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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
, )  
 )  
Defendant(s). )  
\_\_\_\_\_ )

CASE NO.  
**CRIMINAL MOTION AND  
TRIAL ORDER**  
**Trial:**  
**Time: 9:00 a.m.**

A. GENERAL REQUIREMENTS

1. The captioned title of every pleading shall contain the name of the first-listed defendant as well as the name(s) and number(s) (in the order listed in the Indictment) of the particular defendant(s) to whom the pleading applies, unless the document applies to all defendants. The individual defendant's registration number (if known) should be provided on any document pertaining to defendant's custody status (*e.g.*, requests for transfer, medical requests). All parties shall docket items only as to the particular defendant(s) the item pertains to, not as to all defendants, unless the item pertains to all. With the exception of documents filed under seal, every pleading shall be filed electronically in such a way that it is clear from the docketing entry to which defendant(s) it applies. The

1 outer envelope containing any pleading filed under seal should identify only the  
2 case title with first-listed defendant and case number and should state that the  
3 document is filed under seal.

4 2. Mandatory paper Chambers copies of all e-filed documents must be  
5 delivered to Judge Fitzgerald's drop box outside of Courtroom 1600 by 12:00  
6 p.m. (noon) on the first court day after the filing date. Attach the Notice of  
7 Electronic Filing ("NEF") to the BACK of the Chambers copy. Chambers copies  
8 delivered by Federal Express should not require the signature of the recipient.

9 B. EX PARTE APPLICATIONS AND MOTIONS

10 1. *Ex parte* applications are disfavored. The Court is unlikely to grant  
11 an *ex parte* application reciting that the moving party has been unable to obtain  
12 the position of the opposing party. Counsel should make serious efforts to obtain  
13 the agreement (or at least the position) of opposing counsel before filing an  
14 application.

15 2. *Ex parte* applications to allow defendant to travel should be made  
16 well in advance of the date of travel. Counsel should indicate whether the Pretrial  
17 Services officer has approved the travel. Applications by defendants with  
18 appointed counsel must indicate who will pay for the travel and related expenses.  
19 If these expenses are not to be paid by the defendant's employer, the Court may  
20 require declarations under penalty of perjury from the persons paying the  
21 expenses.

22 3. Counsel must meet and confer with opposing counsel and attempt to  
23 resolve the issue before filing a motion. Motions expected to take more than one-  
24 half hour of court time must include a time estimate beneath the hearing date on  
25 the face page of the motion.

26 4. Hearings on motions and Status Conferences are held on Mondays,  
27 at 1:30 p.m. Counsel must follow the Central District's Local Rules and General  
28 Orders concerning electronic filing, unless superseded by this Order.

1           5.     Pretrial motions shall be noticed for a Monday that is mutually  
2 agreed to by counsel. The briefing schedule is as follows: Motions shall be filed  
3 three weeks prior to the hearing; oppositions, or notice of non-opposition, shall be  
4 filed two weeks prior to the hearing; and replies, if any, shall be filed one week  
5 prior to the hearing.

6           6.     Suppression motions shall also be noticed for a Monday that is  
7 mutually agreed to by counsel. The briefing schedule for suppression motions is  
8 as follows: Motions shall be filed four weeks prior to the hearing; oppositions  
9 shall be filed two weeks prior to the hearing; and replies, if any, shall be filed one  
10 week prior to the hearing.

11          7.     Counsel shall meet and confer with opposing counsel to resolve  
12 informal discovery disputes prior to filing a motion for discovery. All discovery  
13 motions shall state *with particularity* what is requested, the basis for the request,  
14 whether discovery has been requested and opposing counsel's response to such  
15 request. Motions made without prior consultation with opposing counsel may not  
16 be heard.

17           C.     DISCOVERY AND NOTICE

18           Counsel shall comply promptly with discovery and notice pursuant to  
19 Rules 12, 12.1, 12.2, 12.3, 12.4, 15 and 16 of the Federal Rules of Criminal  
20 Procedure. On government counsel's discovery of any evidence within the scope  
21 of *Brady v. Maryland*, 373 U.S. 83 (1963), and related cases, such evidence shall  
22 be produced forthwith to counsel for the defendant. Counsel for the government  
23 also shall disclose to counsel for defendant the existence or non-existence of (1)  
24 evidence obtained by electronic surveillance, and (2) testimony by a government  
25 informant.

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1           D.    BAIL REVIEWS

2           Any request for a bail review based on changed circumstances or  
3 information not previously presented to the magistrate judge shall be addressed in  
4 the first instance to the magistrate judge and shall be served on both opposing  
5 counsel and Pretrial Services.

6           E.    TRIAL REQUIREMENTS

7           1.    *No later than one week before trial*, counsel for the government shall  
8 file with the Court a trial memorandum setting forth a factual summary of the  
9 government’s case, a statement of the charges and the elements of each charge, an  
10 estimate of the length of the government’s case in chief, including anticipated  
11 cross-examination, the names of witnesses the government intends to call and a  
12 discussion of relevant legal and evidentiary issues as applied to the facts of the  
13 particular case. Counsel for the government shall attempt to obtain defense  
14 counsel’s agreement to the factual summary, statement of the charges, time  
15 estimate for cross-examination of the government’s witnesses and legal and  
16 evidentiary issues.

17           2.    Counsel shall arrive at the Courtroom no later than 8:30 a.m. on the  
18 first day of trial.

19           3.    Counsel for the government shall present the Courtroom Deputy  
20 Clerk (“CRD”) with the following documents on the first day of trial:

21           a.    Three copies of the government’s witness list, which also shall  
22 be sent in Word or WordPerfect format to Chambers' e-mail address.

23           b.    Three copies of the government’s exhibit list in the form  
24 specified in Local Rule 16-5 (Civil), which also shall be sent in Word or  
25 WordPerfect format to Chambers’ e-mail address.

26           c.    All of the government’s exhibits, with official exhibit tags  
27 attached and bearing the same number shown on the exhibit list. Exhibit tags  
28 may be obtained from the receptionist in the Public Intake Section, located on the

1 Main Street level of the Courthouse at 312 North Spring Street, Room G-19.

2 Exhibits shall be numbered 1, 2, 3, etc., *NOT* 1.1, 1.2, etc. If a “blow-up” is an  
3 enlargement of an existing exhibit, it shall be designated with the number of the  
4 original exhibit followed by an “A.”

5 d. A three-ring binder containing a copy of the indictment/  
6 information, a copy of all exhibits that can be reproduced, and a copy of the  
7 witness list. Each exhibit shall be tabbed with the exhibit number for easy  
8 referral.

9 e. A three-ring binder containing a copy of all exhibits for use by  
10 witnesses.

11 4. Exhibits such as firearms, narcotics, etc., must remain in the custody  
12 of a law enforcement agent during the pendency of the trial. It shall be the  
13 responsibility of the agent to produce any such items for court, secure them at  
14 night and guard them at all times while in the courtroom.

15 5. The Court prefers that defense counsel deliver defense exhibits to the  
16 CRD by noon on the Monday before trial, but counsel are not required to do so  
17 unless these exhibits have previously been provided to the government. Defense  
18 counsel are reminded that many discovery obligations are reciprocal. Defense  
19 counsel are responsible for affixing completed exhibit tags with the case name  
20 and case number to all exhibits to be used in defendant’s case. Defense counsel  
21 should be sure that defense exhibit numbers do not duplicate government exhibit  
22 numbers.

23 6. In trials where the defense expects to admit more than 20 exhibits,  
24 defense counsel shall provide three (3) three-ring binders (two for the Court and  
25 one for witnesses), tabbed if possible with numbers to correspond to the exhibits  
26 counsel expects to introduce. Defense counsel shall provide the Court with a  
27 copy of defense exhibits as they are introduced during trial, if they have not  
28 previously been provided.

1           7.     Defense counsel shall email to the Chambers' email address and  
2 provide the CRD and the court reporter with the defense witness list and defense  
3 exhibit list at the start of the defense case, if they have not previously done so.

4           8.     At least one week before trial, the parties must provide a case-  
5 specific glossary for the court reporter that includes applicable medical, scientific  
6 or technical terms, gang terms, slang, the names and spellings of case names  
7 likely to be cited, street/city/country names, all parties/agents/departments/  
8 entities involved in the case, names of people interviewed/deposed, names of  
9 family members, friends, or others who might be mentioned, and other case-  
10 specific terminology.

11          9.     A copy of the exhibit list with all *admitted exhibits* will be given to  
12 the jury during deliberations. Government and defense counsel shall review and  
13 approve the exhibit list with the CRD before the list is given to the jury.

14          10.    If any counsel wishes to arrange for the use of additional equipment,  
15 such as video monitors, overhead projectors, etc., counsel shall contact 213-894-  
16 3061 to verify and/or reserve demonstrative equipment and notify the CRD no  
17 later than 4:00 p.m. at least one week before trial so that the necessary  
18 arrangements may be made.

19          11.    Counsel shall not attempt to display or use any charts or  
20 enlargements of exhibits unless all counsel have agreed to their use or objections  
21 have been heard and a ruling has been made by the Court.

22          12.    On the day of jury selection, trial will begin at 9:00 a.m. Counsel  
23 will appear at 8:30 a.m. Thereafter, trial days are Tuesday through Friday, 9:00  
24 a.m. to 4:30 p.m. with two fifteen-minute breaks and a one hour lunch break.

25          13.    On the day of jury selection, the Court reserves the time from 8:30  
26 a.m. to 9:00 a.m. to handle legal and administrative matters. Jury selection will  
27 commence promptly at 9:00 a.m. or as soon as jurors are available. All counsel  
28 must anticipate matters that may need to be addressed outside of the presence of

1 the jury and raise them at the end of the day or during breaks. The Court does not  
2 make jurors wait while counsel discuss matters that should have been addressed  
3 previously. Short briefs addressing disputed issues are welcome. The Court  
4 discourages sidebars during trial.

5 14. Any party requesting special court reporter services for any hearing  
6 (*i.e.*, real time transmission, daily transcripts) shall notify the reporter as least two  
7 weeks before the hearing date.

8 15. All pretrial document copies delivered to the Court shall be “binder-  
9 ready” (three-hole punched on the left side, without blue-backs or staples).

10 F. JURY INSTRUCTIONS, VERDICT FORMS AND  
11 QUESTIONNAIRES

12 1. **No later than the Monday one week before trial**, counsel shall  
13 submit both general and substantive jury instructions in the form described below.  
14 If possible, all instructions should be taken from the *Manual of Model Criminal*  
15 *Jury Instructions for the Ninth Circuit* (West Publishing, current edition). Where  
16 no applicable Ninth Circuit model instruction is available, counsel should consult  
17 the instructions from O’Malley, Grenig & Lee (formerly Devitt, et al.), *Federal*  
18 *Jury Practice and Instructions* (West Publishing Co., current edition). When  
19 submitting other than Ninth Circuit instructions, counsel should be sure that the  
20 law on which the instruction is based is the same as Ninth Circuit law on the  
21 subject. Counsel may submit alternatives to the Ninth Circuit model jury  
22 instructions or O’Malley, Grenig & Lee instructions only if counsel has a  
23 reasoned argument that those instructions do not properly state the law or they are  
24 incomplete.

25 2. The parties must submit JOINT jury instructions and a JOINT  
26 proposed verdict form. In order to produce these joint instructions, the parties  
27 shall meet and confer sufficiently in advance of the required submission date with  
28 the goal of agreeing on instructions and verdict forms. Where the parties cannot

1 agree, disputed instructions shall be submitted Wednesday before trial as follows:  
2 1) JOINT jury instructions (those instructions agreed to by all parties); and 2)  
3 DISPUTED jury instructions (those instructions propounded by a party to which  
4 another party objects). On a separate page following each disputed jury  
5 instruction, the party opposing the instruction shall briefly state the basis for the  
6 objection, any authority in support thereof and, if applicable, an alternative  
7 instruction. On the following page, the party proposing the disputed instruction  
8 shall briefly state its response to the objection, and any authority in support of the  
9 instruction. Each requested jury instruction shall be numbered and set forth in  
10 full on a separate page, citing the authority or source of the requested instruction.

11 3. Jury instructions should be modified as necessary to fit the facts of  
12 the case (*e.g.*, inserting names of defendant(s) or witness(es) to whom instruction  
13 applies). Where language appears in brackets in the model instruction, counsel  
14 shall select the appropriate text and eliminate the inapplicable bracketed text.

15 4. An index page shall accompany all jury instructions submitted to the  
16 Court. The index page shall indicate the following:

- 17 a. The number of the instruction;
- 18 b. A brief title of the instruction;
- 19 c. The source of the instruction; and
- 20 d. The page number of the instruction.

21 EXAMPLE:

| 22 Number | Title               | Source         | Page Number |
|-----------|---------------------|----------------|-------------|
| 23 #1     | Conspiracy-Elements | 9th Cir. 8.5.1 | 1           |

24  
25 5. One or more copies of the instructions will be given to the jury  
26 during deliberations. Accordingly, counsel must submit to the Chambers' e-mail  
27 address a "clean" set of all instructions in Word or WordPerfect format,  
28 containing only the text of each instruction, set forth in full on each page, with the



1 caption “Instruction No. \_\_\_\_” (eliminating titles, supporting authority, indication  
2 of party proposing, etc.). A paper Chambers copy must also be submitted.

3 6. Counsel shall submit a proposed verdict form with the jury  
4 instructions.

5 7. At least by Wednesday before trial, each counsel must file any  
6 proposed questions to be asked of prospective jurors.

7 G. INSTRUCTIONS GOVERNING PROCEDURE DURING TRIAL

8 1. Water is permitted in the courtroom. Food is not permitted in the  
9 courtroom.

10 2. Counsel shall rise when addressing the Court. Counsel and the  
11 defendant shall rise when the jury enters or leaves the courtroom. Special  
12 procedures or exceptions may apply when the defendant is in custody or  
13 restrained.

14 3. In trial, all remarks shall be addressed to the Court. Counsel shall  
15 not directly address the CRD, the court reporter or opposing counsel without the  
16 Court’s permission. All requests for re-reading of questions or answers, or to  
17 have an exhibit placed in front of a witness, shall be addressed to the Court.

18 4. Counsel shall not discuss the law or argue the case in opening  
19 statements.

20 5. Counsel shall not refer to any witness -- including a client -- over 14  
21 years of age by his/her first name during trial.

22 6. No “speaking objections” are allowed. When objecting, counsel  
23 shall stand, state only the legal ground of the objection, *e.g.*, hearsay, irrelevant,  
24 etc. Counsel shall not argue an objection before the jury. Requests to approach  
25 sidebar to argue an objection further should be made sparingly, and may not be  
26 granted.

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1           7. Counsel shall not make facial expressions, nod, shake their heads,  
2 comment, or otherwise exhibit in any way any agreement, disagreement, or other  
3 opinion or belief concerning the testimony of a witness. Counsel shall admonish  
4 their clients and witnesses not to engage in such conduct.

5           8. Counsel should not talk to jurors at all, and should not talk to co-  
6 counsel, opposing counsel, witnesses, or clients where the conversation can be  
7 overheard by jurors. Each counsel should admonish counsel's own clients and  
8 witnesses to avoid such conduct.

9           9. Counsel shall question witnesses from the lectern. Counsel shall not  
10 approach the witness box or enter the well without the Court's permission, and  
11 shall return to the lectern when counsel's purpose has been accomplished.

12           10. No document shall be placed before a witness unless a copy has been  
13 provided to the Court and opposing counsel. Counsel may consider such devices  
14 as overhead projectors, jury notebooks for admitted exhibits, or enlargements of  
15 important exhibits. The Court has an Elmo projector and other equipment  
16 available for use during trial. Counsel may call the CRD if they wish to visit  
17 when the Court is not in session to practice using the equipment. The Court does  
18 not permit exhibits to be "published" by passing them up and down the jury box.  
19 Exhibits may be displayed briefly using the screen in the courtroom, unless the  
20 process becomes too time-consuming.

21           11. Counsel should not offer a stipulation without having conferred with  
22 opposing counsel and having reached an agreement. Any stipulation of fact will  
23 require defendant's personal concurrence and shall be submitted to the Court in  
24 writing for approval. A proposed stipulation should be explained to the  
25 defendant(s) in advance.

26           12. While court is in session, counsel shall not leave counsel table to  
27 confer with investigators, paralegals, secretaries, witnesses, etc., unless  
28 permission is granted in advance.

1           13. When a party has more than one lawyer, only one lawyer may  
2 conduct the examination of a given witness, and only that same lawyer may  
3 handle objections during the testimony of that witness.

4           14. If a witness was on the stand at a recess or adjournment, counsel who  
5 called the witness shall ensure the witness is back on the stand and ready to  
6 proceed when trial resumes.

7           15. Counsel are directed to have witnesses available throughout the court  
8 day. If no witnesses are available and there is more than a brief delay, the Court  
9 may deem counsel to have rested.

10          16. The Court attempts to cooperate with expert witnesses and other  
11 professionals, and will, except in extraordinary circumstances, accommodate  
12 them by permitting them to be called out of sequence. Counsel are urged to  
13 anticipate any such possibility and to discuss it with opposing counsel. If there is  
14 an objection, counsel shall confer with the Court in advance.

15          17. Counsel must notify the CRD in advance if any witness should be  
16 accommodated based on the Americans with Disabilities Act or for other reasons.

17          18. Each counsel should keep counsel's own list of exhibits and should  
18 note when each has been admitted into evidence.

19          19. Each counsel is responsible for any exhibits that counsel secures  
20 from the CRD and must return them before leaving the courtroom at the end of  
21 the session.

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20. An exhibit not previously marked should, at the time of its first mention, be accompanied by a request that the CRD mark it for identification. To save time, counsel must show a new exhibit to opposing counsel before it is mentioned in Court.

IT IS SO ORDERED.

Dated: July 19, 2013

MICHAEL W. FITZGERALD  
United States District Judge