstance exists or that such result is substantially certain to occur. Such knowledge is established if a person is aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist.

Authority:

15 U.S.C. § 78dd-2(h) (3) (defining "knowing" with regard to FCPA violations); United States v. Aguilar, 10-CR-1031, DE 511 at 34 (C.D. Cal. Apr. 20, 2011) (court's instruction no. 31 defining "corruptly and willfully" and "knowledge") (Ex. A); United States v. Green, 08-CR-59, DE 288 at 10-11 (C.D. Cal. Sept. 11, 2009) (defining "corruptly" and "willfully") (Ex. B); United States v. Kay, 01-CR-914, DE 142 at 14-23 (S.D. Tex. Oct. 6, 2004), aff'd, 513 F.3d 432, 446-52 (5th Cir. 2007), reh'g denied, 513 F.3d 461 (5th Cir.), cert. denied, 129 S. Ct. 42 (2008); United States v. Kay, 359 F.3d 738, 755-56 (5th Cir. 2004); United States v. Jefferson, 07-CR-209, DE 684 at 75-87 (E.D. Va. July 30, 2009) (same).

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA

Plaintiff,

v.

**ENRIQUE FAUSTINO AGUILAR
NORIEGA, ANGELA MARIA
GOMEZ AGUILAR, KEITH E.
LINDSEY, STEVE K. LEE, AND
LINDSEY MANUFACTURING
COMPANY,**

Defendants.

CASE NO. CR 10-1031 AHM

JURY INSTRUCTIONS

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COURT'S INSTRUCTION NO. 31
FOREIGN CORRUPT PRACTICES ACT – DEFINITIONS

“Domestic Concern”

A “domestic concern” is: (a) any individual who is a citizen, national, or resident of the United States; and (b) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States, or which is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States.

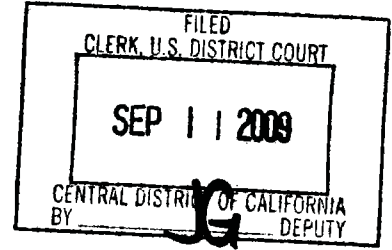
“Corruptly and Willfully”

An act is done “corruptly” if it is done voluntarily and intentionally, and with a bad purpose or evil motive of accomplishing either an unlawful end or result, or a lawful end or result but by some unlawful method or means. The term “corruptly” in the Foreign Corrupt Practices Act (“FCPA”) is intended to connote that the offer, payment, or promise was intended to induce the recipient to misuse his official position.

A person acts “willfully” if he acts deliberately and with the intent to do something the law forbids, that is, with a bad purpose to disobey or disregard the law. The person need not be aware of the specific law and rule that his conduct may be violating, but the person must act with the intent to do something that the law forbids.

“Interstate Commerce”

The term “interstate commerce” means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State or between any State and any place or ship outside thereof, and such term includes the intrastate use of (a) a telephone or other interstate means of communication, or (b) any other interstate instrumentality.



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA)
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 Plaintiff(s),)
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 v.)
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 GERALD GREEN; PATRICIA GREEN)
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 Defendant(s).)
)
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No. CR 08-59-GW

JURY INSTRUCTIONS

* * * * *

[(3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official . . .]

for purposes of -

(A) (i) influencing any act or decision of such foreign official in his official capacity, (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or (iii) securing any improper advantage; or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person

15 U.S.C. § 78dd-2(g)(2)(A) makes it a crime for a person to “willfully violate” Section 78dd-2.

ELEMENTS OF A FCPA VIOLATION

To establish that a Defendant violated the FCPA, the Government must prove each of the following seven elements beyond a reasonable doubt:

First, the Defendant was a “domestic concern” or an officer, director, employee of agent of a domestic concern;

Second, the Defendant made use of the mails or any means or instrumentality of interstate commerce;

Third, at which time the Defendant was acting “corruptly”;

Fourth, when the defendant authorized, offered to pay, or made a gift or payment of anything of value to a foreign official or to any person (knowing that all or a part of such gift or payment would be offered or given directly or indirectly to a foreign official);

Fifth, for the purpose of (a) influencing any act or decision of such foreign official in his official capacity, (b) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or (c) securing any improper advantage;

Sixth, the gift or payment was authorized or made to assist the domestic concern in obtaining or retaining business for or with (or directing business to) any person; and

Seventh, the Defendant acted willfully.

A “domestic concern” means any individual who is a citizen or resident of the United States and/or any corporation, partnership or business entity which is organized under the laws of a State of the United States or which has its principal place of business in the United States.

A “foreign official” means any officer or employee of a foreign government or

any department, agency or instrumentality of the foreign government; or any person acting in an official capacity or on behalf of any such foreign government, department or agency.

The term "interstate commerce" means trade, commerce, transportation or communications among the several States of this country, or between any foreign country and any State, or between any State and any location outside of that State. The term also includes the use of a telephone or other interstate means of communication or any other interstate instrumentality, such as fax transmissions, e-mail correspondence and wire transfers of funds between persons in different States or countries.

An act is "corruptly" done if done voluntarily and intentionally, and with a bad purpose or evil motive of accomplishing either an unlawful end or result, or a lawful end or result but by some unlawful method or means. The term "corruptly" in FCPA is intended to connote that the offer, payment, or promise was intended to induce the recipient to misuse his or her official position.

A violation of the FCPA is "willful" if: 1) the Defendant's actions are intentional and not the result of an accident or mistake, and 2) the Defendant knows that his or her actions are in some way unlawful. As to the second point, the Defendant does not have to be aware of the existence of the FCPA itself, but the Defendant must have proceeded with the knowledge that he or she was doing a "bad" act under the general rules of law, doing an act with a bad purpose, or taken the action without any ground to believe that it was lawful.

TRANSPORTING FUNDS TO PROMOTE UNLAWFUL ACTIVITY

Both Defendants are charged in Counts Eleven through ~~Eighteen~~^{Seventeen} of transporting funds to promote unlawful activity in violation of 18 U.S.C. § 1956(a)(2)(A). See paragraph 27 of the Indictment for a description of each of the section 1956(a)(2)(A) counts. In order for a Defendant to be found guilty of that crime, the Government must prove each of the following elements beyond a reasonable doubt:

First, the Defendant transported money from a place in the United States to or through a place outside the United States; and

Second, the Defendant acted with the intent to promote the carrying on of unlawful activity, that is the bribery of a foreign official in violation of the FCPA.

Section 1956(a)(2)(A) does not require that the money being transported be itself the proceeds from some prior unlawful activity.

FALSIFICATION OF RECORDS IN A FEDERAL INVESTIGATION

The defendant GERALD GREEN is charged in Count Nineteen of the Indictment with knowingly making a false entry in documents to obstruct the investigation of a matter within the jurisdiction of a federal government agency, in violation 18 U.S.C. § 1519. In order for the Defendant to be found guilty of that crime, the Government must prove each of the following essential elements beyond a reasonable doubt:

First, Gerald Green knowingly falsified a document and/or caused a document to be altered in a material way; and