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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

8 Respectfully submitted,

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17 /s/

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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);

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:

1 15 U.S.C. § 78dd-2(h) (3) (defining "knowing" with
2 regard to FCPA violations); United States v. Aguilar,
3 10-CR-1031, DE 511 at 34 (C.D. Cal. Apr. 20, 2011)
4 (court's instruction no. 31 defining "corruptly and
5 willfully" and "knowledge") (Ex. A); United States v.
6 Green, 08-CR-59, DE 288 at 10-11 (C.D. Cal. Sept. 11,
7 2009) (defining "corruptly" and "willfully") (Ex. B);
8 United States v. Kay, 01-CR-914, DE 142 at 14-23 (S.D.
9 Tex. Oct. 6, 2004), aff'd, 513 F.3d 432, 446-52 (5th
10 Cir. 2007), reh'g denied, 513 F.3d 461 (5th Cir.),
11 cert. denied, 129 S. Ct. 42 (2008); United States v.
12 Kay, 359 F.3d 738, 755-56 (5th Cir. 2004); United
13 States v. Jefferson, 07-CR-209, DE 684 at 75-87 (E.D.
14 Va. July 30, 2009) (same).