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DISTRICT COURT OF GUAM

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JEANNE G. QUINATA
CLERK OF COURT

DISTRICT COURT OF GUAM

TERRITORY OF GUAM

In Re:

GENERAL ORDER NO. 15-0004

CRIMINAL TRIAL DOCUMENTS

Based on the court's observation from previous criminal trials¹ and in an effort to streamline the trial process and avoid any unnecessary delays throughout the course of trial, the court hereby **ORDERS** the following:

1. **Trial Brief**. A trial brief shall contain the following information:

- a. **Table of Contents.**
- b. **Table of Authorities.**
- c. **Case Posture:** name(s) of the defendant(s), charge(s) in the indictment, and procedural history of the case.
- d. **Basic Facts:** factual narration of the case.

¹ See, e.g., *United States v. Arias*, No. CR-14-00009 (parties informed that due to the problems encountered during trial, the court will be issuing an order to promote efficiency and ensure proper trial preparation).

1 e. **Charges and Related Issues:** list of the charge(s), the elements for each charge,
2 and any relevant caselaw that may be helpful to that particular charge. For
3 example:

4 Conspiracy to Distribute Methamphetamine is a criminal
5 offense under Sections 841(a) and 846 of Title 21, United States
6 Code. The elements of this offense are as follows:

- 7 1. First, beginning on or about XXXX, and ending on or
8 about XXXX, there was an agreement between two or
9 more persons to distribute methamphetamine; and
- 10 2. Second, the defendant joined in the agreement knowing
11 of its purpose and intending to help accomplish that
12 purpose.

13 Ninth Circuit Model Criminal Jury Instructions, Instruction 9.19.

14 “A conspiracy may be proven by circumstantial evidence
15 that the defendants acted together with a common goal.” *United*
16 *States v. Williams*, 547 F.3d 1187, 1196 (9th Cir. 2008). *See also*
17 *United States v. Corona-Verbera*, 509 F.3d 1105, 1117 (9th Cir.
18 2007) (same); *United States v. Ching Tang Lo*, 447 F.3d 1212,
19 1226 (9th Cir. 2006) (same).

20 “The agreement need not be explicit, but may be inferred
21 from circumstantial evidence.” *United States v. Kiriki*, 756 F.2d
22 1449, 1453 (9th Cir. 1985). *See also United States v. Melchor-*
23 *Lopez*, 627 F.2d 886, 891 (9th Cir. 1980) (same).

1 “Once the existence of a conspiracy is established,
2 evidence which establishes beyond a reasonable doubt that a
3 defendant is even slightly connected with the conspiracy is
4 sufficient to convict.” *Corona-Verbera*, 509 F.3d at 1117
5 (quotation marks omitted). “A defendant may be ‘slightly
6 connected’ even if he did not know all the conspirators, did not
7 know all the details of the conspiracy, did not participate in the
8 conspiracy from the outset, and did not participate in all the
9 enterprises of the conspiracy.” *Id.*

10 Finally, it does not matter whether the criminal object of
11 the conspiracy was ever attained, so long as the defendant—as a
12 member of the conspiracy—intended to help attain it. *See, e.g.,*
13 *United States v. Bosch*, 914 F.2d 1239, 1241 (9th Cir. 1990)
14 (upholding conviction for conspiracy to aid and abet the possession
15 of cocaine with intent to distribute and to aid and abet the
16 distribution of cocaine even though the undercover IRS agent
17 never possessed or distributed cocaine and no crime of possession
18 or distribution occurred).

19 f. **Anticipated Evidence:** list of witnesses and the offer of proof for each witness.

20 For example:

21 FBI Special Agent M. Terrell Lynch will testify to his surveillance
22 of the deal, and will authenticate the photographs of the seized
23 methamphetamine, the actual seized methamphetamine, the
24 photographs of the handgun, and the actual handgun. Agent Lynch

1 may also offer lay opinion testimony on the accuracy of the
2 transcripts, based on his fluency in both the English and Gaelic
3 languages.

- 4 **g. Evidentiary and Other Trial Issues:** discuss any evidentiary issues that may
5 arise at trial, such as *prima facie* threshold for authentication, foundation for audio
6 recordings, admission of audio recordings, voice identification foundation,
7 playing of recordings for the jury, photographs foundation, admission of
8 photographs, chain of custody, lay witness opinion, expert witness opinion,
9 witness impeachment by prior bad acts, and co-conspirator hearsay statements.

10 For example:

11 Photographs. Copies of photographs may be introduced.

12 Under Rule 901 of the Federal Rules of Evidence, a witness
13 familiar with a scene or object may provide a sufficient foundation
14 for admission of a photograph by testifying that the photograph
15 fairly and accurately depicts the scene or the object at some
16 relevant time. *See United States v. Brannon*, 616 F.2d 413, 416
17 (9th Cir.), *cert. denied sub nom. Cox v. United States*, 447 U.S. 908
18 (1980).

19 Foundation for Audio Recordings. The Ninth Circuit has
20 specifically disapproved of “rigid foundation requirements” for the
21 authentication of audio recordings. *United States v. King*, 587 F.2d
22 956, 960 (9th Cir. 1978). An audio recording has proper
23 foundation for admission when a law enforcement agent testifies
24 that he was responsible for recording the conversation; that the all

1 or nearly all of the conversation was recorded; that little of the
2 recording is inaudible, and that as a whole it is an accurate and
3 complete recording of the conversation. *See United States v.*
4 *Mouton*, 617 F.2d 1379, 1383-84 (9th Cir. 1980) (citation omitted).

5 **h. Conclusion.**

- 6 2. **Witness List.** The Witness List shall include the full name of the witness, his/her title
7 and place of employment (if testifying in that capacity), village of residency, and family
8 name (if any). For example:

9 M. Terrell Lynch
10 Special Agent, Federal Bureau of Investigation
11 Yona
12 *Familian Hawks*

- 13 3. **Exhibit List.** The Exhibit List shall be organized based on each witness, and it shall
14 include the exhibit number and its description. For example:

15 Witness No. 1: M. Terrell Lynch
16 Special Agent, Federal Bureau of Investigation

Exhibit No.	Page No.	Description
24	24-1 to 24-12	Application for a Search Warrant, Case No. MJ-XX-XXXXX

18
19 Witness No. 2: R. Kevin Sherman
20 Special Agent, IRS-Criminal Investigations

Exhibit No.	Page No.	Description
25	25-1 to 25-12	Tax Returns of Defendant

1 In submitting the exhibit list, the prosecutor shall include a certification page, certifying
2 that he or she has reviewed the exhibit list and that it is accurate to the best of his or her ability.
3 The certification page shall also include the signature of the U.S. Attorney, certifying the same.

4 4. **Trial Preparation.** Trial preparation is critical to ensuring fewer delays at trial.

5 Accordingly, the court reminds all counsel—the prosecutor and defense—to be mindful
6 of the importance of trial preparation, including but not limited to thorough review of the
7 Federal Rules of Evidence.

8
9 **SO ORDERED.**



/s/ Frances M. Tydingco-Gatewood
Chief Judge
Dated: Apr 09, 2015