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REBECCA G. CHURCH  
Attorney for the United States  
Acting Under Authority  
Conferred by 28 U.S.C. § 515  
Nicholas W. Pilchak  
CA State Bar No. 331711  
Andrew R. Haden  
CA State Bar No. 258436  
Assistant U.S. Attorneys  
880 Front Street, Room 6293  
San Diego, CA 92101  
Tel: (619) 546-9709 / 6961  
Email: nicholas.pilchak@usdoj.gov

Attorneys for the United States

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

GIOVANNI VINCENZO TILOTTA (3),  
aka "Gio Tilotta,"

Defendant.

Case No. 19-CR-4768-GPC

**UNITED STATES'  
AMENDED PROPOSED  
JURY INSTRUCTIONS**

COMES NOW, the plaintiff, UNITED STATES OF AMERICA, by and through its counsel REBECCA G. CHURCH, Attorney for the United States Acting Under Authority Conferred By 28 U.S.C. § 515, and Andrew R. Haden and Nicholas W. Pilchak, Assistant U.S. Attorneys, and hereby files its Amended Proposed Jury Instructions.

1 **PATTERN INSTRUCTIONS FOR PRELIMINARIES, COURSE OF TRIAL,**  
 2 **AND PARTICULAR EVIDENCE.**

3 The United States will ask the Court to deliver the model instructions listed  
 4 below at the preliminary phase, in the course of trial, and concerning particular  
 5 evidence expected to be admitted at this trial.

No.	Instruction
	<b>PRELIMINARIES</b>
1.1	Duty of Jury
1.2	The charge—presumption of innocence
1.3	What is evidence
1.4	What is not evidence
1.5	Direct and circumstantial evidence
1.6	Rule of objections
1.7	Credibility of witnesses
1.8	Conduct of the jury
1.9	No transcript available to jury
1.10	Taking notes
1.11	Outline of trial
1.14	Questions to witnesses by jurors during trial
	<b>COURSE OF TRIAL</b>
2.1	Cautionary instruction—first recess
2.3	Stipulations of fact
2.6	Transcript of recording in English
2.10	Other crimes, wrongs or acts of defendant
2.12	Evidence for limited purpose

1	2.14	Dismissal of some charges against defendant
2	2.15	Disposition of charge against codefendant
3		<b>PARTICULAR EVIDENCE</b>
4	3.1	Statements by defendant
5	3.3	Other crimes, wrongs or acts of defendant
6	3.9	Testimony of witnesses involving special circumstances—immunity,
7		benefits, accomplice, plea
8	3.10	Government’s use of undercover agents and informants
9	3.14	Opinion evidence, expert witness
10	3.16	Charts and summaries not admitted into evidence
11	3.17	Charts and summaries admitted into evidence

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1                   **11.1 CONSPIRACY TO MAKE FALSE STATEMENTS IN THE**  
2   **ACQUISITION OF A FIREARM**

3           Defendant is charged in Count 1 of the indictment with conspiracy to make false  
4 statements in the acquisition of a firearm, in violation of Sections 371 and 924(a)(1)(A)  
5 of Title 18 of the United States Code. For Defendant to be found guilty of that charge,  
6 the government must prove each of the following elements beyond a reasonable  
7 doubt:

8           First, beginning on or about October 21, 2015, and ending on or about  
9 February 13, 2019, there was an agreement between two or more persons to commit  
10 the crime of making false statements in the acquisition of a firearm;

11           Second, the defendant became a member of the conspiracy knowing of its object  
12 and intending to help accomplish it; and

13           Third, one of the members of the conspiracy performed at least one overt act for  
14 the purpose of carrying out the conspiracy.

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16           The crime of making false statements in the acquisition of a firearm has the  
17 following elements:

18           First, the person knowingly made a false statement or representation;

19           Second, the person made the statement or representation to a Federal Firearms  
20 Licensee; and

21           Third, the statement pertained to information that the law requires the Federal  
22 Firearms Licensee to keep.

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24           The government need not prove that the false statements related to the  
25 lawfulness of the underlying sale or acquisition of the firearm. Instead, the  
26 government must prove only that the person knowingly made a false statement with  
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1 respect to the information required under law to be kept by federally licensed firearms  
2 dealers.

3  
4 A conspiracy is a kind of criminal partnership—an agreement of two or more  
5 persons to commit one or more crimes. The crime of conspiracy is the agreement to  
6 do something unlawful; it does not matter whether the crime agreed upon was  
7 committed.

8 For a conspiracy to have existed, it is not necessary that the conspirators made  
9 a formal agreement or that they agreed on every detail of the conspiracy. It is not  
10 enough, however, that they simply met, discussed matters of common interest, acted  
11 in similar ways, or perhaps helped one another. You must find that there was a plan to  
12 commit at least one of the crimes alleged in the indictment as an object of the  
13 conspiracy with all of you agreeing as to the particular crime which the conspirators  
14 agreed to commit.

15 One becomes a member of a conspiracy by willfully participating in the  
16 unlawful plan with the intent to advance or further some object or purpose of the  
17 conspiracy, even though the person does not have full knowledge of all the details of  
18 the conspiracy. Furthermore, one who willfully joins an existing conspiracy is as  
19 responsible for it as the originators. On the other hand, one who has no knowledge of  
20 a conspiracy, but happens to act in a way which furthers some object or purpose of the  
21 conspiracy, does not thereby become a conspirator. Similarly, a person does not  
22 become a conspirator merely by associating with one or more persons who are  
23 conspirators, nor merely by knowing that a conspiracy exists.

24 An overt act does not itself have to be unlawful. A lawful act may be an element  
25 of a conspiracy if it was done for the purpose of carrying out the conspiracy. The  
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1 government is not required to prove that the defendant personally did one of the overt  
2 acts.

3 [Model Instr. 11.1 approved 1/2019, *modified*;  
4 *United States v. McGowan*, 746 Fed. Appx. 679, 681 fn.1 (9th Cir. 2018) (unpub.);  
5 *see also United States v. Johnson*, 680 F.3d 1140, 1143–45 (9th Cir. 2012)]  
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**FIREARM—DEFINED**

A firearm includes any weapon which will or is designed to expel a projectile by the action of an explosive.

[18 U.S.C. § 921(a)(3)(A)]

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**14.3, 4.1 AIDING AND ABETTING**

**DEALING IN FIREARMS WITHOUT A LICENSE**

Defendant is charged in Count 2 of the indictment with aiding and abetting dealing firearms without a license, in violation of Sections 922(a)(1)(A) and 2 of Title 18 of the United States Code.

To prove a defendant guilty of dealing in firearms without a license by aiding and abetting, the government must prove each of the following elements beyond a reasonable doubt:

First, Morad Marco Garmo committed the crime of dealing in firearms without a license;

Second, the defendant aided, counseled, commanded, induced or procured Garmo with respect to at least one element of engaging in the business of dealing in firearms without a license;

Third, the defendant acted with the intent to facilitate dealing in firearms without a license; and

Fourth, the defendant acted before the crime was completed.

To be guilty of aiding and abetting a crime, it is not enough that the defendant merely associated with the person committing the crime, or unknowingly or unintentionally did things that were helpful to that person, or was present at the scene of the crime. The evidence must show beyond a reasonable doubt that the defendant acted with the knowledge and intention of helping that person deal in firearms without a license.

A defendant acts with the intent to facilitate the crime when the defendant actively participates in a criminal venture with advance knowledge of the crime.



1 In turn, the elements of the crime of dealing in firearms without a license are:

2 First, Morad Marco Garmo was willfully engaged in the business of dealing in  
3 firearms beginning no later than October 21, 2015 and continuing up to and including  
4 February 13, 2019; and

5 Second, Garmo did not then have a license as a firearms dealer.  
6

7 The government must prove beyond a reasonable doubt that Morad Marco  
8 Garmo engaged in a greater degree of activity than the occasional sale of a hobbyist or  
9 collector, and that Garmo devoted time, attention and labor to selling firearms as a  
10 trade or business with the intent of making profits through the repeated purchase and  
11 sale of firearms. A person who makes occasional sales, exchanges, or purchases of  
12 firearms for the enhancement of a personal collection or for a hobby, or who sells all  
13 or part of his personal collection of firearms, is not engaged in the business of dealing  
14 in firearms.

15 For a person to engage in the business of dealing in firearms, it is not necessary  
16 to prove an actual sale of firearms. Nor is it necessary to prove that dealing in firearms  
17 was the person's primary business.

18 The government need not prove profits if the person was engaged in the regular  
19 and repetitive purchase and disposition of firearms for criminal purposes.

20 Willfully, as used in this statute, requires proof that Morad Marco Garmo knew  
21 that his conduct was unlawful, but does not require proof that Garmo knew of the  
22 federal licensing requirement.

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24 [Model Instr. 14.3 approved 5/2020, *modified*;  
25 Model Instr. 4.1 approved 9/2019, *modified*;  
26 *United States v. King*, 735 F.3d 1098, 1106 (9th Cir. 2013);  
27 *Bryan v. United States*, 524 U.S. 184, 198–99 (1998);  
*United States v. Nadirashvili*, 655 F.3d 114, 119 (2nd Cir. 2011);

18 U.S.C. § 921(a)(21)(C);  
18 U.S.C. § 921(a)(22)]

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**4.1 AIDING AND ABETTING MAKING FALSE STATEMENTS IN THE ACQUISITION OF A FIREARM**

Defendant is charged in Count 4 of the indictment with aiding and abetting making false statements in the acquisition of a firearm, in violation of Sections 924(a)(1)(A) and 2 of Title 18 of the United States Code. In order for Defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, Morad Marco Garmo committed the crime of making a false statement in the acquisition of a firearm, to wit, a Sig Sauer P226 Legion 9mm pistol, bearing serial number 47A141276;

Second, the defendant aided, counseled, commanded, induced or procured Garmo with respect to at least one element of making a false statement in the acquisition of a firearm;

Third, the defendant acted with the intent to facilitate making a false statement in the acquisition of a firearm; and

Fourth, the defendant acted before the crime was completed.

The elements of the crime of making a false statement in the acquisition of a firearm are:

First, Morad Marco Garmo knowingly made a false statement or representation;

Second, Garmo made the statement or representation to a Federal Firearms Licensee; and

Third, the statement pertained to information that the law requires the Federal Firearms Licensee to keep.

[Model Instr. 4.1 approved 9/2019, *modified*;  
*United States v. McGowan*, 746 Fed. Appx. 679, 681 fn.1 (9th Cir. 2018) (unpub.);  
*see also United States v. Johnson*, 680 F.3d 1140, 1143–45 (9th Cir. 2012)]

1           **4.1 AIDING AND ABETTING MAKING FALSE STATEMENTS IN THE**  
2   **ACQUISITION OF A FIREARM**

3           Defendant is charged in Count 5 of the indictment with aiding and abetting  
4 making false statements in the acquisition of a firearm, in violation of Sections  
5 924(a)(1)(A) and 2 of Title 18 of the United States Code. In order for Defendant to  
6 be found guilty of that charge, the government must prove each of the following  
7 elements beyond a reasonable doubt:

8           First, Fred Magana committed the crime of making a false statement in the  
9 acquisition of a firearm, to wit, a Walther PPS M2 9mm pistol, bearing serial number  
10 AR5980;

11           Second, the defendant aided, counseled, commanded, induced or procured  
12 Magana with respect to at least one element of making a false statement in the  
13 acquisition of a firearm;

14           Third, the defendant acted with the intent to facilitate making a false statement  
15 in the acquisition of a firearm; and

16           Fourth, the defendant acted before the crime was completed.

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18           The elements of the crime of making a false statement in the acquisition of a  
19 firearm are:

20           First, Fred Magana knowingly made a false statement or representation;

21           Second, Magana made the statement or representation to a Federal Firearms  
22 Licensee; and

23           Third, the statement pertained to information that the law requires the Federal  
24 Firearms Licensee to keep.

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[Model Instr. 4.1 approved 9/2019, *modified*;  
*United States v. McGowan*, 746 Fed. Appx. 679, 681 fn.1 (9th Cir. 2018) (unpub.);  
*see also United States v. Johnson*, 680 F.3d 1140, 1143–45 (9th Cir. 2012)]

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**14.9 UNLAWFUL SALE OF FIREARMS**

Defendant is charged in Count 7 of the indictment with unlawfully selling firearms, in violation of Section 922(b)(2) of Title 18 of the United States Code. In order for Defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant was licensed as a firearms dealer;

Second, the defendant willfully sold or delivered three firearms, to wit, a Daniel Defense AR-15 style 5.56 mm rifle bearing serial number DDM4107377, a Smith & Wesson Shield 9mm handgun bearing serial number HNH6175, and a Glock 27 .40 caliber pistol bearing serial number RLK240, to Vikas Bajaj; and

Third, the defendant knew the location of the sale was in violation of California law.

Under California law, a firearms licensee may only conduct business at the building designated in the licensee’s license, or certain gun shows or special events designated by California law, such as auctions, raffles, or similar events.

Willfully, as used in this context, requires that the defendant act with knowledge that his conduct is unlawful, but not that the defendant be aware of the specific provision that he is charged with violating.

In addition to the elements above, before you may find Defendant TILOTTA guilty on this count, you must unanimously agree that he sold or delivered at least one of the listed firearms, with all of you agreeing on at least one specific firearm.

[Model Instr. 14.9 approved 5/2020, *modified*;  
Cal. Penal Code §§ 26805, 27905;  
*United States v. Ogles*, 406 F.3d 586, 590 (9th Cir. 2005);  
*Bryan v. United States*, 524 U.S. 184, 198–99 (1998)]

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**4.8 KNOWINGLY—DEFINED**

An act is done knowingly if the defendant is aware of the act and does not act through ignorance, mistake, or accident. You may consider evidence of the defendant’s words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

[Model Instr. 4.8 approved 3/2018]

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August 23, 2022

REBECCA G. CHURCH  
Attorney for the United States  
Acting Under Authority  
Conferred by 28 U.S.C. § 515

/s/ Nicholas W. Pilchak  
NICHOLAS W. PILCHAK  
ANDREW R. HADEN  
Assistant United States Attorneys