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CLERK

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

|                           |   |                  |
|---------------------------|---|------------------|
| UNITED STATES OF AMERICA, | ) | CR. 11-50054-JLV |
|                           | ) |                  |
| Plaintiff,                | ) |                  |
|                           | ) | INSTRUCTIONS     |
| vs.                       | ) | TO THE JURY      |
|                           | ) |                  |
| SCOTT THOMPSON,           | ) |                  |
|                           | ) |                  |
| Defendant.                | ) |                  |

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**INSTRUCTION NO. 1 - ROLE OF INSTRUCTIONS**

Members of the jury, I will take a few minutes to give you the instructions about this case and about your duties as jurors. At the end of the trial, I will give you further instructions. I may also give you instructions during the trial. These instructions explain the law that applies to this case. Unless I specifically tell you otherwise, all instructions, both those I give you now and those I will give you later, are equally binding on you and must be followed. Consider these instructions with all written and oral instructions given to you during and at the end of the trial and apply them to the facts of the case. You must consider my instructions as a whole and not single out some instructions and ignore others.

**INSTRUCTION NO. 2 - DUTY OF JURORS**

This is a criminal case brought by the United States government against the defendant, Scott Thompson. Mr. Thompson is charged with the offenses of making false claims, submitting false documents to a department or agency of the United States, committing fraud by wire, and receiving stolen government money. Your duty is to decide from the evidence whether the defendant is not guilty or guilty of the offenses charged against him.

You will find the facts from the evidence presented in court. "Evidence" is defined in Instruction No. 9. You are entitled to consider that evidence in light of your own observations and experiences. You may use reason and common sense to draw conclusions from facts established by the evidence. You are the sole judges of the facts, but you must follow the law as stated in my instructions, whether you agree with the law or not. You will then apply the law to the facts to reach your verdict.

It is vital to the administration of justice that each of you faithfully perform your duties as jurors. Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict based solely on the evidence, your common sense, and the law as I give it to you. Do not take anything I may say or do during the trial as an indication of what I think about the evidence or what I think your verdict should be. Do not conclude from any ruling or comment I may make that I have any opinion on how you should decide the case.

Please remember only Mr. Thompson, not anyone else, is on trial here. Also, remember Mr. Thompson is on trial only for the offenses charged against him, not for anything else.

**INSTRUCTION NO. 3 - DESCRIPTION OF THE OFFENSE**

An offense consists of “elements” which the government must prove beyond a reasonable doubt in order to convict a defendant of that offense. To help you follow the evidence, I will give you the elements of the offenses charged in the indictment. However, I must first explain some preliminary matters.

The charges against Mr. Thompson are set out in an indictment. An indictment is simply an accusation. It is not evidence of anything. Mr. Thompson pled not guilty to the charges brought against him. Mr. Thompson is presumed to be innocent unless and until the government proves, beyond a reasonable doubt, each element of the offenses charged.

The indictment charges the offenses were committed “on or about” a certain date. The government does not have to prove with certainty the exact date of an offense charged. It is sufficient if the evidence establishes that an offense occurred within a reasonable time of the date alleged in the indictment.

I will now give you the elements for the offenses charged in the indictment.

**COUNTS 1-3: FALSE CLAIMS**

Counts 1, 2 and 3 of the indictment charge that at Rapid City, in the District of South Dakota, and elsewhere, the defendant, Scott Thompson, made or presented claims to a department or agency of the United States, namely, upon the National Science Foundation, knowing the claims were false.

Count 1: On or about February 25, 2009, in the initial proposal requesting grant monies from the National Science Foundation through the Small Business Innovative Research and Small Business Technology Transfer Programs, Scott Thompson claimed that Steven Makrinos was the CEO for Isosceles LLC, knowing that claim was false in that Steven Makrinos was not the CEO for Isosceles LLC and had not agreed to be listed as such on the Initial Proposal to the National Science Foundation for the project titled "Full Spectrum Conjugated Polymers for Highly Efficient Polymer Photovoltaics."

Count 2: On or about June 23, 2009, after the grant was approved, Scott Thompson claimed Jing Li was employed as the Principal Investigator, that Jing Li's primary employment was with Isosceles LLC and he would continue to conduct the research proposed in the Initial Proposal to the National Science Foundation and that he was available at that time to perform the proposed work, knowing those claims were false in that Jing Li was not an employee of Isosceles LLC, could not continue working on the research and was not available to perform the proposed work.

Count 3: On or about January 14, 2010, in the final report for the period June 2009 to June 2010, Scott Thompson claimed Jing Li was employed as the Principal Investigator for Isosceles LLC for the project titled "Full Spectrum Conjugated Polymers for Highly Efficient Polymer Photovoltaics," and that Jing Li had worked more than 160 hours on the project knowing the claims were false in that Jing Li was not an employee of Isosceles LLC and had not worked 160 hours on the project.

## **Elements**

For you to find Mr. Thompson guilty of an offense of making a false claim to a department or agency of the United States as charged in Counts 1, 2 and 3 of the indictment, the government must prove the following essential elements beyond a reasonable doubt as to each count:

- 1. That on or about the date alleged in each count, Scott Thompson made or presented to the National Science Foundation a claim upon or against the United States;**
- 2. That at the time the claim was presented, the National Science Foundation was a department or agency of the United States;**
- 3. That the claim was false, fictitious or fraudulent for the reasons set out above in Counts 1, 2 and 3;**
- 4. That Scott Thompson knew the claim was false, fictitious or fraudulent; and**
- 5. The false, fictitious or fraudulent claim was material to the National Science Foundation.**

A claim is “false” or “fictitious” if any part of it is untrue when made and then known to be untrue by the person making or causing the claim to be made.

A claim is “fraudulent” if any part of it is known to be untrue and made or caused to be made with the intent to deceive the governmental agency to which it was submitted.

When a claim is charged to be false in more than one way, you need not find that the claim is false

in all of the ways alleged. Instead, you must decide unanimously and beyond a reasonable doubt whether the claim is false in at least one of the ways set out in a particular count of the indictment.

A claim is “material” if it has a natural tendency to influence, or is capable of influencing, the decision of the agency. However, whether a claim is “material” does not depend on whether the agency was actually deceived.

To find Mr. Thompson guilty of an offense for false claims as charged in counts 1, 2 and 3, the government must prove all the essential elements beyond a reasonable doubt as to that count. If the government proves all the essential elements beyond a reasonable doubt, you must find Mr. Thompson guilty of that offense. If the government fails to prove any essential element beyond a reasonable doubt, you must find Mr. Thompson not guilty of that offense. **You must consider each count separately.**



**COUNTS 4-6: FALSE DOCUMENTS SUBMITTED TO A DEPARTMENT OR AGENCY OF THE UNITED STATES**

Counts 4, 5 and 6 of the indictment charge that at Rapid City, in the District of South Dakota, and elsewhere, the defendant, Scott Thompson, did willfully and knowingly make or cause to be made, or used or caused to be used, in a matter within the jurisdiction of the National Science Foundation, a false writing or document, knowing the same to contain a materially false, fictitious and fraudulent statement.

- Count 4: On or about February 25, 2009, Scott Thompson submitted an Initial Proposal to the National Science Foundation claiming that Steven Makrinos was the CEO for Isosceles LLC, well knowing and believing that Steven Makrinos was not the CEO for Isosceles LLC and had not agreed to be listed as such in the Initial Proposal to the National Science Foundation.
- Count 5: On or about June 23, 2009, Scott Thompson submitted an Initial Payment Request claiming that Jing Li was employed as the Principal Investigator for Isosceles LLC, that Jing Li's primary employment was with Isosceles LLC and Jing Li would continue to conduct the research proposed to the National Science Foundation for the project titled "Full Spectrum Conjugated Polymers for Highly Efficient Polymer Photovoltaics," and that he was available at that time to perform the proposed work, well knowing and believing Jing Li was not an employee of Isosceles LLC, could not continue working on the research and was not available to perform the proposed work.
- Count 6: On or about January 14, 2010, Scott Thompson submitted a National Science Foundation Small Business Innovative Research Program Award Final Report for the period of June 2009 to June 2010 in which he claimed Jing Li was employed as the Principal Investigator for Isosceles LLC for the project titled "Full Spectrum Conjugated Polymers for Highly Efficient Polymer Photovoltaics," and that Jing Li had worked more than 160 hours on the project, well knowing and believing that Jing Li was not an employee of Isosceles LLC and had not worked 160 hours on the project.

## **Elements**

For you to find Mr. Thompson guilty of an offense of submitting a false document to a department or agency of the United States, the government must prove the following essential elements beyond a reasonable doubt as to each count:

- 1. That on or about the date alleged in each count, Scott Thompson voluntarily and intentionally made or used a writing or document;**
- 2. That the writing or document contained a false, fictitious or fraudulent statement;**
- 3. That at the time Mr. Thompson made the writing or document, he knew it contained a false, fictitious or fraudulent statement;**
- 4. That the false, fictitious or fraudulent statement was material to the National Science Foundation; and**
- 5. That the Initial Proposal, Initial Payment Request and Final Report were matters within the jurisdiction of the National Science Foundation.**

You may find this element is proven if you determine beyond a reasonable doubt that the National Science Foundation's function includes funding scientific grant projects.

A claim is "false" or "fictitious" if any part of it is untrue when made and then known to be untrue by the person making or causing the claim to be made.

A writing or document is “fraudulent” if known by the defendant to be untrue and made or used by the defendant with the intent to deceive the governmental agency to which it was submitted.

As used in this instruction, an act is done “knowingly” if the defendant realized what he was doing and did not act through ignorance, mistake or accident. You may consider evidence of the defendant’s acts and words, along with all the evidence, in deciding whether the defendant acted knowingly. The government is not required to prove the defendant knew his acts or omissions were unlawful.

A writing or document is “material” if it has a natural tendency to influence, or is capable of influencing, the decision of the agency. However, whether a writing or document is “material” does not depend on whether the agency was actually deceived.

To find Mr. Thompson guilty of an offense of submitting a false document to a department or agency of the United States as charged in counts 4, 5 and 6, the government must prove all the essential elements beyond a reasonable doubt as to that count. If the government proves all the essential elements beyond a reasonable doubt, you must find Mr. Thompson guilty of that offense. If the government fails to prove any essential element beyond a reasonable doubt, you must find Mr. Thompson not guilty of that offense. **You must consider each count separately.**

**COUNTS 7-9: FRAUD BY WIRE**

Counts 7, 8 and 9 of the indictment charge that the defendant, Scott Thompson, devised or intended to devise a scheme to defraud the National Science Foundation and to obtain money by means of materially false or fraudulent pretenses, representations or promises. That is, Mr. Thompson, for the purpose of executing the scheme, caused to be transmitted by means of wire communication in interstate commerce the signals and sounds described below:

- Count 7: That on or about February 25, 2009, Scott Thompson caused to be transmitted the Initial Proposal to the National Science Foundation via the internet from Rapid City, South Dakota, to Arlington, Virginia.
- Count 8: That on or about June 23, 2009, Scott Thompson caused to be transmitted the Initial Payment Request to the National Science Foundation via the internet from Rapid City, South Dakota, to Arlington, Virginia.
- Count 9: That on or about January 14, 2010, Scott Thompson caused to be transmitted the Final Report to the National Science Foundation via the internet from Rapid City, South Dakota, to Arlington, Virginia.

**Elements**

For you to find Mr. Thompson guilty of an offense of fraud by wire, the government must prove the following essential elements beyond a reasonable doubt as to each count:

- 1. That on or about between February 25, 2009, and January 14, 2010, in the District of South Dakota, Scott Thompson voluntarily and intentionally devised or made up a scheme to defraud the National Science Foundation by means of material**

**false representations or promises, which scheme is described as follows: Scott Thompson submitted, via the internet, an Initial Proposal to the National Science Foundation in order to obtain grant money for a project titled “Full Spectrum Conjugated Polymers for Highly Efficient Polymer Photovoltaics” in which he claimed Jing Li would be the Principal Investigator and Steven Makrinos was the CEO. Mr. Thompson continued to assert Jing Li was the Principal Investigator in the Initial Payment Request and in the Final Report to the National Science Foundation;**

- 2. That Mr. Thompson acted with the intent to defraud; and**
- 3. That Mr. Thompson used, or caused to be used, interstate wire communications facilities in furtherance of, or in an attempt to carry out, some essential step in the scheme.**

The phrase “scheme to defraud” includes any plan or course of action intended to deceive or cheat another out of money by employing material falsehoods, concealing material facts, or omitting material facts. It also means the obtaining of money from another by means of material false representations or promises. A scheme to defraud need not be fraudulent on its face but must include some sort of fraudulent misrepresentation or promise reasonably calculated to deceive a reasonable person.

A statement or representation is “false” when it is untrue when made or effectively conceals or omits a material fact.

A fact, falsehood, representation or promise is “material” if it has a natural tendency to

influence, or is capable of influencing, the decision of a reasonable person in deciding whether to engage or not to engage in a particular transaction. However, whether a fact, falsehood, representation or promise is “material” does not depend on whether the person was actually deceived.

To act with “intent to defraud” means to act knowingly and with the intent to deceive someone for the purpose of causing some financial loss to another or bringing about some financial gain to oneself to the detriment of a third party. With respect to false statements, the defendant must have known the statement was untrue when made or have made the statement with reckless indifference to its truth or falsity.

An act is done “knowingly” if the defendant realized what he was doing and did not act through ignorance, mistake or accident. You may consider evidence of the defendant’s acts and words, along with all the evidence, in deciding whether the defendant acted knowingly. The government is not required to prove the defendant knew his acts or omissions were unlawful.

To find Mr. Thompson guilty of an offense of fraud by wire as charged in counts 7, 8 and 9, the government must prove all the essential elements beyond a reasonable doubt as to that count. If the government proves all the essential elements beyond a reasonable doubt, you must find Mr. Thompson guilty of that offense. If the government fails to prove any essential element beyond a reasonable doubt, you must find Mr. Thompson not guilty of that offense. **You must consider each count separately.**

**COUNT 10: RECEIPT OF STOLEN GOVERNMENT MONEY**

Count 10 of the indictment charges that on or about between February 25, 2009, and January 14, 2010, at Rapid City, in the District of South Dakota, and elsewhere, the defendant, Scott Thompson, willfully and knowingly received, concealed or retained money he knew belonged to the United States, which he knew had been converted from the United States, that is \$100,000 in grant money from the National Science Foundation fraudulently obtained, with the intent to convert the money to his own use.

**Elements**

For you to find Mr. Thompson guilty of the offense of receipt of stolen government money, the government must prove the following essential elements beyond a reasonable doubt:

- 1. That Mr. Thompson voluntarily, intentionally and knowingly received or retained for his own use money that he knew had been converted;**
- 2. That the money belonged to the United States and exceeded \$1,000 in value; and**
- 3. That Mr. Thompson did so with intent to deprive the United States of the use or benefit of the money.**

An act is done “knowingly” if the defendant realized what he was doing and did not act through ignorance, mistake or accident. You may consider evidence of the defendant’s acts and words, along with all the evidence, in deciding whether the defendant acted knowingly. The

government is not required to prove the defendant knew his acts or omissions were unlawful.

It is not necessary for the government to prove the defendant knew the United States owned the money at the time of the wrongful taking so long as it is established, beyond a reasonable doubt, that the government did in fact own the money involved, the money exceeded \$1,000 and the defendant knowingly and willfully received the fraudulently obtained money.

“Conversion” means the deliberate taking or retaining of the money or property of another with the intent to deprive the owner of its use or benefit either temporarily or permanently. Conversion includes the misuse or abuse of property as well as use in an unauthorized manner or to an unauthorized extent.

To find Mr. Thompson guilty of the offense of receipt of stolen government money as charged in count 10, the government must prove all the essential elements beyond a reasonable doubt. If the government proves all the essential elements beyond a reasonable doubt, you must find Mr. Thompson guilty of the offense. If the government fails to prove any essential element beyond a reasonable doubt, you must find Mr. Thompson not guilty of the offense.



**INSTRUCTION NO. 4 - PROOF OF INTENT**

Intent may be proven like anything else. You may consider any statements made or acts done by Mr. Thompson and all the facts and circumstances in evidence which may aid in a determination of Mr. Thompson's intent.

You may, but are not required to, infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

**INSTRUCTION NO. 5 – GOOD FAITH DEFENSE**

One of the issues in this case is whether Mr. Thompson acted in “good faith.” “Good faith” is a complete defense to all of the offenses charged. The essence of a good-faith defense is that one who acts with honest intentions cannot be convicted of a crime requiring fraudulent intent.

The phrase “good faith” includes, among other things, an opinion or belief honestly held, even if the opinion is in error or the belief is mistaken. However, even though a defendant honestly held a certain opinion or belief, a defendant does not act in good faith if he also knowingly made false or fraudulent representations or promises, or otherwise acted with the intent to defraud or deceive another. Proof of fraudulent intent requires more than proof that a defendant made a mistake in judgment or management or was careless.

The government has the burden of proving beyond a reasonable doubt that Mr. Thompson acted with the intent to defraud or with the intent to obtain money by false or fraudulent pretenses, representations or promises. Evidence Mr. Thompson acted in “good faith” may be considered by you, together with all the other evidence, in determining whether or not Mr. Thompson acted with either the intent to defraud or with the intent to obtain money by means of false or fraudulent pretenses, representations or promises.

**INSTRUCTION NO. 6 - CLAIM OF RIGHT DEFENSE**

Another issue in this case is whether Mr. Thompson had a “claim of right” to the grant money. A “claim of right” is a complete defense only to the offense of receipt of stolen government money as charged in count 10.

A defendant may assert a “claim of right” defense when he was unaware the money taken was that of another, when he acted under an honest and reasonable claim of right to the money involved or when he had a right to acquire or dispose of the money as he did.

A “claim of right” is a belief that is genuinely, although not necessarily correctly, held by the defendant. The “claim of right” defense is not limited to those situations in which a defendant believed he owned the money. Rather, it includes situations in which the defendant honestly and reasonably, although not necessarily correctly, believed he had either the right or the authorization to acquire or dispose of the money.

The government has the burden of proving beyond a reasonable doubt that Mr. Thompson did not act based on a claim of right. If the government proves all the elements of receipt of stolen government money as charged in count 10 beyond a reasonable doubt and also proves beyond a reasonable doubt that Mr. Thompson did not honestly or reasonably believe he had either the right or the authorization to acquire or dispose of the money, then you must find him guilty.

If the government fails to prove beyond a reasonable doubt one or more elements of receipt of stolen government money as charged in count 10, or if the

government fails to prove beyond a reasonable doubt that Mr. Thompson did not honestly and reasonably believe he had either the right or the authorization to acquire or dispose of the money, then you must find him not guilty of the offense charged in count 10.

**INSTRUCTION NO. 7 -**

**PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF**

Mr. Thompson is presumed innocent and, therefore, not guilty. This presumption of innocence requires you to put aside all suspicion that might arise from the arrest or charge of Mr. Thompson or the fact he is here in court. The presumption of innocence remains with Mr. Thompson throughout the trial. This presumption alone is sufficient to find Mr. Thompson not guilty. The presumption of innocence may be overcome only if the government proves, beyond a reasonable doubt, each essential element of an offense charged.

The burden is always on the government to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant to prove his innocence, for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant is not even obligated to cross-examine the witnesses called to testify by the government.

If Mr. Thompson does not testify, this fact must not be considered by you in any way or even discussed in arriving at your verdict. If Mr. Thompson testifies, you should judge his testimony in the same manner in which you judge the testimony of any other witness.

If the government proves beyond a reasonable doubt all the essential elements of an offense charged, you must find Mr. Thompson guilty of that offense. If the government fails to prove beyond a reasonable doubt any

essential element of an offense charged, you must find Mr. Thompson not guilty of that offense.

**INSTRUCTION NO. 8 - REASONABLE DOUBT**

A reasonable doubt may arise from the evidence or lack of evidence produced during trial. A reasonable doubt is a doubt based upon reason and common sense, and not doubt based on speculation. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the more serious and important affairs of life. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

**INSTRUCTION NO. 9 - DEFINITION OF EVIDENCE**

I mentioned the word “evidence.” “Evidence” includes the testimony of witnesses, documents and other things received as exhibits and stipulated facts. Stipulated facts are facts formally agreed to by the parties. Certain things are *not* evidence. I shall list those things for you now:

1. Statements, arguments, questions and comments by lawyers representing the parties in the case are not evidence. Opening statements and closing arguments by lawyers are not evidence.
2. Objections and rulings on objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustain an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
3. Testimony I strike from the record or tell you to disregard is not evidence and must not be considered.
4. Anything you see or hear about this case outside the courtroom is not evidence.

The fact an exhibit may be shown to you does not mean you must rely on it more than you rely on other evidence.

Furthermore, a particular piece of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose and not for any other purpose. I will tell you when that occurs and



instruct you on the purposes for which the piece of evidence can and cannot be used.

Some of you may have heard the terms “direct evidence” and “circumstantial evidence.” You should not be concerned with those terms. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

The weight of the evidence is not determined by the number of witnesses testifying as to the existence or non-existence of any fact. Also, the weight of the evidence should not be determined merely by the number or volume of documents or exhibits. The weight of evidence depends on its quality, not quantity. The quality and weight of the evidence are for you to decide.

**INSTRUCTION NO. 10 - CREDIBILITY OF WITNESSES**

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 all of what a witness says, only part of it or none of it. In deciding what testimony to believe, consider:

- the witness' intelligence;
- the opportunity the witness had to see or hear the things testified about;
- the witness' memory;
- any motives the witness may have for testifying a certain way;
- the behavior of the witness while testifying;
- whether the witness said something different at an earlier time;
- the general reasonableness of the testimony; and
- the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind people sometimes see or hear things differently and sometimes forget things. You need to consider whether a contradiction results from an innocent misrecollection or sincere lapse of memory or instead from an intentional falsehood or pretended lapse of memory.

Finally, just because a witness works in law enforcement or is employed by the government does not mean you should give more weight or credibility to the witness' testimony than you give to any other witness' testimony.

**INSTRUCTION NO. 11 - IMPEACHMENT**

In the last instruction, I instructed you generally on the credibility of witnesses. I now instruct you further on how the credibility of a witness may be “impeached” and how you may treat certain evidence.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; or by evidence that at some other time the witness said or did something, or failed to say or do something, that is inconsistent with the witness’ trial testimony. If earlier statements of a witness were admitted into evidence, they were not admitted to prove that the contents of those statements were true. Instead, you may consider those earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness and therefore, whether they affect the credibility of that witness.

If you believe a witness has been discredited or impeached, it is your exclusive right to give that witness’ testimony whatever weight you think it deserves.

**INSTRUCTION NO. 12 - BENCH CONFERENCES AND RECESSES**

During the trial it may be necessary for me to talk with the lawyers out of the hearing of the jury, either by having a bench conference while the jury is present in the courtroom or by calling a recess. Please be patient because while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, to avoid confusion and error, and to save your valuable time. We will do what we can to keep the number and length of these conferences to a minimum.

**INSTRUCTION NO. 13 - OBJECTIONS**

The lawyers may make objections and motions during the trial that I must rule upon. If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself. The lawyers have a duty to object to testimony or other evidence they believe is not properly admissible. Do not hold it against a lawyer or the party the lawyer represents because the lawyer has made an objection.

**INSTRUCTION NO. 14 - NOTE TAKING**

At the end of the trial, you must make your decision based on the evidence. We have an official court reporter making a record of the trial. However, we will not have a typewritten transcript of the trial available for your use in reaching a verdict. You must pay close attention to the evidence as it is presented.

If you want to take notes during the trial, you may, but be sure your note taking does not interfere with listening to and considering all the evidence. If you choose not to take notes, remember it is your responsibility to listen carefully to the evidence.

Notes you take during the trial are not necessarily more reliable than your memory or another juror's memory. Therefore, you should not be overly influenced by the notes.

If you take notes, do not discuss them with anyone before you begin your deliberations. At the end of each day, please leave your notes in the jury room. At the end of the trial, you may take your notes out of the notebook and keep them or leave them, and we will destroy them. No one will read the notes, either during or after the trial.

**INSTRUCTION NO. 15 - MEDIA AND TECHNOLOGY**

You are required to decide this case based solely on the evidence and exhibits that you see and hear in the courtroom. If one or more of you were to get additional information from an outside source, that information might be inaccurate or incomplete or for some other reason not applicable to this case, and the parties would not have a chance to explain or contradict that information because they would not know about it. This is why it is so important that you base your verdict only on information you receive in this courtroom.

In order for your verdict to be fair, you must not be exposed to any other information about the case, the law or any of the issues involved in this trial during the course of your jury duty. This is very important, so I am taking the time to give you a detailed explanation about what you should do and not do during your time as jurors.

*First*, you must not try to get information from any source other than what you see and hear in this courtroom. That means you may not speak to anyone, including your family and friends about this case. You may not use any printed or electronic sources to get information about this case or the issues involved. This includes the internet, reference books or dictionaries, newspapers, magazines, television, radio, computers, smartphones, PDAs, or any other electronic device. You may not do any personal investigating, such as visiting any of the places involved in this case, using internet maps or Google Earth or any other such technology, talking to any possible witnesses, or creating your



own demonstrations or reenactments of the events which are the subject of this case.

*Second*, you must not communicate with anyone about this case or your jury service, and you must not allow anyone to communicate with you. In particular, you may not communicate about the case through emails, text messages, tweets, blogs, chat rooms, comments or other postings, social networking sites, including but not limited to Facebook, MySpace, Twitter or any other website. This applies to communicating with your fellow jurors, your family members, your employer and the people involved in the trial, although you may notify your family and employer that you have been seated as a juror in the case. If you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and immediately report the contact to the court.

I recognize these rules and restrictions may affect activities you may consider to be normal and harmless. I assure you that I am very much aware I am asking you to refrain from activities which may be very common and very important in your daily lives. However, the law requires these restrictions to ensure the parties have a fair trial based on the evidence each party has an opportunity to address.

Any juror who violates the restrictions I have explained to you jeopardizes the fairness of these proceedings, and a mistrial could result which would require the entire trial process to start over. As you can imagine, a mistrial is a

tremendous expense and inconvenience to the parties, the court and the taxpayers. If any juror is exposed to any outside information or has any difficulty whatsoever in following these instructions, please notify the court immediately. If any juror becomes aware that one of your fellow jurors has done something that violates these instructions, you are obligated to report that violation to the court as well.

These restrictions remain in effect throughout this trial. Once the trial is over, you may resume your normal activities. At that point, you will be free to read or research anything you wish. You will be able to speak—or choose not to speak—about the trial to anyone you wish. You may write, post or tweet about the case if you choose to do so. The only limitation is that you must wait until after the verdict, when you have been discharged from your jury service.

**INSTRUCTION NO. 16 - CONDUCT OF THE JURY DURING TRIAL**

To insure fairness, you as jurors must obey the following rules:

*First*, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide your verdict.

*Second*, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended, and I discharge you as jurors. This means you must not talk to your spouse, other family members or friends about this case until I discharge you as jurors.

*Third*, when you are outside the courtroom, do not let anyone tell you anything about the case or about anyone involved with it, until the trial has ended, and I accept your verdict. If someone should try to talk to you about the case, please report it to me.

*Fourth*, during the trial, you should not talk with or speak to any of the parties, lawyers or witnesses involved in this case—you should not even pass the time of day with any of them. It is important you not only do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the case sees you talking to a person from the other side, even if it is simply to pass the time of day, an unwarranted and unnecessary suspicion about your fairness might be created. If any lawyer, party or witness does not speak to you when you pass in the hall, ride the elevator or the like, it is because they are not supposed to talk or visit with you.

*Fifth*, during the trial, do not make up your mind about what the verdict should be. Keep an open mind until you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

*Sixth*, if at any time during the trial you have a problem you would like to bring to my attention or if you feel ill or need to go to the restroom, please send a note to the court security officer, who will deliver it to me. Or just raise your hand and get my attention. I want you to be comfortable, so please do not hesitate to inform me of any problem.

**INSTRUCTION NO. 17 - OUTLINE OF THE TRIAL**

The trial will proceed as follows:


After these instructions, the lawyer for the government may make an opening statement. Next, the lawyer for the defendant may, but does not have to, make an opening statement. An opening statement is not evidence. It is simply a summary of what the lawyer expects the evidence to be.

The government will then present its evidence and call witnesses. The lawyer for the defendant may, but has no obligation to, cross-examine them. Following the government's case, the defendant may, but does not have to, present evidence or call witnesses. If the defendant calls witnesses, the government may cross-examine them.

After presentation of the evidence is complete, the lawyers will make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence. I will then give you additional instructions, and you will retire to deliberate on your verdict.

Dated October 20, 2014.

BY THE COURT:

  
\_\_\_\_\_  
JEFFREY L. VIKEN  
CHIEF JUDGE

**FILED**

OCT 29 2014

*[Signature]*  
CLERK

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

|                           |   |                  |
|---------------------------|---|------------------|
| UNITED STATES OF AMERICA, | ) | CR. 11-50054-JLV |
|                           | ) |                  |
| Plaintiff,                | ) | SUPPLEMENTAL     |
|                           | ) | INSTRUCTIONS     |
| vs.                       | ) | TO THE JURY      |
|                           | ) |                  |
| SCOTT THOMPSON,           | ) |                  |
|                           | ) |                  |
| Defendant.                | ) |                  |

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VERDICT

**INSTRUCTION NO. 18 - EQUALLY IMPORTANT INSTRUCTIONS**

Members of the jury, I will now take a few minutes to give you additional instructions explaining the law which applies to this case. All instructions, both those I gave you earlier and these instructions, are equally binding on you and must be followed. You must consider my instructions as a whole and not single out some instructions and ignore others.

**INSTRUCTION NO. 19 – INTERSTATE COMMERCE**

The phrase “interstate commerce” means trade, transactions, transportation or communication between any point in a state and any place outside that state or between two points within a state through a place outside the state.

The term “commerce” includes, among other things, travel, trade, transportation and communication. The internet is an instrumentality and channel of interstate commerce.



**INSTRUCTION NO. 20 – EMPLOYMENT CONTRACT**

An employer-employee relationship may be created by an express or implied contract.

An express contract is a contract in which the terms are explicitly set out in written form.

An implied contract is a contract which is not in written form, but where the parties' conduct, language or other acts cause you to conclude the parties entered into a contract.

**INSTRUCTION NO. 21 –**

**DELIBERATE IGNORANCE/WILLFUL BLINDNESS**

You may find Mr. Thompson acted knowingly if you find beyond a reasonable doubt he believed there was a high probability that he was not entitled to the money received from the National Science Foundation and that he took deliberate actions to avoid learning of that fact. Knowledge may be inferred if Mr. Thompson deliberately closed his eyes to what would otherwise have been obvious to him. A willfully blind defendant is one who takes deliberate actions to avoid confirming a high probability of wrongdoing and who can almost be said to have actually known the critical facts.

With regard to counts 1, 2, 3, 4, 5, 6, 7, 8 and 9, you may not find Mr. Thompson acted “knowingly” if you find he was merely negligent, careless or mistaken in making the statements or representations to the National Science Foundation.

With regard to counts 1, 2, 3, 4, 5, 6, 7, 8 and 9, you may not find Mr. Thompson acted “knowingly” if you find he actually believed the statements or representations he made to the National Science Foundation.

With regard to count 10, you may not find Mr. Thompson acted “knowingly” if you find he was merely negligent, careless or mistaken as to his belief he had either the right or the authorization to acquire or dispose of the money.

With regard to count 10, you may not find Mr. Thompson acted “knowingly” if you find he actually believed he had either the right or the authorization to acquire or dispose of the money.

**INSTRUCTION NO. 22 - DUTY TO DELIBERATE**

A verdict must represent the considered judgment of each juror. Your verdict must be unanimous. It is your duty to consult with one another and to deliberate with a view of reaching agreement if you can do so without violence to your individual judgment. Of course, you must not surrender your honest convictions as to the weight or effect of the evidence solely because of the opinions of other jurors or for the mere purpose of returning a verdict. Each of you must decide the case for yourself, but you should do so only after consideration of the evidence with your fellow jurors.

In the course of your deliberations, you should not hesitate to re-examine your own views and change your opinion if you are convinced it is wrong. To bring the jury to a unanimous result, you must examine the questions submitted to you openly and frankly with proper regard for the opinions of others and with a willingness to re-examine your own views.

Remember that if, in your individual judgment, the evidence fails to establish Mr. Thompson's guilt beyond a reasonable doubt, then Mr. Thompson should have your vote for a not guilty verdict. If all of you reach the same conclusion, the verdict of the jury must be not guilty. Of course, the opposite also applies. If, in your individual judgment, the evidence establishes Mr. Thompson's guilt beyond a reasonable doubt, your vote should be for a verdict of guilty against Mr. Thompson. If all of you reach that conclusion, the verdict of the jury must be guilty.

The question before you can never be whether the government wins or loses the case. The government, as well as society, always wins when justice is done, regardless of whether your verdict is not guilty or guilty.

Finally, remember that you are not partisans. You are judges of the facts. Your sole interest is to seek the truth from the evidence. You are the judges of the credibility of the witnesses and the weight of the evidence.

You may conduct your deliberations as you choose. You may take all the time you feel is necessary.

There is no reason to think that another trial would be tried in a better way or that a more conscientious, impartial or competent jury would be selected to hear it. Any future jury must be selected in the same manner and from the same source as you. If you should fail to agree on a verdict, then this case is left open and must be resolved at some later time.

**INSTRUCTION NO. 23 - DUTY DURING DELIBERATIONS**

There are certain rules you must follow while conducting your deliberations and returning your verdict:

*First*, when you go to the jury room, you must select one of your members as your foreperson, who will preside over your discussions and speak for you here in court.

*Second*, if Mr. Thompson is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government proved its case beyond a reasonable doubt as to the offenses charged in the indictment.

*Third*, if you need to communicate with me during your deliberations, you may send a note to me through the court security officer, signed by one or more jurors. After conferring with the lawyers, I will respond as soon as possible, either in writing or orally in open court. Remember you should not tell anyone—including me—how your votes stand numerically.

*Fourth*, your verdict must be based solely on the evidence and on the law in these instructions. **The verdict, whether not guilty or guilty, must be unanimous.** Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

*Fifth*, the verdict form is simply the written notice of the decision you reach in this case. You will take this form to the jury room. When you have unanimously agreed on the verdict, the foreperson will fill in the form, date and sign it and advise the court security officer you have reached a verdict. You will then return to the courtroom where your verdict will be received and announced.

Dated October 29<sup>th</sup>, 2014.

BY THE COURT:



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JEFFREY L. VIKEN  
CHIEF JUDGE