UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA

v. CR No. 08-045 ML

DOLORES RODRIGUEZ LAFLAMME

JURY INSTRUCTIONS

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PART I: GENERAL INSTRUCTIONS

1. INTRODUCTION

Members of the jury, we have now come to the end of this trial. This case, like all criminal cases, is a serious one. I say this because the defendant and the United States have a deep concern for your mature consideration of the evidence as presented and the law which I am about to give you.

Although you as the jury are the sole judges of the facts, you are duty bound to follow the law as I instruct you, and to apply that law to the facts as you find them to be from the evidence which has been presented during this trial. You are not to single out any one instruction as stating the law. Rather, you must consider these instructions in their entirety. You are not to be concerned with the wisdom of any rule of law, regardless of any opinion which you might have as to what the law ought to be. It would be a violation of your sworn duty to base your verdict upon any version of the law other than that which I am about to give to you.

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the indictment and the denials made by the "not guilty" plea of the defendant. You are to perform this duty without bias or prejudice as to any party. The law does not permit jurors to be governed by sympathy, prejudice, or public opinion. Both the accused and the government are entitled to a fair and impartial consideration of all the evidence. Moreover, the parties and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the Court, and reach a just verdict, regardless of the consequences.

The fact that the prosecution is brought in the name of the United States of America entitles the government to no greater consideration than that accorded to any other party to a litigation. By the same token, it is entitled to no less consideration. All parties, whether the government or individuals, stand as equals at the bar of justice.

2. EVIDENCE RECEIVED IN THIS CASE

For the purpose of determining whether or not the government has sustained its burden of proof, you must evaluate all of the evidence. The evidence in this case consists of the sworn testimony of the witnesses, all exhibits received in evidence, and any facts to which the parties have stipulated.

Any proposed testimony or proposed exhibit to which an objection was sustained by the Court, as well as any testimony ordered stricken by the Court, must be entirely disregarded.

Anything you may have seen or heard outside the courtroom is not proper evidence and must be entirely disregarded.

3. INDICTMENT – DEFINED

An indictment is not evidence. This case, like most criminal cases, began with an indictment. You will have that indictment before you in the course of your deliberations in the jury room. The indictment was returned by a grand jury, which heard only the government's side of the case. The fact that the defendant has had an indictment filed against her is no evidence whatsoever of her guilt. An indictment is nothing more than an accusation. It is a piece of paper filed with the Court to bring a criminal charge against a defendant. Here, the defendant has pleaded not guilty and has put in issue the charges alleged in the indictment. The

government therefore has the burden of proving the allegations made against the defendant beyond a reasonable doubt. The fact that an indictment has been filed in this case does not give rise to a presumption of guilt. It does not even lead to an inference of guilt. The indictment simply brings this matter before you for determination. Beyond that, it has no significance whatsoever.

4. INFERENCES – DEFINED

In determining whether the government has sustained its burden of proof, you are to consider only the evidence. But in your consideration of the evidence, you are not limited to the statements of witnesses, or solely to what you see and hear as the witnesses testify. You are permitted to draw, from the facts which you find have been proven, such reasonable inferences as seem justified in light of your experiences.

Inferences are deductions or conclusions which reason and common sense lead you to draw from facts which have been established by the evidence in the case. You may not, however, draw an inference from another inference.

5. EVIDENCE – DIRECT AND CIRCUMSTANTIAL

There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness that the witness saw something. Circumstantial evidence is indirect evidence, that is, proof of a fact or facts from which you could draw the inference, by reason and common sense, that another fact exists, even though it has not been proven directly. You are entitled to consider both kinds of evidence. The law

permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

6. OBJECTIONS AND WEIGHT OF THE EVIDENCE

The fact that the Court may have admitted evidence over objection should not influence you in determining the weight that you will give such evidence. Nor should statements made by counsel, either for or against the admission of offered evidence, influence your determination of the weight that you will give the evidence if admitted. In other words, you should determine the weight that you will give such evidence on the basis of your own independent consideration of it and without regard to the statements of counsel concerning the admissibility of such evidence.

7. JURY'S RECOLLECTION CONTROLS

If any reference by the Court or by counsel to matters of evidence does not coincide with your own recollection, it is your recollection which should control during your deliberations.

8. PRESUMPTION OF INNOCENCE

It is a cardinal principle of our system of justice that every person accused of a crime is presumed to be innocent unless and until his or her guilt is established beyond a reasonable doubt. The presumption is not a mere formality. It is a matter of the utmost importance.

The presumption of innocence alone may be sufficient to raise a reasonable doubt and to require the acquittal of a defendant. The defendant before you has the benefit of that presumption throughout the trial, and you are not to convict her of a particular charge unless you are unanimously persuaded of her guilt on that charge beyond a reasonable doubt.

This presumption was the defendant when the trial began and remains with the defendant even now as I speak to you and will continue with her into your deliberations unless and until you are convinced that the government has proven the defendant's guilt beyond a reasonable doubt.

9. BURDEN OF PROOF

As I have said, the burden is upon the government to prove beyond a reasonable doubt that a defendant is guilty of the charge made against the defendant. It is a strict and heavy burden, but it does not mean that a defendant's guilt must be proved beyond all possible doubt. It does require that the evidence exclude any reasonable doubt concerning a defendant's guilt.

A reasonable doubt may arise not only from the evidence produced but also from a lack of evidence. Reasonable doubt exists when, after weighing and considering all the evidence, using reason and common sense, jurors cannot say that they have a settled conviction of the truth of the charge.

Of course, a defendant is never to be convicted on suspicion or conjecture. If, for example, you view the evidence in the case as reasonably permitting either of two conclusions–one that the defendant is guilty as charged, the other that the defendant is not guilty–you will find the defendant not guilty.

It is not sufficient for the government to establish a probability, though a strong one, that a fact charged is more likely to be true than not true. That is not enough to meet the burden of proof beyond a reasonable doubt. On the other hand, there are very few things in this world that

we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt.

I instruct you that what the government must do to meet its heavy burden is to establish the truth of each element of each offense charged by proof that convinces you and leaves you with no reasonable doubt, and thus satisfies you that you can, consistently with your oath as jurors, base your verdict upon it. If you so find as to a particular charge against the defendant, you will return a verdict of guilty on that charge. If, on the other hand, you think there is a reasonable doubt about whether the defendant is guilty of a particular offense, you must give the defendant the benefit of the doubt and find the defendant not guilty of that offense.

10. CONSIDER EACH COUNT SEPARATELY

You must consider each charge separately. The fact that you find the defendant guilty or not guilty on one count does not mean that you should find the defendant guilty or not guilty on any other count.

PART II: THE OFFENSES CHARGED

11. "ON OR ABOUT" – DEFINED

You will note that the indictment charges that the offenses were committed "on or about" certain dates. The proof need not establish with certainty the exact date of the alleged offense. It is sufficient that the evidence in the case establishes beyond a reasonable doubt that the offenses were committed on dates reasonably near the dates alleged in the indictment.

12. CHARGES CONTAINED IN THE INDICTMENT

The indictment in this case contains 12 counts or "charges." The defendant in this case is Dolores Rodriguez LaFlamme.

Count 1 charges that beginning on or about August 1, 2006 and continuing until on or about October 10, 2007, defendant LaFlamme conspired with unindicted co-conspirators and others to produce and transfer, and to attempt to produce and transfer, identification documents, that is, Rhode Island driver's licenses, in and affecting interstate commerce, knowing that such documents were produced without lawful authority, in violation of 18 U.S.C. § 1028(a)(1) and (2) and 18 U.S.C.§ 1028(f).

Counts 2 through 7 of the indictment charge that defendant LaFlamme did knowingly and without lawful authority produce identification documents that were and appeared to be Rhode Island driver's licenses, the production of which was in and affecting interstate and foreign commerce, and which were transported in the mail in the course of the unauthorized production, in violation of 18 U.S.C. § 1028(a)(1) and (b)(1)(A)(ii).

Counts 8 through 12 of the indictment charge that defendant LaFlamme, without lawful authority, did knowingly produce, transfer, and use a means of identification of other persons, to wit, their names, social security numbers, and dates of birth, during and in relation to the conspiracy to commit identity fraud alleged in Count 1 and the commission of identity fraud alleged in Counts 2 through 7 of the indictment.

I remind you that a separate crime is alleged against the defendant in each count of the indictment and you must consider each alleged offense, and any evidence pertaining to it, separately. The fact that you find the defendant guilty or not guilty as to one of the offenses charged should not control your verdict as to the other offenses charged against her.

13. COUNTS 2 – 7: IDENTITY FRAUD - 18 U.S.C. § 1028(a)(1)

Counts 2 through 7 of the indictment each charge that defendant LaFlamme committed identity fraud, in violation of 18 U.S.C. § 1028(a)(1) and (b)(1)(A)(ii).

A violation of section 1028(a)(1) occurs when a person "knowingly and without lawful authority produces an identification document." To constitute a violation under the statute, the conduct must be in or affecting interstate or foreign commerce, or the identification document must have been transported in the mail in the course of the unauthorized production.

14. 18 U.S.C. § 1028(a)(1) – ELEMENTS OF THE OFFENSE

To sustain its burden of proof on a charge of identity fraud, the government must prove each of the following elements beyond a reasonable doubt:

First, that the defendant knowingly produced an identification document;

Second, that the defendant produced an identification document without lawful authority;

Third, that the production of the identification document was in or affected interstate or foreign commerce, or that the identification document was transported in the mail in the course of the unauthorized production.

15. "KNOWINGLY" – DEFINED

The first element of the offense of identity fraud requires proof that the defendant knowingly produced an identification document.

The word "knowingly," as that term is used in these instructions, means that the act was done voluntarily and intentionally and not because of mistake or accident.

16. PROVING INTENT AND KNOWLEDGE

Intent or knowledge may not ordinarily be proven directly because there is no way of directly scrutinizing the workings of the human mind. However, you may infer the defendant's intent or state of mind from the surrounding circumstances. In determining what the defendant knew or intended at a particular time, you may consider any statements made or acts done or omitted by the defendant and all other facts and circumstances received in evidence that may aid in your determination of the defendant's intent or state of mind. You may infer, but you certainly are not required to infer, that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. It is entirely up to you, however, to decide what facts are proven by the evidence received during this trial.

17. "IDENTIFICATION DOCUMENT" AND "PRODUCE" - DEFINED

The term "identification document" means a document made or issued by or under the authority of a state or a political subdivision of a state which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

The term "produce" includes alter, authenticate, or assemble. A defendant may be convicted of identity fraud even if the defendant did not produce the identification document herself, but caused an innocent third party to produce an identification document.

18. "IN OR AFFECTED INTERSTATE OR FOREIGN COMMERCE" – DEFINED

To prove that the production of an identification document was "in or affected interstate or foreign commerce," the government need only show a minimal nexus with interstate or foreign commerce. The government may satisfy this requirement by showing that the identification document traveled via interstate commerce. The government may also satisfy its burden by showing that the defendant's actions actually affected interstate commerce or by showing that the defendant had the intent to accomplish acts, which, if successful, would have affected interstate or foreign commerce. The production of a driver's license has some effect upon interstate commerce. In addition, the operation of a motor vehicle, even if it does not leave Rhode Island, sufficiently affects interstate commerce to satisfy the minimal nexus requirement.

19. COUNT 1: CONSPIRACY TO COMMIT IDENTITY FRAUD

Count 1 of the indictment alleges that the defendant LaFlamme, in violation of 18 U.S.C. § 1028(f), engaged in a conspiracy to commit identity fraud. The indictment alleges that:

> Beginning on or about August 1, 2006 and continuing until on or about October 10, 2007, in the District of Rhode Island and elsewhere, the defendant, DOLORES RODRIGUEZ LAFLAMME, knowingly and willfully combined, conspired, confederated, and agreed with unindicted co-conspirators and others known and unknown to the Grand Jury, to produce and transfer, and to attempt to produce and transfer, identification documents, that is, Rhode Island driver's licenses, in and affecting interstate commerce, knowing that such documents were produced without lawful authority, in violation of 18 U.S.C. § 1028(a)(1) and (2).

The indictment alleges that the object of the conspiracy was "to produce and transfer Rhode Island driver's licenses without lawful authority for the purpose of selling fraudulently issued Rhode Island driver's licenses to individuals who were not entitled to obtain them by lawful means."

20. 18 U.S.C. § 1028(f) – ELEMENTS OF THE OFFENSE

For you to find the defendant guilty of conspiracy to commit identity fraud, you must be convinced that the government has proven each of the following elements beyond a reasonable doubt:

First, that the conspiracy charged in the indictment existed between at least two people to produce and transfer identification documents produced without lawful authority;

Second, that the defendant willfully joined in that conspiracy; and,

Third, that at least one of the conspirators committed one of the overt acts alleged in the indictment during the period of the conspiracy to further the purpose of the conspiracy.

21. CONSPIRACY GENERALLY

A conspiracy is an agreement or combination of two or more persons to violate the law. It is a kind of partnership in which each member of the conspiracy, just by being a member of the conspiracy, becomes an agent of every other member of the conspiracy. What this means is that each conspirator not only acts for himself, but also acts for the other conspirators. In other words, a conspiracy is a combination or an agreement to disobey or disregard the law to achieve the unlawful purpose.

In this case, the indictment alleges that there was an agreement between defendant LaFlamme and unindicted co-conspirators and others to commit identity fraud. It is not necessary that the government prove that the unlawful purpose of the conspiracy actually was achieved in order to prove that the conspiracy existed. It must prove, however, that defendant LaFlamme and the co-conspirators in some way or manner, or through some means, came to a mutual understanding to accomplish their common unlawful purpose and that they did so knowingly, willfully, and intentionally.

22. CONSPIRACY – TIME PERIOD

The indictment charges that the conspiracy existed from on or about August 1, 2006 to on or about October 10, 2007. In determining whether the defendant LaFlamme conspired as charged, you need not find the precise time frame in which the conspiracy was in existence. Instead, it is sufficient that you find that a conspiracy was in existence for any period of time reasonably described by the period alleged in the indictment, and that the defendant LaFlamme was a member of that conspiracy during that period.

23. EXISTENCE OF A CONSPIRACY

In your consideration of the conspiracy offense alleged in Count 1, you should first determine, from all of the testimony and evidence in the case, whether or not a conspiracy existed as charged.

A conspiracy is an agreement, spoken or unspoken. The conspiracy does not have to be a formal agreement or plan in which everyone involved sat down together and worked out all the details. However, the government must prove beyond a reasonable doubt that those who were involved shared a general understanding about the crime. Mere similarity of conduct among various people, or the fact that they may have associated with each other or discussed common aims and interests, does not necessarily, in and of itself, establish proof of the existence of a conspiracy, but you may consider such factors.

Since a conspiracy, by its very nature, is often secret; neither the existence of the common agreement or scheme nor the fact of a defendant's participation in it need be proven by direct evidence. Both may be inferred from the circumstances of the case and course of dealings between defendant LaFlamme and unindicted co-conspirators.

24. "WILLFULLY" – DEFINED

In addition to proving that the conspiracy charged in the indictment existed, the government must also prove beyond a reasonable doubt that the defendant LaFlamme willfully joined in that agreement. To act "willfully" means to act voluntarily and intelligently, and with the specific intention that the underlying crime–here, identity fraud–be committed. In other

words, to act willfully means to act with bad purpose, either to disobey or disregard the law–not to act by ignorance, accident, or mistake.

Proof that the defendant willfully joined in the agreement must be based upon evidence of her own words and/or actions. You need not find that the defendant agreed specifically to or knew about all the details of the crime, or that she knew every other co-conspirator, or that she participated in each act of the agreement or played a major role, but the government must prove beyond a reasonable doubt that she knew the essential features and general aims of the venture. It is not necessary that the government prove all of the names of the defendant's co-conspirators, but it is necessary that the government present evidence of an agreement between two or more persons. The essence of a conspiracy is the existence of the conspiracy agreement, not the identity of those who agree.

Even if the defendant was not part of the agreement at the very start, she can be found guilty of conspiracy if the government proves that she willfully joined the agreement later. On the other hand, a person who has no knowledge of a conspiracy, but simply happens to act in a way that furthers some object or purpose of the conspiracy, does not thereby become a conspirator.

Mere knowledge of or acquiescence in an unlawful plan, without participation in it, is not sufficient. More is required under the law. What is necessary is that a defendant participated with knowledge of the purposes or objectives of the conspiracy and with the intention of aiding in the accomplishment of those objectives.

The extent of a defendant's participation in a conspiracy has no bearing on the issue of that defendant's guilt. A conspirator's liability is not measured by the extent or duration of that

conspirator's participation. Each conspirator may perform separate and distinct acts and may perform them at different times. Some conspirators play major roles, while others play minor parts in the scheme. An equal role is not what the law requires. Even a single act may be sufficient to draw a defendant within the ambit of a conspiracy if the act is done with the intention of agreeing to join the conspiracy and the intention of accomplishing the conspiracy's unlawful purpose.

25. INTENT

To establish that defendant LaFlamme willfully joined in the conspiracy charged in the indictment, the government must prove two types of intent beyond a reasonable doubt: (1) an intent to agree; and (2) an intent that the underlying crime, in this case, intent to commit identity fraud, be committed. The government need not prove that the defendant agreed to commit the underlying offense personally. It is sufficient that the defendant intended that the offense be committed, if not by herself, then by a co-conspirator. Mere presence at the scene of the crime is not alone enough, but you may consider it among other factors. An individual's intent may be inferred from all of the surrounding circumstances.

26. CONSIDERATION OF ACTS AND STATEMENTS OF CO-CONSPIRATORS

In deciding whether defendant LaFlamme was a member of the conspiracy, you should first consider the evidence of defendant LaFlamme's own acts and statements. You may also consider any other evidence in the case as it bears on the issue of the defendant's membership. Specifically, you may consider the acts and statements of the other alleged co-conspirators, even

if defendant LaFlamme was not present at the time the acts were done or the statements were made. However, you may do so only if you find that the defendant was a member of the conspiracy at the time the acts were done or the statements made, and only if you find that the acts were done and the statements were made by a person whom you find to be a member of the conspiracy during the conspiracy's existence and in furtherance of one it its purposes. If the acts were performed or the statements were made at a time when defendant LaFlamme was not a member of the conspiracy, or were performed or made by someone whom you do not find to have been a member of the conspiracy, or if they were not done or said in furtherance of the conspiracy, then they may be considered as evidence only against the conspiracy member who did or said them and not against the defendant.

You are instructed that in this case defendant LaFlamme is alleged to have entered into the agreement described in the indictment with unindicted co-conspirators and others.

27. OVERT ACT REQUIREMENT

In order to prove a conspiracy, the government must prove that, after the conspiracy was entered, one of the members of the conspiracy committed an overt act in an effort to accomplish some purpose of the conspiracy. In this case, paragraph 9 of the indictment sets forth the overt acts alleged to have been committed in furtherance of the conspiracy charged.

An "overt act" is any act knowingly committed by one or more of the conspirators in an effort to accomplish some purpose of the conspiracy. Only one overt act has to be proven. The overt act need not itself be a crime. It is sufficient if one conspirator committed one overt act at

some time during the period of the conspiracy. However, you must unanimously agree as to which overt act alleged in the indictment has been proven beyond a reasonable doubt.

28. CONSPIRACY – SUCCESS IMMATERIAL

The government does not have to prove that the conspiracy succeeded or that its goal was achieved. The crime of conspiracy is complete upon the agreement to commit the underlying crime and the commission of one overt act.

29. COUNTS 8 – 12: AGGRAVATED IDENTITY THEFT

The defendant is charged in Counts 8 through 12 of the indictment with knowingly transferring, possessing, or using, without lawful authority, a means of identification of another person during and in relation to the conspiracy to commit identity fraud and the commission of identity fraud alleged in Count 1 and Counts 2 through 7 of the indictment.

30. 18 U.S.C. § 1028A(a)(1) – ELEMENTS OF THE OFFENSE

In order for the defendant to be found guilty of aggravated identity theft, the government must prove each of the following elements beyond a reasonable doubt:

First, that the defendant knowingly transferred, possessed, or used a means of identification of another person; and,

Second, when the defendant transferred, possessed or used a means of identification of another person, the defendant did so without lawful authority; and,

Third, that the defendant transferred, possessed, or used the means of identification of another person during and in relation to the conspiracy to commit identity fraud as alleged in Count 1 of the indictment and/or identity fraud as alleged in Counts 2 through 7 of the indictment.

31. "MEANS OF IDENTIFICATION" - DEFINED

The term "means of identification" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any name, social security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number.

32. "DURING AND IN RELATION TO" - DEFINED

In order for you to find that the defendant acted "during and in relation to" an offense, you must find that the unauthorized transfer, possession, or use of the means of identification facilitated or played a role in the offense. You may use the Court's definitions of these elements of the offenses alleged in Count 1 and Counts 2 through 7 in considering whether the defendant's actions facilitated or played a role in the commission of the offenses alleged in Count 1 or Counts 2 through 7, keeping in mind that Counts 8 through 12 charge transfer, possession, use of a means of identification during and in relation to either the conspiracy alleged in Count 1 or the identity fraud and unlawful production of identification documents alleged in Counts 2 through 7. You need only find that the defendant engaged in an unauthorized transfer, possession or use

of the means of identification during and in relation to one of the offenses specified, and not both, in order for you to find the defendant guilty of the offenses charged in Counts 8 through 12.

33. "KNOWINGLY" - DEFINED

The government must prove that the defendant knew that she did not have lawful authority to use the means of identification in question, and that the defendant knew that the means of identification belonged to an actual person. As mentioned earlier, the word "knowingly" means that the act was done voluntarily and intentionally and not because of mistake or accident.

PART III: CONSIDERATION OF THE EVIDENCE

34. EXHIBITS

Exhibits admitted into evidence by the Court are properly before you, and will be available to you during your deliberations. An exhibit marked by the Court for identification is not evidence in the case unless or until it was admitted by the Court as a full exhibit. If it has not been admitted as a full exhibit, you may not consider it. If it was admitted, however, it is just as much a part of the evidence in the case as the testimony which you have heard from the witness stand.

35. REMARKS OF COUNSEL

Remarks, statements, and questions by counsel are not evidence and you are not to consider them as evidence during your deliberations. Neither should you permit objections by counsel to the admission of evidence, or the rulings of the Court, to create any bias or prejudice toward counsel or the party whom he or she represents. It is the duty of counsel for both sides to represent their clients vigorously and to defend their clients' rights and interests. In the performance of that duty, counsel freely may make objection to the admission of offered evidence, or to any other ruling of the Court, and neither the attorney nor the client should not be penalized for doing so.

36. CONDUCT OF COURT AND COUNSEL

If during trial, or in instructing you, I have said or done anything that has caused you to believe that I was indicating an opinion as to what the facts are in this case, you should put that

belief out of your mind. I did not intend to indicate any such opinion. In fact, I try not to have an opinion about the case because you are the sole and exclusive judges of the facts.

In determining the facts, you are to consider only that evidence which has properly been placed before you. It is the Court's duty to pass upon the admissibility of offered evidence, that is, to decide whether or not offered evidence should be considered by you. Evidence admitted by the Court is properly before you for your consideration; evidence which the Court has refused to admit, or may have stricken from the record after you heard it, is not a proper subject for your deliberations and you should not consider it.

PART IV: CREDIBILITY OF WITNESSES

37. TESTIMONY OF WITNESSES

The law does not require you to accept or credit the evidence admitted. In determining what evidence you will accept, you must make your own evaluation of the testimony given by each of the witnesses, and the weight you choose to give to his or her testimony.

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe everything a witness says or only part of it or none of it.

In deciding what to believe, you may consider a number of factors, including the following: (1) the witness's ability to see or hear or know the things the witness testifies to; (2) the quality of the witness's memory; (3) the witness's manner while testifying; (4) whether the witness has an interest in the outcome of the case or any motive, bias, or prejudice; (5) whether the witness is contradicted by anything the witness said or wrote before trial or by other evidence; and (6) how reasonable the witness's testimony is when considered in light of other evidence which you believe.

Inconsistencies or discrepancies in the testimony of a witness or between the testimony of different witnesses may or may not cause you to disbelieve or discredit such testimony. Two or more persons witnessing an incident or a transaction may simply see or hear it differently. Innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, however, always consider whether it pertains to a matter of importance or an insignificant detail and consider whether the discrepancy results from innocent error or from intentional falsehood.

The testimony of a witness may be discredited or impeached by showing that he or she previously made statements which are different than or inconsistent with his or her testimony here in court. These statements may be used to impeach the credibility of that witness. It is within your province to assess the credibility, if any, to be given the testimony of a witness who has made prior inconsistent or contradictory statements.

38. CAUTION AS TO COOPERATING WITNESS / ACCOMPLICE

You have heard the testimony of Soraya Santiago and Jose Bueno. Each of these individuals received a benefit for their cooperation. Ms. Santiago and Mr. Bueno participated in the conspiracy and provided evidence under agreements with the government.

Some people in this position are entirely truthful when testifying. Still, you should consider the testimony of these individuals with particular caution. They may have had reason to make up stories or exaggerate what others did because they wanted to help themselves.

39. CAUTION AS TO PAID INFORMANT WITNESS / COOPERATING WITNESS

You have also heard the testimony of Carlos Lugo. Mr. Lugo received money from the government in exchange for providing information. Some people in this position are entirely truthful when testifying. Still, you should consider his testimony with particular caution. He may have had reason to make up stories or exaggerate what others did because he wanted to help himself.

PART V: THE DELIBERATIONS AND VERDICT

40. UNANIMOUS VERDICT – JURY CONDUCT

To render a verdict, all twelve of you must agree, that is, your verdict must be unanimous. Therefore, during your deliberations and in your consideration of the evidence, you should exercise reasonable and intelligent judgment. It is not required that you yield your view simply because a majority holds to the contrary view, but in pursuing your deliberations, you should keep your minds reasonably open with respect to any point in dispute so that you will not be prevented from achieving a unanimous verdict due to mere stubbornness. It is your right, however, to maintain your view. The vote of each juror is as important as the vote of any other juror, and you need not give up your view, sincerely held, simply because a majority holds to the contrary view.

Do not approach your consideration of the case in an intellectual vacuum. You are not required to disregard your experiences and observations in the ordinary everyday affairs of life. Indeed, your experiences and observations are essential to your exercise of sound judgment and discretion, and it is your right and duty to consider the evidence in light of such experiences and observations. It is hoped and anticipated that you will sift all of the evidence in this case through maturity and common sense.

Of course, you should not permit prejudice, sympathy, or compassion to influence you. All that any party is entitled to, or expects, is a verdict based upon your fair, scrupulous, and conscientious examination of the evidence and an application of the law as I have instructed you to that evidence.

41. COMMUNICATIONS BETWEEN COURT AND JURY DURING DELIBERATIONS

During your deliberations, if you need further instruction or assistance by the Court in any way, I ask that, through your foreperson, you reduce such requests or questions as you may have to writing. The foreperson may then hand such written request or question to the marshal in whose charge you will be placed. The marshal will bring any written questions or requests to me. I will attempt to fulfill your request or answer your question. Other than the method outlined, please do not attempt to communicate privately or in any other way with the Court.

Bear in mind also that you are never to reveal to any person–not even to the Court–how the jury stands, numerically or otherwise, on the question of whether the accused is guilty or not guilty, until after you have reached a unanimous verdict.