TRACY L. WILKISON
Acting United States Attorney
SCOTT M. GARRINGER
Assistant United States Attorney
Chief, Criminal Division
SCOTT PAETTY (Cal. Bar No. 274719)
CATHERINE AHN (Cal. Bar No. 248286)
BRIAN FAERSTEIN (Cal. Bar No. 274850)
Assistant United States Attorneys
Major Frauds/Environmental and Community Safety Crimes Sections
1100/1300 United States Courthouse
312 North Spring Street
Los Angeles, California 90012
Telephone: (213) 894-6527/2424/3819
Facsimile: (213) 894-6269/0141
E-mail: Scott.Paetty@usdoj.gov
Catherine.S.Ahn@usdoj.gov
Brian.Faerstein@usdoj.gov

DANIEL S. KAHN
Acting Chief, Fraud Section
Criminal Division, U.S. Department of Justice
CHRISTOPHER FENTON
Trial Attorney, Fraud Section
Criminal Division, U.S. Department of Justice
1400 New York Avenue NW, 3rd Floor
Washington, DC 20530
Telephone: (202) 320-0539
Facsimile: (202) 514-0152
E-mail: Christopher.Fenton@usdoj.gov

Attorneys for Plaintiff
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. RICHARD AYVAZYAN, Aka "Richard Ayazian" and "Iuliia Zhadko," et al. Defendants.	CR 2:20-579(A)-SVW GOVERNMENT'S REVISED PROPOSED FORFEITURE JURY INSTRUCTIONS

Plaintiff United States of America, by and through its counsel of record, the acting United States Attorney for the Central District of California and Assistant United States Attorneys Dan Boyle, Scott Paetty, Catherine S. Ahn and Brian Faerstein, and United States Department of Justice Fraud Section Trial Attorney Christopher Fenton, hereby submits its revised proposed forfeiture jury instructions, conformed and amended to reflect the counts of the defendants' convictions, to be read during the forfeiture phase of trial.

Dated: June 27, 2021

Respectfully submitted,

TRACY L. WILKISON
Acting United States Attorney

SCOTT M. GARRINGER
Assistant United States Attorney
Chief, Criminal Division

/s/
DAN G. BOYLE

CATHERINE AHN
SCOTT PAETTY
BRIAN FAERSTEIN
Assistant United States Attorneys
CHRISTOPHER FENTON
Department of Justice Trial Attorney

Attorneys for Plaintiff
UNITED STATES OF AMERICA

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COURT'S FORFEITURE INSTRUCTION NO. ____

[PROPOSED FORFEITURE INSTRUCTION NO. 1]

[Forfeiture Proceeding Follows Guilty Verdict]

[This Instruction and all following instructions to be read before the jury begins its deliberations on forfeiture]

While deliberating concerning the issue of forfeiture you must not reexamine your previous determination regarding the defendants' guilt. However, all the instructions previously given to you concerning duties of the jury, your consideration of the evidence, what is and is not evidence, the credibility of the witnesses, expert testimony, your duty to deliberate together, your duty to base your verdict solely on the evidence without prejudice, bias, or sympathy, and the necessity of a unanimous verdict, will continue to apply during these supplemental deliberations.

Source: Eleventh Circuit Model Jury Instructions, T6 (2017 ed.) (adapted); Federal Rule of Criminal Procedure 32.2; 18 U.S.C. § 981; United States v. Warshak, 631 F.3d 266, 331 (6th Cir. 2010) (defendant is not permitted to relitigate the legality of his conduct or otherwise attempt to undermine the jury's finding of guilt during the forfeiture phase; affirming district court's refusal to let defendant introduce evidence tending to show his conduct was not illegal, and holding that in the forfeiture phase, the legality of the conduct is "no longer a live issue;" the only question is the nexus between the conduct and the offense).

COURT'S FORFEITURE INSTRUCTION NO. ____

[PROPOSED FORFEITURE INSTRUCTION NO. 2]

[Forfeiture – Scope of Jury's Determination]

Your duty at this phase of the proceeding is solely to determine whether the government has proven the required connection between the property sought for forfeiture and the offenses for which you have found the defendants guilty.

You should not consider what might happen to the property in determining whether the property is subject to forfeiture; the disposition of any property that is declared forfeited is exclusively a matter for the Court to decide. Similarly, if any property has been transferred to a third party, the Court will later determine the rights of that third party to the property.

Some of the property which the government claims is subject to forfeiture may be in the name of one or more defendants and persons or business entities other than the defendants. However, any interest that a person other than a defendant may claim to such property will be taken into account by this Court in a separate proceeding. Interests of persons or entities other than any of the defendants are not for your consideration.

Your sole task is to decide whether the defendants' interest in the property, whatever that interest may be, is subject to forfeiture under the applicable law.

Source: Fed. R. Crim. P. 32.2(b)(2)(A) (only question during forfeiture phase is whether evidence establishes requisite nexus

between underlying crimes of conviction and property sought to be forfeited); United States v. Nava, 404 F.3d 1119, 1132 (9th Cir. 2005) (district court properly instructed jury that questions of ownership "were not before them"); United States v. Yeje-Cabrera, 430 F.3d 1, 15 (1st Cir. 2005) (explaining that the primary purpose of Rule 32.2(b)(2) was to preserve the resources of the court and third parties by deferring the ownership issue to the ancillary proceeding, thus avoiding duplicative litigation); United States v. Andrews, 530 F.3d 1232, 1236 (10th Cir. 2008) (once forfeitability is determined, the court does not – "and indeed may not" -- determine ownership, as that issue is deferred to the ancillary proceeding).

COURT'S FORFEITURE INSTRUCTION NO. ____

[PROPOSED FORFEITURE INSTRUCTION NO. 3]

[Standard of Proof]

With two important exceptions, all previous instructions will continue to apply to your deliberations. The first exception is that during this phase, the government's burden is no longer proof beyond a reasonable doubt, but instead, is simply proof by a preponderance of the evidence, which I will define for you.

The second exception is that during this phase, you will consider a component of the potential punishment to be imposed on the defendants, but your sole task is to determine whether the government has established, by a preponderance of the evidence, the required connection between the crimes of which the defendants have been convicted and the property sought for forfeiture.

Source: Libretti v. United States, 516 U.S. 29, 39 (1995) ("Our precedents have likewise characterized criminal forfeiture as an aspect of punishment imposed following conviction of a substantive criminal offense."); United States v. Lazarenko, 476 F.3d 642, 647 (9th Cir. 2007) (criminal forfeiture operates *in personam* against a defendant; it is part of his punishment following conviction); Rule 32.2(b)(5); United States v. Garcia-Guizar, 160 F.3d 511, 518 (9th Cir. 1998) (preponderance standard is constitutional because criminal forfeiture is not a separate offense, but only an additional penalty for an offense that was established beyond a reasonable doubt).

COURT'S FORFEITURE INSTRUCTION NO. ____

[PROPOSED FORFEITURE INSTRUCTION NO. 4]

[Definition - Preponderance of the Evidence]

When a party has the burden of proof on any claim by a preponderance of the evidence, it means you must be persuaded by the evidence that the claim is more probably true than not true. You should base your decision on all of the evidence, regardless of which party presented it.

Source: Ninth Circuit Model Jury Instructions, Civil, No. 1.3 (2010 ed.) [Preponderance of the Evidence].

COURT'S FORFEITURE INSTRUCTION NO. ____

[PROPOSED FORFEITURE INSTRUCTION NO. 5]

[Reliance on Evidence Presented During Guilt Phase]

In making the forfeiture determination, you should consider all of the evidence presented during the trial as well as the evidence presented during these post-verdict forfeiture proceedings, regardless of who offered it. You should evaluate the evidence and its credibility according to the instructions given to you earlier.

Source: Federal Rule of Criminal Procedure 32.2; 18 U.S.C. § 981; Rule 32.2 ((b)(1)(B) (whether made by the Court or the jury, the nexus determination may be based upon "evidence already in the record, including any written plea agreement, and on any additional evidence or information submitted by the parties and accepted by the court as relevant and reliable."); United States v. Capoccia, 503 F.3d 103, 109 (2d Cir. 2007) (finder of fact may rely on evidence from the guilt phase; it is not necessary for the government to reintroduce that evidence in the forfeiture phase).

COURT'S FORFEITURE INSTRUCTION NO. ____

[PROPOSED FORFEITURE INSTRUCTION NO. 6]

[Forfeiture Allegations Not Evidence]

The forfeiture allegations set forth in the First Superseding Indictment are not evidence and do not create any inference that the property is subject to forfeiture. The defendants have denied that the property is subject to forfeiture.

Source: Fed. Crim. Jury Instr. 7th Cir. (2012 ed.) [Forfeiture Allegations Instruction]; cf. Ninth Circuit Model Jury Instructions, Civil, No. 3.2 (2010 ed.) [Charge Against Defendant Not Evidence].

COURT'S FORFEITURE INSTRUCTION NO. ____

[PROPOSED FORFEITURE INSTRUCTION NO. 7]

[Forfeiture – Multiple Bases]

I will soon describe the specific property the government seeks to forfeit and what the government must prove to forfeit such property. You will be asked to consider whether such property is subject to forfeiture, including on multiple grounds. You need not be concerned with "double-counting" of monetary amounts or "overlapping" of properties.

Even if you find that a particular property is subject to forfeiture for more than one reason, that does not mean the government will receive the property twice. However, it is important that you indicate on the special verdict form all bases on which you find any given property is subject to forfeiture.

Any issues of "double-counting" or "overlapping" will be considered by the Court when imposing sentence.

Source: Fed. R. Crim. P. 32.2(b); 18 U.S.C. § 982.

COURT'S FORFEITURE INSTRUCTION NO. ____

[PROPOSED FORFEITURE INSTRUCTION NO. 8]

[Property Subject to Forfeiture for Wire Fraud Conviction or Conspiracy to Commit such Offense]

Under federal law, any defendant convicted of one or more violations of Title 18, United States Code, Section 1343, shall forfeit to the government all of the defendant's right, title and interest in any and all property, real or personal, constituting, or derived from, any proceeds obtained, directly or indirectly, as a result of the offense.

Source: Federal Rule of Criminal Procedure 32.2; 18 U.S.C. § 981(a)(1)(C); 28 U.S.C. § 2461(c).

COURT'S FORFEITURE INSTRUCTION NO. ____

[PROPOSED FORFEITURE INSTRUCTION NO. 9]

[Property Subject to Forfeiture for Bank Fraud Conviction]

Under federal law, any defendant convicted of one or more violations of Title 18, United States Code, Section 1344, shall forfeit to the government all of the defendant's right, title and interest in any and all property, real or personal, constituting, or derived from, any proceeds obtained, directly or indirectly, as a result of the offense.

Source: Federal Rule of Criminal Procedure 32.2; 18 U.S.C. § 981(a)(1)(C); 28 U.S.C. § 2461(c).

COURT'S FORFEITURE INSTRUCTION NO. ____

[PROPOSED FORFEITURE INSTRUCTION NO. 10]

[Property Subject to Forfeiture for Aggravated Identity Theft Conviction]

Under federal law, any defendant convicted of one or more violations of Title 18, United States Code, Section 1028A concerning a violation of Title 18, United States Code, Sections 1343 or 1344, shall forfeit to the government all of the defendant's right, title and interest in any and all property, real or personal, constituting, or derived from, any proceeds obtained, directly or indirectly, as a result of the offense.

Source: Federal Rule of Criminal Procedure 32.2; 18 U.S.C. § 981(a)(1)(C); United States v. Pollard, 850 F.3d 1038, 1042-1043 (9th Cir. 2017)

COURT'S FORFEITURE INSTRUCTION NO. ____

[PROPOSED FORFEITURE INSTRUCTION NO. 11]

[Proceeds Defined]

Property subject to forfeiture as proceeds of a scheme to defraud includes any money obtained as a result of the scheme, and any property obtained with that money.

Proceeds remain proceeds regardless of how many times the property may change form. For example, the proceeds of a crime may start out as money in one bank account, be moved to a second bank account, be converted to a check, and then used to buy a car. In that case, each of the items would be considered the proceeds of the offense, or property derived from such proceeds.

In a case, like this one, involving a scheme to defraud, property is subject to forfeiture if it is derived from or traceable to the scheme as a whole; it is not necessary for the Government to trace the property to a particular execution of the scheme, such as a particular wire transfer.

Source: United States v. Swanson, 394 F.3d 520, 529 n.4 (7th Cir. 2005) (a change in the form of the proceeds does not prevent forfeiture; property traceable to the forfeitable property is forfeitable as well); United States v. Lo, 839 F.3d 777, 793 (9th Cir. 2016) ("[T]he proceeds of the crime of conviction consist of the

funds involved in that fraudulent scheme, including additional executions of the scheme that were not specifically charged or on which the defendant was acquitted."); United States v. Venturella, 585 F.3d 1013, 1015, 1016-17 (7th Cir. 2009) (forfeiture in a mail fraud case "is not limited to the amount of the particular mailing but extends to the entire scheme"); 18 U.S.C. § 981(a)(2)(A); United States v. Boesen, 473 F.Supp.2d 932, 952-953 (S.D. Iowa 2007) (forfeiting the gross proceeds of a large health care fraud scheme, not just the proceeds of the 82 executions of the scheme); see also United States v. Capoccia, 503 F.3d 103, 117-18 (2d Cir. 2007) (distinguishing scheme offenses such as in Boesen from discrete offenses, for purposes of determining forfeitable proceeds).

COURT'S FORFEITURE INSTRUCTION NO. ____

[PROPOSED FORFEITURE INSTRUCTION NO. 12]

[Forfeiture of Fungible Property]

The Government is not required to identify specific cash, precious metals, or bank funds involved in an offense that is the basis for the forfeiture, because it is not a defense that the cash, precious metals, or bank funds involved in such an offense were removed and replaced by identical property. Any identical cash, precious metals, or bank funds found in the same place or account as the property involved in the offense that is the basis for the forfeiture shall be subject to forfeiture.

Source: 18 U.S.C. § 984; 28 U.S.C. § 2461(c)

COURT'S FORFEITURE INSTRUCTION NO. ____

[PROPOSED FORFEITURE INSTRUCTION NO. 13]

[Forfeiture based on Fraud Offenses Under 18 U.S.C. § 981(a)(1)(C)]

The government seeks to forfeit the following property pursuant to the findings of guilt on each of Counts One through Twenty-Two and Twenty-Four:

1. All of the convicted defendant's right, title and interest in certain real Property located in Tarzana, California identified by Assessors Parcel Number 2176-029-031;
2. All of the convicted defendant's right, title and interest in certain real Property located in Glendale, California identified by Assessors Parcel Number 5663-036-033;
3. All of the convicted defendant's right, title and interest in certain real Property located in Palm Desert, California identified by Assessors Parcel Number 694-331-008;
4. $74,557.79 in bank funds seized from Bank of America account number ending in 7695 held in the name of Allstate Towing & Transport LLC;
5. $65,990.43 in bank funds seized from Bank of America account ending in '9700 in the name of Runyan Tax Service Inc.
6. $451,185.00 in U.S. Currency seized on November 5, 2020, in various areas and backyard of a Tarzana, California residence;
7. $3,422.00.00 in U.S. Currency seized on November 20, 2020, from Ricahrd Ayvazyan and Marietta Terabelian at the Miami International Airport;

8. One Audermars Piguet, Royal Oak 18 carat rose gold wrist watch, model 26331, serial number J52335;

9. One Rolex Datejust stainless steel wrist watch, model 126334, serial number 4U95Z313;

10. One Audemars Piguet, Royal Oak Offshore black ceramic wrist watch, serial number K23313;

11. One Audemars Piguet Royal Oak Offshore black ceramic wrist watch, serial number LU44845K;

12. Audemars Piguet Royal Oak stainless steel wrist watch, serial number LW3397N;

13. One Rolex Day-Date watch, serial number W44P7238;

14. Sixty Gold Bullion coins;

15. One 14 carat yellow gold 24" neck chain; and

16. One Pair of 14 carat white gold earrings with diamond studs.

The government contends that the property described above constitutes or is derived from proceeds obtained, directly or indirectly, as a result of the violation(s) of which one or more defendant was found guilty, and is therefore subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(C).

If you conclude that the government has proved by a preponderance of the evidence that the property listed above constitutes or is derived from proceeds one or more of the defendants obtained, directly or indirectly, as a result of the violation(s) of which one or more defendant has been found guilty, you must find that such property is forfeitable to the United States.

Source: Federal Rule of Criminal Procedure 32.2; 18 U.S.C. § 981(a)(1)(C); United States v. Lazarenko, 504 F. Supp. 2d 791, 796-97 (N.D. Cal. 2007) (Rule 32.2(a) requires only that the indictment give notice of the forfeiture in generic terms; that the Government did not itemize all of the property subject to forfeiture until much later was of no moment; older cases holding that property had to be listed in the indictment are no longer good law); Rule 32.2(b)(2)(A) (The only question to be determined during the forfeiture phase is whether the evidence submitted during the guilt phase, together with any additional evidence received during the forfeiture phase, establishes by a preponderance of the evidence that there is the requisite nexus between the underlying crime(s) of conviction and the property sought to be forfeited by the government. "If the court finds that the property is subject to forfeiture, it must promptly enter a preliminary order of forfeiture . . . directing the forfeiture of specific property . . . ."); United States v. Monsanto, 491 U.S. 600, 607 (1989) ("Congress could not have chosen stronger words to express its intent that forfeiture be mandatory in cases where the statute applied."); United States v. Newman, 659 F.3d 1235, 1240 (9th Cir. 2011) (following Monsanto: "When the Government has met the requirements for criminal forfeiture, the district court must impose criminal forfeiture, subject only to statutory and constitutional limits"); *id.* ("[T]he district court has no discretion to reduce or eliminate mandatory criminal forfeiture"); Lazarenko, 476 F.3d at 648 ("Upon a finding that the property involved is subject to forfeiture, a court must promptly enter a preliminary

order of forfeiture without regard to a third party's interests in the property"); United States v. Nava, 404 F.3d 1119, 1132 (9th Cir. 2005) (district court properly instructed jury that questions of ownership "were not before them"; jury's return of special verdict of forfeiture silent on the issue of ownership of the property); United States v. Yeje-Cabrera, 430 F.3d 1, 15 (1st Cir. 2005) (explaining that the primary purpose of Rule 32.2(b)(2) was to preserve the resources of the court and third parties by deferring the ownership issue to the ancillary proceeding, thus avoiding duplicative litigation); United States v. Andrews, 530 F.3d 1232, 1236 (10th Cir. 2008) (once forfeitability is determined, the court does not – "and indeed may not" -- determine ownership; that issue is deferred to the ancillary proceeding); Lazerenko, 476 F.3d at 648; *Gaskin*, 2002 WL 459005, at *9 n.4 (ownership is a question for the court alone to determine in the ancillary proceeding), aff'd, 364 F.3d 438 (2d Cir. 2004); United States v. Christensen, 828 F.3d 763 (9th Cir. 2015) (The standard of proof regarding the criminal forfeitability of property is preponderance of the evidence) (fraud); United States v. Kalish, 626 F.3d 165, 168 (2d Cir. 2010); United States v. Garcia-Guizar, 160 F.3d 511, 518 (9th Cir. 1998) (preponderance standard is constitutional because criminal forfeiture is not a separate offense, but only an additional penalty for an offense that was established beyond a reasonable doubt); United States v. Hernandez-Escarsega, 886 F.2d 1560, 1576-77 (9th Cir. 1989) (interpreting identical language in 21 U.S.C. § 853, the forfeiture statute applicable to most criminal forfeiture proceedings).

COURT'S FORFEITURE INSTRUCTION NO. ____

[PROPOSED FORFEITURE INSTRUCTION NO. 14]

[Property Subject to Forfeiture for Money Laundering Conviction]

Under federal law, any defendant convicted of one or more violations of Title 18, United States Code, Section 1956, or a conspiracy to commit the same, shall forfeit to the government all of the defendant's right, title and interest in any and all property, real or personal, involved in such offense, or any property traceable to such property.

Source: Federal Rule of Criminal Procedure 32.2; 18 U.S.C. § 982(a)(1).

COURT'S FORFEITURE INSTRUCTION NO. ____

[PROPOSED FORFEITURE INSTRUCTION NO. 15]

[Scope of 18 U.S.C. §982(a)(1)]

Property subject to forfeiture as property involved in a violation of Section 1956 of Title 18 of the United States Code (Count Twenty-Six) includes:

1. Money or other property that was the subject of the financial transaction that constituted the money laundering violation;

2. Any property used to facilitate such a money laundering violation; and

3. Any fees or commissions paid to the money launderer.

Property may be the subject of the financial transaction in a number of ways. For example, the property may be the proceeds of the underlying specified unlawful activity which were used to conduct the transaction; it may be property that was commingled with those proceeds at the time the financial transaction took place; or it may be property that was obtained as part of an exchange or purchase that constitutes the violation for which a defendant has been found guilty.

Property that was used to facilitate the money laundering transaction may include property that was not part of the transaction itself, but was used to make the money laundering offense easier to commit or harder to detect.

Property that is traceable to the property described in (1) through (3) above in this instruction is also subject to forfeiture. The phrase "any property traceable to" such property includes any property which was exchanged for, derived from, or

obtained with any of the property involved in the underlying money laundering crime. For example, property involved in a money laundering violation may be used to acquire, improve, or maintain real or personal property in a transaction that is not a money laundering violation, but that real or personal property is forfeitable because it can be traced to property that was involved in the money laundering violation. Property is forfeitable as traceable to property that was involved in a money laundering even if some untainted funds were also used to purchase, improve or maintain the property.

Source: 18 U.S.C. § 982(a)(1); United States v. Cherry, 330 F.3d 658, 669 n.17 (4th Cir. 2003) (court properly instructed jury that it had to find that property "fairly represents the property which was involved in, or is traceable to property involved in" the money laundering counts); United States v. Huber, 404 F.3d 1047, 1058 (8th Cir. 2005) (the SUA proceeds involved in a financial transaction, as well as any clean money commingled with it, constitute the corpus of the money laundering transaction; both are subject to forfeiture); United States v. Stewart, 185 F.3d 112, 129-30 (3d Cir. 1999) (tainted funds traced into account which held untainted funds were forfeitable as "involved in" and "traceable to" money laundering); United States v. Nicolo, 597 F. Supp. 2d 342, 355 (W.D.N.Y. 2009) (if funds in bank account are subject to forfeiture as property involved in money laundering, then vehicle purchased with those funds is forfeitable as property traceable to such property); United States v. Hawkey, 148 F.3d 920, 927-28 (8th Cir. 1998) (property "traceable to"

the laundering violation and any appreciation in value is forfeitable; entire motor home forfeitable even if untainted funds added to value of it).

COURT'S FORFEITURE INSTRUCTION NO. ____

[PROPOSED FORFEITURE INSTRUCTION NO. 16]

[Forfeiture based on Money Laundering Offenses Under 18 U.S.C. § 982(a)(1)]

The government seeks to forfeit the following property pursuant to the findings of guilt on Count 26:

1. All of the convicted defendant's right, title and interest in certain real Property located in Tarzana, California identified by Assessors Parcel Number 2176-029-031;
2. All of the convicted defendant's right, title and interest in certain real Property located in Glendale, California identified by Assessors Parcel Number 5663-036-033;
3. All of the convicted defendant's right, title and interest in certain real Property located in Palm Desert, California identified by Assessors Parcel Number 694-331-008;
4. $65,990.43 in bank funds seized from Bank of America account ending in '9700 in the name of Runyan Tax Service Inc.
5. $451,185.00 in U.S. Currency seized on November 5, 2020, in various areas and backyard of a Tarzana, California residence;
6. $3,422.00.00 in U.S. Currency seized on November 20, 2020, from Ricahrd Ayvazyan and Marietta Terabelian at the Miami International Airport;
7. One Audermars Piguet, Royal Oak 18 carat rose gold wrist watch, model 26331, serial number J52335;
8. One Rolex Datejust stainless steel wrist watch, model 126334, serial number 4U95Z313;

9. One Audemars Piguet, Royal Oak Offshore black ceramic wrist watch, serial number K23313;

10. One Audemars Piguet Royal Oak Offshore black ceramic wrist watch, serial number LU44845K;

11. Audemars Piguet Royal Oak stainless steel wrist watch, serial number LW3397N;

12. One Rolex Day-Date watch, serial number W44P7238;

13. Sixty Gold Bullion coins;

14. One 14 carat yellow gold 24" neck chain; and

15. One Pair of 14 carat white gold earrings with diamond studs.

The government contends that the property described above was involved in or traceable to the money laundering violations for which one or more defendants were found guilty, and is therefore subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 982(a)(1).

If you conclude that the government has proved by a preponderance of the evidence that the property listed above was involved in such offense, or traceable to the violation(s) of which one or more defendant has been found guilty, you must find that such property is forfeitable to the United States.

Source: Federal Rule of Criminal Procedure 32.2; 18 U.S.C. § 982(a)(1)

COURT'S FORFEITURE INSTRUCTION NO. ____

[PROPOSED FORFEITURE INSTRUCTION NO. 17]

[Special Verdict Form]

A Special Verdict Form has been prepared for your use. With respect to the property listed or described, you are asked to decide whether it is subject to forfeiture to the government based on the reasons I have explained to you. Your decision must be unanimous. Indicate on the verdict form whether you find that the property listed is subject to forfeiture, and then the foreperson should sign and date the form.

Source: Federal Rule of Criminal Procedure 32.2(b)(1); 18 U.S.C. § 981; Libretti v. United States, 516 U.S. 29, 133 L. Ed. 2d. 271, 116 S. Ct. 356, 365 (1995).