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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,	)	No. 3:13-cr-00103-SLG-DMS
	)	
Plaintiff,	)	**GOVERNMENT'S TRIAL**
	)	**BRIEF**
vs.	)	
	)	
MICHAEL BRANDNER,	)	
	)	
Defendant.	)	
	)	

STATUS OF THE CASE

Trial is scheduled to begin on October 27, 2014. At defendant's request, the deadline for filing this trial brief was extended to Wednesday October 22, 2014.

The indictment charges the defendant with ten-counts. The defendant is charged with seven counts of wire fraud for violating 18 U.S.C. § 1343. He is also charged with three counts of tax evasion for violating 26 U.S.C. § 7201.

Estimated time for the government's case is eight days. The United States expects to call approximately 30 witnesses, and expects to offer approximately 300 exhibits. The United States will be represented by Assistant United States Attorneys Bryan Schroder and by trial attorney Ignacio Perez de la Cruz of the Department of Justice, Tax Division. The defendant is represented by privately-retained counsel D. Randall Ensminger.

STATEMENT OF FACTS

Defendant engaged in a scheme to defraud his wife of marital assets during the pendency of their divorce proceedings. He also committed tax evasion when he willfully engaged in several affirmative acts of evasion

with the intent to evade the assessment of his tax liability for each of the 2008-2010 tax years. Defendant's scheme to defraud his wife of marital assets involved numerous wire communications as it proceeded through four phases.

A. Scheme to Defraud

Phase I: Defendant Collected Millions in Marital Assets

In July 2007, while officially separated from his wife Sheila Brandner, the defendant gathered and collected marital assets, including between 500-1,000 ounces of gold, over $300,000 in cash and five cashier/official checks from various financial institutions: a September 21, 2007 cashier's check for $613,200 from Mountain West Bank, a November 1, 2007 official check for $5,431.09 from Wells Fargo a November 20, 2007 cashier's check for $65,000 also from Wells Fargo Bank a November 21, 2007 official check for $937,436.04 from First Interstate, and a December 3, 2007 official check for $1,767,700.76 from Bank of Texas. The later four checks post-date the filing date of Sheila's October 2, 2007 divorce suit and appear to have been collected outside Alaska.

Later on, in mid-2008, Defendant plotted to conceal his one main remaining in the U.S. asset: a self-directed IRA valued at over a million

dollars held by the Pensco Trust Corp. ("Pensco"). Defendant's various misrepresentations to Pensco culminated when he authorized the transfer and induced Pensco to wire $1,264,500 to Panama on June 24, 2008 under the false representation that the funds were being used to buy stock in a company in an arms-length transaction, when in fact the funds were funneled to a bank account that the defendant controlled. This Pensco transfer was made while a restraining order, dated February 22, 2008, from the divorce court prohibited the defendant from "withdrawing, disposing of, encumbering, transferring, or dissipating" marital assets.

Phase II: <u>Defendant Hid the Marital Assets Overseas Where They Would Be Harder for the Divorce Court to Find</u>

Defendant absconded with the five checks, the cash and the gold and hid them in Central America with one goal in mind: concealing them from the divorce court and ultimately from his divorcing wife. On November 16, 2007, defendant arranged to ship his Mercedes from Anchorage to Tacoma, WA . Then on November 19, 2007, Defendant covertly left the state. Once reunited with his car, defendant drove south into Mexico, through Guatemala and into Costa Rica.

Over the course of two days in January, defendant deposited $104,200 in cash in sub-$10,000 lumps into a bank account in Scotiabank in Costa Rica. Scotiabank closed down his account and issued him a cashier's check for the balance, because as defendant would recount they got "nervous." He deposited another $257,200 in cash at another bank, Banco Nacional de Costa Rica (BNCR) along with the Scotiabank cashier's check.

Similarly, defendant stashed away the gold in a safe deposit box in Costa Rica. The checks were another matter. BNCR refused to deposits such large checks. At the time, an attorney in Costa Rica named Jamileth Narvaez was assisting defendant with his local banking. On January 25, 2008, Narvaez emailed Joseph Saranello and asked him if he could assist defendant. Joseph Saranello was a disbarred American attorney assisting Americans with investments in Panama. Saranello replied that he could help defendant open a bank account in Panama.

On March 16, 2008, defendant met Saranello for the first time. The next day, they went to Capital Bank of Panama, opened an account in defendant's name, and the defendant deposited the five checks totaling $3,388,767.89. With funds from this account, he then bought two one-

year CDs in amounts of one and two million. In violation of the restraining order, the CDs were renewed for two additional years on May 2009 and May 2010.

This concealment phase involved the creation of a shell corporation: Dakota Investments of CA ("Dakota"), with a nominee president – Federico Rodriguez – to conceal defendant's ownership and control of the nearly $3,400,000 hidden in Panama. In reality Federico Rodriguez was a nominee – a Panamanian citizen who for $500 sold Saranello the right to use his identity in corporate documents.

Defendant flew back to Alaska on March 27, 2008. Once in Alaska, defendant continued hiding funds in Panama. On June 23, 2008, he transferred the $389,079.48 balance of his Panama account (opened under his own name) into an account opened under the name of Dakota.

Phase III: <u>Defendant Lied About the Nature, Location and Availability of the Marital Assets</u>

Defendant repeatedly misled to the divorce court either directly or through others, about the nature, location and availability of marital assets. Defendant lied about the offshore assets in every way possible.

The divorce court learned of the large checks defendant had absconded with. Rather than admitting that he bought one-year CDs and had a balance remaining in the Panama bank account, defendant falsely mislead the divorce court and his attorneys into believing that the Panama funds were tied up until 2013 in a five-year promissory note. The defendant provided these the note and the letter to his divorce attorney.

On September 25, 2008, the divorce court modified its restraining order to allow the release of $50,000 into the trust account of his attorney, Suzanne Lombardi, "from any available funds in Dr. Brandner's name," of which $10,000 was to go to Sheila's attorneys. Defendant could have disclosed his bank accounts in Costa Rica, Panama or his gold reserves to ensure compliance with the order. Instead, Defendant told Lombardi that "the two accounts the money was invested in were not available for liquidation," leaving Lombardi to scramble to collect funds from Pensco and from Dakota. As Lombardi explained in her affidavit, Federico Rodriguez told her that no funds were available from Dakota.

Saranello also assisted defendant in misleading the divorce court into thinking that the Panama funds were illiquid. The promissory note cited above was created by Saranello and signed by him purporting to be

from Federico Rodriguez. Similarly, the phone call and email that Lombardi though she had had with Rodriguez as president of Dakota were in fact with Joseph Saranello.

Phase IV: Defendant Tried to Recover Marital Assets for his Own Use Rather Than Return Them to the Court for Distribution

Finally in April 2011, once the divorce court awarded Sheila 60% of the Panama funds and the entirety of the $1,260,000 Pensco-held IRA, the defendant set in motion the final chapter of his fraud scheme – to secretly repatriate the funds for his own use and later try to claim that the unsecured investments had been lost.

Joseph Saranello by this time had pleaded guilty to a one-count information charging him with conspiracy to commit wire fraud on an matter unrelated to the defendant. He was cooperating with the government on various investigations

Over the next few months, defendant and Saranello discussed the best way to bring the funds back to the United States so that Brandner could keep the funds to himself. They devised a scheme where they created a Wyoming corporation called Evergreen Capital LLC

("Evergreen") and opened a bank account at Bank of America on behalf of Evergreen in which defendant had signatory authority.

To cover up the repatriation of the funds for defendant's own use, it was necessary to make the divorce court believe that the investments that supposedly were to mature in 2013 had been lost. Defendant and Saranello plotted to send the divorce a court a letter to that effect.

To defendant's dismay, when the money was repatriated, the entirety of the $4,656,085.10 funds was seized by Homeland Security Investigations (HSI). The funds became the corpus in a civil forfeiture suit out of the Central District of California. When the funds were seized, an HSI agent reached out to defendant to inquire about the nature of the funds. In a recorded call with Saranello, Brandner explains that he is going to call that agent back and tell the agent that the funds are not his. This call is also a vivid example of how Brandner used his communications with Saranello to knowingly further his crimes. Indeed, that same day the defendant spoke with the agent and lied, denying the funds were his.

B. Tax Evasion

Defendant earned substantial interest on the over $4,500,000 invested in Central America, roughly as shown on the following table:

Year	Unreported Foreign Interest
2008	$9,027
2009	$259,840
2010	$245,707

Defendant filed federal individual federal income tax returns (Form 1040s) for each of 2008-2010 in which he failed to report this foreign interest income, thereby evading substantial tax liability. Furthermore, the $1,264,915 in IRA funds that the defendant withdrew from Pensco in June 2008 to hide in Panama represents taxable income to him, which he willfully failed to report on his Form 1040 for 2008.

APPLICABLE STATUTE AND ELEMENTS

18 U.S.C. § 1344, Wire Fraud

The elements of wire fraud, Title 18 U.S.C. § 1343, are as follows:

> (1) the defendant knowingly participated in a scheme or plan to defraud, or a scheme or plan for obtaining money or property by means of false or fraudulent pretenses, representations, or promises;
> (2) the statements made or facts omitted as part of the scheme were material; that is, they had a natural tendency to

> influence, or were capable of influencing, a person to part with money or property;
> (3) the defendant acted with the intent to defraud, that is, the intent to deceive or cheat; and
> (4) the defendant used, or caused to be used, a wire communication to carry out or attempt to carry out an essential part of the scheme.

Ninth Circuit Model Criminal Jury Instruction 8.124 (2010); *United States v. Ciccone*, 219 F.3d 1078, 1083 (9th Cir. 2010). "To sustain a conviction for fraud . . . , the government must prove beyond a reasonable doubt the element of specific intent." *Id.*, 219 F.3d at 1082 (citation omitted).

A scheme to defraud requires (1) specific intent and (2) a material misrepresentation or omission. *United States v. Bohonus*, 628 F.2d 1167, 1172 (9th Cir. 1980); *United States v. Neder*, 527 U.S. 1, 25 (1999) (materiality is essential element of fraud).

A representation is false or fraudulent if it is known to be untrue, or made with reckless disregard for its truth or falsity, or made or caused to be made with the intent to deceive. *United States v. Federbush*, 625 F.2d 246, 255 (9th Cir. 1980). A misrepresentation or omission is material when:

> a reasonable man would attach importance to its existence or nonexistence in determining his choice of action in the transaction in question; or (b) the maker of the representation knows or has reason to know that its recipient regards or is likely to regard the matter as important in determining his choice of action, although a reasonable man would not so regard it.

Neder, 527 U.S. at 22 n.5; *see also United States v. Gaudin*, 515 U.S. 506, 509 (1995) (false statement is material if it has a "natural tendency to influence, or is capable of influencing, the decision of the decision-making body to which it is addressed."). The Ninth Circuit Model Jury Instructions state that a statement or promise is material if it "would reasonably influence a person to part with money or property."

The requisite specific intent can be inferred from misrepresentation, "deceitful concealment of material facts," or reckless indifference as to the truth or falsity of material representation. *Bohonus*, 628 F.2d at 1172; *United States v. Silvano*, 812 F.2d 754, 759 (1st Cir. 1987) (failure to disclose material information in the face of an affirmative duty to disclose is fraud even in the absence of deliberate concealment). The specific intent required relates only to the intent to defraud, not to the causing of the mailings. *See*, *e.g., United States v. Cusino*, 694 F.2d 185, 188 (9th Cir. 1982). Specific intent may also be proven by circumstantial evidence.

As with mail fraud, materiality is an essential element of the crime of wire fraud. *Neder v. United States*, 527 U.S. 1 (1999). The elements of wire fraud under Section 1343 directly parallel those of the mail fraud statute, but require the use of an interstate telephone call or electronic communication made in furtherance of the scheme. *See e.g. United States v. Sullivan*, 522 F.3d 967, 974 (9th Cir. 2008) (applying both statutes); *United States v. Cusino*, 694 F.2d 185, 187n.1 (9th Cir.1982) ("Since both section 1341 and 1343 outlaw use of the mails or wire communications 'for the purpose of executing' the scheme to defraud, the sections are in pari materia and are to be given similar construction."). Unlike mail fraud[1], however, wire fraud requires an interstate nexus for jurisdictional purposes. *United States v. Bryant*, 766 F.2d 370, 375 (8th Cir. 1985).

The use of the wires need not be central to the scheme. A wire transmission may be considered to be for the purpose of furthering a scheme to defraud if the transmission is incident to the accomplishment of an essential part of the scheme. *United States v. Mann*, 884 F.2d 532, 536

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[1] Bogy v. United States, 96 F.2d 734, 737 (6th Cir. 1938) (noting in analyzing the predecessor mail fraud statute that "Congress, under its power to establish post offices and post roads, Article 1, § 8, United States Constitution, has full control of the mails and may forbid their use in the execution of schemes to defraud.")

(10th Cir. 1984). Moreover, it is not necessary to show that the defendant directly participated in the transmission, where it is established that the defendant caused the transmission, and that such use was the foreseeable result of his acts. *United States v. Gill*, 909 F.2d 274, 277-78 (7th Cir. 1990).

Each use of the wires constitutes a separate violation of the wire fraud statute. *United States v. Garlick*, 240 F.3d 789, 793 (9th Cir. 2001).

26 U.S.C. § 7201, Attempted Tax Evasion

26, U.S.C. § 7201 provides, in pertinent part, that "Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall . . . be guilty of a felony. . . . "

The elements of Tax Evasion under Section 7201 are:
1. An attempt to evade or defeat a tax or the payment thereof;
2. An additional tax due and owing; and
3. Willfulness.

Sansone v. United States, 380 U.S. 343, 351(1965); Ninth Circuit Model Criminal Jury Instruction 9.35.

1. Attempt to Evade

The attempt to evade can take unlimited forms. Section 7201 expressly provides that the attempt can be "in any manner." The only requirement is that the taxpayer take some affirmative action with a tax

evasion motive. Conversely, failing to act or do something does not constitute an attempt. For example, failing to file a return, standing alone, is not an attempt to evade. *Spies v. United States*, 317 U.S. 492, 499 (1943). Similarly, obstinately refusing to pay taxes due and possession of the funds needed to pay the taxes, without more, does not establish the requisite affirmative act necessary for an attempted evasion of payment charge. *See Spies*, 317 U.S. at 499. The general rule is that "any conduct, the likely effect of which would be to mislead or to conceal" for tax evasion purposes constitutes an attempt. *Spies*, 317 U.S. at 499.

Examples of affirmative acts of evasion of payment include placing assets in the names of others, dealing in currency, causing receipts to be paid through and in the name of others, causing debts to be paid through and in the name of others, and paying creditors instead of the government. *See Cohen v. United States*, 297 F.2d 760, 762, 770 (9th Cir. 1962); *see also United States v. Carlson*, 235 F.3d 466, 469 (9th Cir. 2000) (opening and using bank accounts with false social security numbers, incorrect places of birth, and incorrect dates of birth could easily have misled or concealed information from the IRS); *United States v. Gonzalez*, 58 F.3d 506, 509 (10th Cir. 1995) (signing and submitting false financial

statements to the IRS); *United States v. Pollen*, 978 F.2d 78, 88 (3d Cir. 1992); (defendant placed assets out of the reach of the United States Government by maintaining more than $350,000.00 in gold bars and coins, platinum, jewelry, and gems in safe-deposit boxes at bank, in a fictitious name); *United States v. Beall*, 970 F.2d 343, 345-47 (7th Cir. 1992) (defendant instructed employer to pay income to a tax protest organization); *United States v. McGill*, 964 F.2d 222, 227-29, 232-33 (3d Cir. 1992) (defendant concealed assets by using bank accounts in names of family members and co-workers); *United States v. Brimberry*, 961 F.2d 1286, 1291 (7th Cir. 1992) (defendant falsely told IRS agent that she did not own real estate and that she had no other assets with which to pay tax); *United States v. Conley*, 826 F.2d 551, 553 (7th Cir. 1987) (defendant concealed "nature, extent, and ownership of his assets by placing his assets, funds, and other property in the names of others and by transacting his personal business in cash to avoid creating a financial record"); *United States v. Voorhies*, 658 F.2d 710, 712 (9th Cir. 1981) (defendant removed money from the United States and laundered it through Swiss banks); *but see McGill*, 964 F.2d at 233 (mere failure to

report the opening of an account in one's own name and in one's own locale is not an affirmative act).

2. Tax Due and Owing

A tax deficiency is an essential element of an evasion case. *Boulware v. United States*, 552 U.S. 421 (2008). It is unnecessary, however, for the United States to charge or prove the exact amount of tax due and owing. *United States v. Buckner*, 610 F.2d 570, 573-74 (9th Cir. 1979).

3. Willfulness

Willfulness in criminal tax violations means a "voluntary, intentional violation of a known legal duty." *Cheek v. United States*, 498 U.S. 192 (1991). This is contrary to the general criminal law rule that ignorance of the law is no excuse. *Id*. at 199. Proof of willfulness may be, and usually is, shown by circumstantial evidence alone. *United States v. Marabelles*, 724 F.2d 1374, 1379 (9th Cir. 1984) (list of acts from which willfulness can be inferred).

The Supreme Court has furnished excellent guidance on the type of evidence from which willfulness can be inferred. In *Spies v. United States*, 317 U.S. 492 (1943), the Court, "by way of illustration and not by

way of limitation," set forth the following as examples of conduct from which willfulness may be inferred:

> [K]eeping a double set of books, making false entries or alterations, or false invoices or documents, destruction of books or records, concealment of assets or covering up sources of income, handling of one's affairs to avoid making the records usual in transactions of the kind, and any conduct, the likely effect of which would be to mislead or to conceal.

Id. at 499.

Willfulness is suggested by a pattern of failing to file for consecutive years in which returns should have been filed. *United States v. Greenlee*, 517 F.2d 899, 903 (3d Cir. 1975). This may include years prior or subsequent to the prosecution period. *United States v. Upton*, 799 F.2d 432, 433 (8th Cir. 1986). Likewise, a pattern of filing returns, followed by failure to file, is evidence of willfulness. *United States v. Fingado*, 934 F.2d 1163, 1168 (10th Cir. 1991). High gross income is also relevant to a taxpayer's awareness of filing requirements. *United States v. Payne*, 800 F.2d 227, 229 (10th Cir. 1986) (income approaching $100,000 is sufficient to infer knowledge and willfulness). Business experience is probative of willfulness. *United States v. Smith*, 890 F.2d 711, 715 (5th Cir. 1989)

(defendant's experience as an entrepreneur pointed to willfulness rather than honest error).

Continuing conduct after warning by knowledgeable individuals that a taxpayer's activities are illegal may show willful behavior. *United States v. Daniel*, 956 F.2d 540, 543 (6th Cir. 1992)(notice by CPA relevant to willfulness); *United States v. Dack*, 987 F.2d 1282, 1285 (7th Cir. 1993)(willfulness inferred from proof that a knowledgeable person warned defendant of tax improprieties); *United States v. Schiff*, 612 F.2d 73, 77-78 (2d Cir. 1979)(previously filed corporate and personal returns, reminder by accountant); *United States v. Brown*, 548 F.2d 1194, 1199 (5th Cir. 1977)(warning letters from IRS service center).

In proving the element of willfulness, the government may introduce evidence of defendant's attitude toward the reporting and payment of taxes generally. *United States v. Grosshans*, 821 F.2d 1247, 1253 ; *United States v. Hogan*, 861 F.2d 312, 316 (1st Cir. 1988); *United States v. Stein*, 437 F.2d 775, 777, 780 (7th Cir. 1971); *United States v. O'Connor*, 433 F.2d 752, 754 (1st Cir. 1970*); United States v. Taylor*, 305 F.2d 183, 185-86 (4th Cir. 1962).

Finally, "[i]f the tax-evasion motive plays *any* part in such conduct the offense may be made out even though the conduct may also serve other purposes such as concealment of other crime." *Spies v. United States*, 317 U.S. 492, 499 (1943) (emphasis added); *United States v. Voigt*, 89 F.3d 1050, 1090 (3d Cir. 1996); *United States v. Nolen*, 472 F.3d 362, 379 (5th Cir. 2006); *United States v. King*, 126 F.3d 987, 989-90 (7th Cir. 1997). Accordingly, even if some of the defendant's actions were primarily motivated by his desire to conceal assets from his wife, those actions can serve the dual purpose of being affirmative acts of evasion.

POTENTIAL DEFENSES

Good Faith

Willfulness is the "intentional violation of a known legal duty." *Cheek*, 498 U.S. at 200. Willfulness is determined by a subjective standard rather than an objective one, and the defendant's beliefs need not be objectively reasonable. *Id*. at 203. However, the jury may "consider the reasonableness of the defendant's asserted beliefs in determining whether the belief was honestly or genuinely held." *United States v. Grunewald*, 987 F.2d 531, 536 (8th Cir. 1993).

A defendant's view regarding the constitutionality and validity of the tax laws is irrelevant in a criminal tax case because a mere disagreement with the tax laws is no defense to the charged crime. *United States v. Powell*, 955 F.2d 1206, 1212 (9th Cir. 1991). In *Cheek*, the Supreme Court held that "a defendant's views about the validity of the tax statutes are irrelevant to the issue of willfulness and need not be heard by the jury, and, if they are, an instruction to disregard them would be proper." *Cheek,* 498 U.S. at 206. Similarly, in *Powell*, the Ninth Circuit affirmed the use of the following instruction: "Mere disagreement with the law, in and of itself, does not constitute good faith misunderstanding under the requirements of law. Because it is the duty of all persons to obey the law whether or not they [agree with] it." *Powell*, 955 F.2d at 1212.

Reliance

A defendant who reasonably relies on the advice of counsel may "not be convicted of a crime which involves wilful and unlawful intent." *Williamson v. United States*, 207 U.S. 425, 453 (1908). Advice of counsel is not a separate and distinct defense but rather is a circumstance indicating good faith which the trier of fact is entitled to consider on the

issue of intent. *Bisno v. United States*, 299 F.2d 711, 719 (9th Cir. 1961). A defendant is entitled to an instruction regarding the advice of counsel if it has some foundation in the evidence. *United States v. Ibarra-Alcarez*, 830 F.2d 968, 973 (9th Cir. 1987). In order to assert advice of counsel, a defendant must have made a full disclosure of all material facts to his or her attorney, received advice as to the specific course of conduct that he or she followed, and relied on the advice in good faith. *Id.*

EVIDENTIARY ISSUES

Expert/ Summary Witness

Near the end of its case, the government expects to call a summary witness, IRS revenue agent Paul Shipley, trained in taxation and accounting. This witness will analyze the defendant's income, particularly unreported foreign income.

Testimony by Paul Shipley was noticed at docket 55. The Federal Rules of Evidence authorize the use of an expert witness if it "will assist the trier of fact to understand the evidence or to determine a fact in issue...." Fed. R. Evid. 702. The courts have traditionally allowed summary expert testimony in tax prosecutions. *United States v. Baker*, 10 F.3d 1374, 1411 (9th Cir. 1990).

Through the expert witness, the government will offer computation schedules, based entirely on admitted evidence, reflecting the defendant's income and tax due for each year. The Ninth Circuit has found no abuse of discretion where summary charts were admitted in evidence. *United States v. Gardner*, 611 F.2d 770, 776 (9th Cir. 1980) (tax evasion case).

Some preliminary computation schedules have been provided in discovery (*e.g.* at Bates numbers MB_5404 and MB_005369-005394, MB_005395-005399, MB_005326-005368, MB_005283-005325 and MB_005237-005282). If there are changes based on evidence at trial, they may change. Additional schedules will be generated during the course of trial. The qualifications of the witness have been provided in compliance with the rules as a *curriculum vitae* at Bates numbers MB_005405-5406.

Stipulations

The parties have stipulated at Dkt 37 that foreign records from Costa Rica and Panama are admissible. The government Exhibits 141-154, 156-163, 300 and 321 were pulled from the stipulated Bates range.

Due to a scheduling conflict from government witness Suzanne Lombardi, the parties stipulated to the admissibility of two documents

she authored at Bates numbers MB_003638-3656 (Govt Exhibit 19) and MB_003597-3608 (Govt Exhibit 25).

The parties have also stipulated to the admissibility of four documents from United Missouri Bank (UMB) to avoid having a document custodian authenticate government exhibits 315-318 as business records, corresponding to Bates numbered documents MB_31804, MB_31805, MB_31809-31812, and MB_31813.

Motion in Limine

At docket 136, the court ruled on the seven motions in limine, including the motion in limine at Docket 95. The court held that the business records listed at docket 95 are admissible business records. The source and Bates numbers of the admissible documents are listed below, together with the Exhibits that they correspond to, as follows:

Source	Bates Range	Government Exhibit(s)
Bank of America	MB_002061-2133	184-187
Mountain West Bank	MB_002298; and MB_002302-2675	165-167
Wells Fargo1 (for A.G. Edwards & Sons)	MB_002823-3150	168-173
Wells Fargo2	MB_002811-2813	177
Wyoming Registered Agents	MB_27797- 27806	208

Charts

The Government intends to use charts during its opening statement, during examination of witnesses, and in closing argument. The Ninth Circuit has consistently approved the use of charts. *United States v. Soulard*, 730 F.2d 1292, 1300 (9th Cir. 1984); *United States v. Johnson*, 594 F.2d 1253 (9th Cir. 1979).

Other Issues

Defense counsel provided a witness list in which he lists over 50 witness, some with a short explanation of their role on the case (**Exhibit A** – redacted to remove address and/or phone numbers). It appears that the defendant is intending to re-litigate his divorce case as part of this trial. For example, the first three witnesses are all listed as having an affair with Ms. Brandner. In addition, the defendant's list also includes all three attorneys that represented the defendant in the divorce and related proceedings, all three attorneys that represented Ms. Brandner during the divorce and related proceedings, and Judges Sen Tan and Stephanie Joannides, who presided over the defendant's 1998 and 2007 divorce cases, respectively.

Fourteen of the witnesses are listed as potential character witnesses, presumably either for the defendant or against Sheila Brandner. It is unclear what legal theory supports admission of this character testimony under the Federal Rules of Evidence. Under FRE 608 and 609, character testimony is limited.

While the elicited testimony of these witnesses remains to be seen, the government is concerned that their testimony may be irrelevant under FRE 401 and 403, or confusing or misleading to the jury under FRE 403. The United States will make appropriate objections prior to the defendant calling these witnesses in his case in chief.

RESPECTFULLY SUBMITTED this 22nd day of October, 2014 in Anchorage, Alaska.

KAREN L. LOEFFLER
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s/ Bryan Schroder
BRYAN SCHRODER
Assistant U.S. Attorney
United States of America

s/ Ignacio Perez De La Cruz
IGNACIO PEREZ de la CRUZ
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Certificate of Service

I hereby certify that on October 22nd , 2014, the foregoing was served electronically via the CM/ECF system on the following counsel of record: D. Randall Ensminger

s/ Bryan Schroder