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15 Attorneys for the United States

16 UNITED STATES DISTRICT COURT
17 SOUTHERN DISTRICT OF CALIFORNIA

18 UNITED STATES OF AMERICA,

19 Plaintiff,

20 v.

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

23 Defendant.

Case No. 19-CR-4768-GPC

**UNITED STATES' SECOND
AMENDED PROPOSED JURY
INSTRUCTIONS**

24 COMES NOW, the plaintiff, UNITED STATES OF AMERICA, by and through
25 its counsel REBECCA G. CHURCH, Attorney for the United States Acting Under
26 Authority Conferred By 28 U.S.C. § 515, and Andrew R. Haden and Nicholas W.
27 Pilchak, Assistant U.S. Attorneys, and hereby files its Second Amended Proposed Jury
28 Instructions. This version includes modifications or amendments consistent with the
Court's in-court rulings on September 2, 2022.

1.1 DUTY OF JURY

Jurors: You now are the jury in this case, and I want to take a few minutes to tell you something about your duties as jurors and to give you some preliminary instructions. At the end of the trial, I will give you more detailed written instructions that will control your deliberations.

When you deliberate, it will be your duty to weigh and to evaluate all the evidence received in the case and, in that process, to decide the facts. To the facts as you find them, you will apply the law as I give it to you, whether you agree with the law or not. You must decide the case solely on the evidence and the law before you.

Perform these duties fairly and impartially. You should not be influenced by any person's race, color, religious beliefs, national ancestry, sexual orientation, gender identity, gender, or economic circumstances. Also, do not allow yourself to be influenced by personal likes or dislikes, sympathy, prejudice, fear, public opinion, or biases, including unconscious biases. Unconscious biases are stereotypes, attitudes, or preferences that people may consciously reject but may be expressed without conscious awareness, control, or intention. Like conscious bias, unconscious bias can affect how we evaluate information and make decisions.

[Model Instr. 1.1 approved 12/2019]

1.2 THE CHARGE—PRESUMPTION OF INNOCENCE

This is a criminal case brought by the United States government. The government charges the defendant with: (1) conspiracy to make false statements in the acquisition of a firearm; (2) aiding and abetting engaging in the business of dealing in firearms without a license; (3) aiding and abetting false statements in the acquisition of a firearm; (4) aiding and abetting false statements in the acquisition of a firearm; and (5) conducting a firearms transaction in violation of California law. The charges against the defendant are contained in the indictment. The indictment simply describes the charges the government brings against the defendant. The indictment is not evidence and does not prove anything.

The defendant has pleaded not guilty to the charges and is presumed innocent unless and until the government proves the defendant guilty beyond a reasonable doubt. In addition, the defendant has the right to remain silent and never has to prove innocence or present any evidence.

[Model Instr. 1.2 approved 9/2019, modified to add charges]

1.3 WHAT IS EVIDENCE

The evidence you are to consider in deciding what the facts are consists of:

First, the sworn testimony of any witness;

Second, the exhibits that are received in evidence; and,

Third, any facts to which the parties agree.

[Model Instr. 1.3 approved 9/2019]

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1.4 WHAT IS NOT EVIDENCE

The following things are not evidence, and you must not consider them as evidence in deciding the facts of this case:

First, statements and arguments of the attorneys;

Second, questions and objections of the attorneys;

Third, testimony that I instruct you to disregard; and

Fourth, anything you may see or hear when the court is not in session even if what you see or hear is done or said by one of the parties or by one of the witnesses.

[Model Instr. 1.4 approved 9/2019]

1.5 DIRECT AND CIRCUMSTANTIAL EVIDENCE

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which one can find another fact.

By way of example, if you wake up in the morning and see that the sidewalk is wet, you may find from that fact that it rained during the night. However, other evidence, such as sprinklers, may explain the water on the sidewalk. Therefore, before you decide that a fact has been proven by circumstantial evidence, you must consider all the evidence in the light of reason, experience, and common sense.

You are to consider both direct and circumstantial evidence. Either can be used to prove any fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

[Model Instr. 1.5 approved 9/2019, with addition of example per GPC]

1 **1.6 RULE OF OBJECTIONS**

2 There are rules of evidence that control what can be received in evidence. When
3 a lawyer asks a question or offers an exhibit in evidence and a lawyer on the other side
4 thinks that it is not permitted by the rules of evidence, that lawyer may object. If I
5 overrule the objection, the question may be answered or the exhibit received. If I
6 sustain the objection, the question cannot be answered, or the exhibit cannot be
7 received. Whenever I sustain an objection to a question, you must ignore the question
8 and must not guess what the answer would have been.

9 Sometimes I may order that evidence be stricken from the record and that you
10 disregard or ignore the evidence. That means that when you are deciding the case, you
11 must not consider the evidence that I told you to disregard.

12 [Model Instr. 1.6 approved 7/2010]
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1.7 CREDIBILITY OF WITNESSES

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

First, the witness's opportunity and ability to see or hear or know the things testified to;

Second, the witness's memory;

Third, the witness's manner while testifying;

Fourth, the witness's interest in the outcome of the case, if any;

Fifth, the witness's bias or prejudice, if any;

Sixth, whether other evidence contradicted the witness's testimony;

Seventh, the reasonableness of the witness's testimony in light of all the evidence; and

Eighth, any other factors that bear on believability.

You must avoid bias, conscious or unconscious, based on a witness's race, color, religious beliefs, national ancestry, sexual orientation, gender identity, gender, or economic circumstances in your determination of credibility.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify about it. What is important is how believable the witnesses are, and how much weight you think their testimony deserves.

[Model Instr. 1.7 approved 9/2019]

1.8 CONDUCT OF THE JURY

I will now say a few words about your conduct as jurors.

First, keep an open mind throughout the trial, and do not decide what the verdict should be until you and your fellow jurors have completed your deliberations at the end of the case.

Second, because you must decide this case based only on the evidence received in the case and on my instructions as to the law that applies, you must not be exposed to any other information about the case or to the issues it involves during the course of your jury duty. Thus, until the end of the case or unless I tell you otherwise:

Do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the merits of the case or anything to do with it. This restriction includes discussing the case in person, in writing, by phone, tablet, or computer, or any other means, via email, via text messaging, or any Internet chat room, blog, website or application, including but not limited to Facebook, YouTube, Twitter, Instagram, LinkedIn, Snapchat, TikTok, or any other forms of social media. This restriction also applies to communicating with your fellow jurors until I give you the case for deliberation, and it applies to communicating with everyone else including your family members, your employer, the media or press, and the people involved in the trial, although you may notify your family and your employer that you have been seated as a juror in the case, and how long you expect the trial to last. But, 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. In addition, you must report the contact to the court.

1 Because you will receive all the evidence and legal instruction you
2 properly may consider to return a verdict: do not read, watch, or listen to
3 any news or media accounts or commentary about the case or anything to do
4 with it[, although I have no information that there will be news reports about
5 this case]; do not do any research, such as consulting dictionaries, searching
6 the Internet or using other reference materials; and do not make any
7 investigation or in any other way try to learn about the case on your own.
8 Do not visit or view any place discussed in this case, and do not use the
9 Internet or any other resource to search for or view any place discussed
10 during the trial. Also, do not do any research about this case, the law, or the
11 people involved—including the parties, the witnesses or the lawyers—until
12 you have been excused as jurors. If you happen to read or hear anything
13 touching on this case in the media, turn away and report it to me as soon as
14 possible.

15 These rules protect each party's right to have this case decided only on evidence
16 that has been presented here in court. Witnesses here in court take an oath to tell the
17 truth, and the accuracy of their testimony is tested through the trial process. If you do
18 any research or investigation outside the courtroom, or gain any information through
19 improper communications, then your verdict may be influenced by inaccurate,
20 incomplete, or misleading information that has not been tested by the trial process.
21 Each of the parties is entitled to a fair trial by an impartial jury, and if you decide the
22 case based on information not presented in court, you will have denied the parties a
23 fair trial. Remember, you have taken an oath to follow the rules, and it is very
24 important that you follow these rules.

1 A juror who violates these restrictions jeopardizes the fairness of these
2 proceedings, and a mistrial could result that would require the entire trial process to
3 start over. If any juror is exposed to any outside information, please notify the court
4 immediately.

5 [Model Instr. 1.8 approved 12/2020]
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1.9 NO TRANSCRIPT AVAILABLE TO JURY

At the end of the trial, you will have to make your decision based on what you recall of the evidence. You will not have a written transcript of the trial. I urge you to pay close attention to the testimony as it is given.

[Model Instr. 1.9 approved 9/2019]

1 **1.10 TAKING NOTES**

2 If you wish, you may take notes to help you remember the evidence. If you do
3 take notes, please keep them to yourself until you and your fellow jurors go to the jury
4 room to decide the case. Do not let note-taking distract you from being attentive.
5 When you leave court for recesses, your notes should be left in the courtroom. No one
6 will read your notes.

7 Whether or not you take notes, you should rely on your own memory of the
8 evidence. Notes are only to assist your memory. You should not be overly influenced
9 by your notes or those of your fellow jurors.

10 [Model Instr. 1.10 approved 7/2010]
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1 **1.11 OUTLINE OF TRIAL**

2 The next phase of the trial will now begin. First, each side may make an opening
3 statement. An opening statement is not evidence. It is simply an outline to help you
4 understand what that party expects the evidence will show. A party is not required to
5 make an opening statement.

6 The government will then present evidence and counsel for the defendant may
7 cross-examine. Then, if the defendant chooses to offer evidence, counsel for the
8 government may cross-examine.

9 After the evidence has been presented, [I will instruct you on the law that applies
10 to the case and the attorneys will make closing arguments] [the attorneys will make
11 closing arguments and I will instruct you on the law that applies to the case].

12 After that, you will go to the jury room to deliberate on your verdict.

13 [Model Instr. 1.11 approved 7/2010]
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1.14 QUESTIONS TO WITNESSES BY JURORS DURING TRIAL

Only the lawyers and I are allowed to ask questions of witnesses. A juror is not permitted to ask questions of witnesses. If, however, you are unable to hear a witness or a lawyer, please raise your hand and I will correct the situation.

[Model Instr. 1.14 approved 9/2019]

1.16 BENCH CONFERENCES AND RECESSES

During the trial, I may need to take up legal matters with the attorneys privately, either by having a conference at the bench when the jury is present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is not to keep relevant information from you, but to decide how certain evidence is to be treated under the rules of evidence and to avoid confusion and error.

Of course, we will do what we can to keep the number and length of these conferences to a minimum. I may not always grant an attorney's request for a conference. Do not consider my granting or denying a request for a conference as any indication of my opinion of the case or what your verdict should be.

[Model Instr. 1.16 approved 9/2019]

2.1 CAUTIONARY INSTRUCTION

At the End of Each Day of the Case:

As I indicated before this trial started, you as jurors will decide this case based solely on the evidence presented in this courtroom. This means that after you leave here for the night, you must not conduct any independent research about this case, the matters in the case, the legal issues in the case, or the individuals or other entities involved in the case. This is important for the same reasons that jurors have long been instructed to limit their exposure to traditional forms of media information such as television and newspapers. You also must not communicate with anyone, in any way, about this case. And you must ignore any information about the case that you might see while browsing the Internet or your social media feeds.

At the Beginning of Each Day of the Case:

As I reminded you yesterday and continue to emphasize to you today, it is important that you decide this case based solely on the evidence and the law presented here. So you must not learn any additional information about the case from sources outside the courtroom. To ensure fairness to all parties in this trial, I will now ask each of you whether you have learned about or shared any information about this case outside of this courtroom, even if it was accidental.

[ALTERNATIVE 1 (in open court): if you think that you might have done so, please let me know now by raising your hand. [Wait for a show of hands]. I see no raised hands; however, if you would prefer to talk to the court privately in response to this question, please notify a member of the court's staff at the next break. Thank you for your careful adherence to my instructions.]

[Model Instr. 2.1 approved 12/2020]

2.3 STIPULATIONS OF FACT

The parties have agreed to certain facts that have been stated to you. Those facts are now conclusively established.

[Model Instr. 2.3 approved 9/2019]

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2.10 OTHER CRIMES, WRONGS OR ACTS OF DEFENDANT

You have heard testimony and seen evidence that the defendant may have committed other wrongs that were discovered during the December 2, 2015 inspection at Honey Badger Firearms by the California Department of Justice, Bureau of Firearms. This evidence of other acts was admitted only for limited purposes. You may consider this evidence only for the purpose of deciding whether the defendant: had the state of mind, knowledge, or intent necessary to commit the crimes charged in the indictment; and did not commit the acts for which the defendant is on trial by accident or mistake.

Do not consider this evidence for any other purpose.

Of course, it is for you to determine whether you believe this evidence and, if you do believe it, whether you accept it for the purpose offered. You may give it such weight as you feel it deserves, but only for the limited purpose that I described to you.

The defendant is not on trial for committing these other acts. You may not consider the evidence of these other acts as a substitute for proof that the defendant committed the crimes charged. You may not consider this evidence as proof that the defendant has a bad character or any propensity to commit crimes. Specifically, you may not use this evidence to conclude that because the defendant may have committed the other acts, he must also have committed the acts charged in the indictment.

Remember that the defendant is on trial here only for: (1) conspiracy to make false statements in the acquisition of a firearm; (2) aiding and abetting engaging in the business of dealing in firearms without a license; (3) aiding and abetting false statements in the acquisition of a firearm; (4) aiding and abetting false statements in the acquisition of a firearm; and (5) conducting a firearms transaction in violation of California law. Do not return a guilty verdict unless the government proves the crimes charged in the indictment beyond a reasonable doubt.

[Model Instr. 2.10 approved 3/2018, modified to add charges]

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2.15 DISPOSITION OF CHARGE AGAINST CODEFENDANTS

You have heard evidence that other individuals who may have participated in criminal activity were not charged with crimes and testified as witnesses.

You also heard evidence that other individuals may have been convicted of crimes related to this case or similar activity.

For reasons that do not concern you, the case against codefendants Marco Garmo, Leo Hamel, and Fred Magana is no longer before you. Do not speculate why. This fact should not influence your verdict with reference to the remaining defendant, and you must base your verdict solely on the evidence against the remaining defendant.

[Model Instr. 2.15 approved 6/2018]

3.1 STATEMENTS BY DEFENDANT

You have heard testimony that the defendant made a statement. It is for you to decide (1) whether the defendant made the statement, and (2) if so, how much weight to give to it. In making those decisions, you should consider all the evidence about the statement, including the circumstances under which the defendant may have made it.

[Model Instr. 3.1 approved 7/2010]

3.15 DUAL ROLE TESTIMONY

You heard testimony from Thomas Chimileski who testified to both facts and opinions and the reasons for his opinions.

Fact testimony is based on what the witness saw, heard, or did. Opinion testimony is based on the education or experience of the witness.

As to the testimony about facts, it is your job to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

As to the testimony about the witness's opinions, this opinion testimony is allowed because of the education or experience of this witness. Opinion testimony should be judged like any other testimony. You may accept all of it, part of it, or none of it. You should give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

[Model Instr. 3.15 approved 3/2018]

3.16 CHARTS AND SUMMARIES NOT ADMITTED INTO EVIDENCE

During the trial, certain charts and summaries were shown to you to help explain the evidence in the case. These charts and summaries were not admitted into evidence and will not go into the jury room with you. They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts or figures shown by the evidence in the case, you should disregard these charts and summaries and determine the facts from the underlying evidence.

[Model Instr. 3.16 approved 3/2018]

3.17 CHARTS AND SUMMARIES ADMITTED INTO EVIDENCE

Certain charts and summaries have been admitted into evidence. Charts and summaries are only as good as the underlying supporting material. You should, therefore, give them only such weight as you think the underlying material deserves.

[Model Instr. 3.17 approved 3/2018]

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

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

23
24 A conspiracy is a kind of criminal partnership—an agreement of two or more
25 persons to commit one or more crimes. The crime of conspiracy is the agreement to
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1 do something unlawful; it does not matter whether the crime agreed upon was
2 committed.

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

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

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

23 [Model Instr. 11.1 approved 1/2019, *modified*;
24 *United States v. McGowan*, 746 Fed. Appx. 679, 681 fn.1 (9th Cir. 2018) (unpub.)
(jury instructions on Section 924(a)(1)(A) were not deficient);
25 *see also United States v. Johnson*, 680 F.3d 1140, 1143–45 (9th Cir. 2012)
26 (statement need not be made related to a firearms purchase; it need only be a
statement the FFL is required to keep)]

11.3 – MULTIPLE CONSPIRACIES

You must decide whether the conspiracy charged in the indictment existed, and, if it did, who at least some of its members were. If you find that the conspiracy charged did not exist, then you must return a not guilty verdict on the conspiracy count, even though you may find that some other conspiracy existed.

[Model Instr. 11.3 approved 1/2019, *modified for multiple counts and only one defendant*]

FIREARM—DEFINED

A firearm includes any weapon which will or is designed to expel a projectile by the action of an explosive. The parties have stipulated that all firearms referenced during this trial were operable firearms within the meaning of federal law.

[18 U.S.C. § 921(a)(3)(A); *modified to include language from stipulation*]

14.3, 4.1 AIDING AND ABETTING

DEALING IN FIREARMS WITHOUT A LICENSE

The 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 the defendant guilty of engaging in the business 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 commit the crime of dealing 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.

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7 The parties have stipulated that Garmo did not have a license as a firearms dealer
8 at the relevant times.

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10 The government must prove beyond a reasonable doubt that Morad Marco
11 Garmo devoted time, attention and labor to selling firearms as a trade or business with
12 the principal or predominant objective of livelihood and profit through the repeated
13 purchase and sale of firearms. A person who makes occasional sales, exchanges, or
14 purchases of firearms for the enhancement of a personal collection or for a hobby, or
15 who sells all or part of his personal collection of firearms, is not engaged in the
16 business of dealing in firearms.

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

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.

23 [Model Instr. 14.3 approved 5/2020, *modified*;
24 Model Instr. 4.1 approved 9/2019, *modified*;
25 *United States v. King*, 735 F.3d 1098, 1106 (9th Cir. 2013);
26 *Bryan v. United States*, 524 U.S. 184, 198-99 (1998);
27 *United States v. Nadirashvili*, 655 F.3d 114, 119 (2nd Cir. 2011);
18 U.S.C. § 921(a)(21)(C);

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

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

5 [Model Instr. 4.1 approved 9/2019, *modified*;
6 *United States v. McGowan*, 746 Fed. Appx. 679, 681 fn.1 (9th Cir. 2018) (unpub.)
7 (jury instructions on Section 924(a)(1)(A) were not deficient);
8 *see also United States v. Johnson*, 680 F.3d 1140, 1143–45 (9th Cir. 2012)
9 (statement need not be made related to a firearms purchase; it need only be a
10 statement the FFL is required to keep)]
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1 **4.1 AIDING AND ABETTING MAKING FALSE STATEMENTS IN THE**
2 **ACQUISITION OF A FIREARM**

3 The 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 the defendant
6 to 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 by accepting an ATF Form 4473 claiming that Fred Magana
14 was the actual buyer of the Walther PPS M2 9mm pistol, while knowing that Leo
15 Hamel was the actual purchaser;

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

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

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

22 First, Fred Magana knowingly made a false statement or representation by
23 claiming that he was the actual buyer of the Walther PPS M2 9mm pistol, when in
24 truth and in fact, Leo Hamel was the actual buyer;

25 Second, Magana made the statement or representation to a Federal Firearms
26 Licensee; and

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

3 [Model Instr. 4.1 approved 9/2019, *modified*;
4 *United States v. McGowan*, 746 Fed. Appx. 679, 681 fn.1 (9th Cir. 2018) (unpub.)
5 (jury instructions on Section 924(a)(1)(A) were not deficient);
6 *see also United States v. Johnson*, 680 F.3d 1140, 1143–45 (9th Cir. 2012)
7 (statement need not be made related to a firearms purchase; it need only be a
8 statement the FFL is required to keep)]
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14.9 UNLAWFUL SALE OF FIREARMS

The 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 the 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 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 delivery was in violation of California law.

The parties have stipulated that the defendant was licensed as a firearms dealer at all relevant times.

Under California law, a firearms licensee may only deliver a firearm 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; or the transferee's place of residence, the transferee's fixed place of business, or the transferee's private property.

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.

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

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5 [Model Instr. 14.9 approved 5/2020, *modified*;
6 Cal. Penal Code §§ 26805, 27905;
7 *United States v. Ogles*, 406 F.3d 586, 590 (9th Cir. 2005);
8 *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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September 3, 2022

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

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