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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 JOSHUA YAFA (2), and
16 JAMIE YAFA (3),

17 Defendants.

Case No.: 21CR1310-WQH

**UNITED STATES' SUPPLEMENTAL
PROPOSED JURY INSTRUCTION**

18 The United States proposes that the following Ninth Circuit Pattern Jury Instructions
19 be given to the jury.
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4.9 Deliberate Ignorance

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3 You may find that a defendant acted knowingly if you find beyond a reasonable
4 doubt that:

5 First, the defendant was aware of a high probability that a conspiracy to pump and
6 dump GWHP and NUNZ stock was underway, and

7 Second, the defendant deliberately avoided learning the truth.

8 You may not find such knowledge, however, if you find that the defendant actually
9 believed that no pump and dump scheme was underway, or if you find that the defendant
10 was simply negligent, careless, or foolish.

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12 * * *

13 The United States believes this instruction is appropriate based on an interview with
14 a cooperating witness conducted within the last 24 hours, and recent discussions with
15 counsel. The relevant facts are as follows:

16 Trial Defendants Joshua Yafa and Jamie Yafa were in charge of the “pump” part of
17 the pump and dump scheme alleged here. Among other things, the Yafas sent out penny
18 stock newsletters to entice investors to buy GWHP and NUNZ stock. The other
19 conspirators sent the Yafas money and stock in exchange for the Yafas’ promotional
20 efforts. Brian Volmer, who recently began cooperating, suggested during an interview
21 conducted yesterday afternoon that the Yafas set up a “Chinese wall,” which supposedly
22 screened Jamie Yafa from the “business” side and/or “compensation” issues – those issues
23 were handled by Joshua Yafa. Under this construct, Jamie Yafa developed and sent out
24 promotional materials (the “pump”) in newsletters he had developed (*i.e.*, Jamie Yafa
25 identified target audiences and built brand recognition for the newsletters, among other
26 things); and Joshua Yafa handled the details of how and how much the conspirators and
27 their affiliates paid the Yafas to promote the stocks. Mr. Volmer also stated that he even
28 thought Joshua Yafa negotiated for some greater level of compensation for the Yafas from

1 the other conspirators, but Joshua Yafa kept most of that additional money for himself and
2 hid it from Jamie Yafa.

3 Jamie Yafa, then, is likely to argue at trial that he did not know incriminating facts
4 surrounding the pump and dump scheme because he was not exposed to those facts, and
5 will point to the “Chinese wall” in support of this argument. Indeed, counsel for Jamie
6 Yafa recently requested that the United States play at trial a portion of a recorded call
7 during which Mr. Marciniak referred to the “Chinese wall” that screened Jamie Yafa from
8 compensation issues. The United States has agreed to play this portion during its
9 presentation of the evidence.

10 In response, the United States will argue that if Jamie Yafa did not have actual
11 knowledge of the scheme or conspiracy, it was because Jamie Yafa knew there was a high
12 probability that a pump and dump scheme was underway, and he set up the supposed
13 “Chinese wall” in an attempt to avoid learning this truth. A deliberate ignorance instruction
14 is appropriate under these circumstances. *See United States v. Heredia*, 483 F.3d 913, 922
15 (9th Cir. 2007) (en banc) (“the district court must determine whether the jury could
16 rationally find willful blindness even though it has rejected the government’s evidence of
17 actual knowledge. If so, the court may also give a *Jewell* instruction.”); *see also United*
18 *States v. Ramos-Atondo*, 732 F.3d 1113, 1120, (9th Cir. 2013) (deliberate ignorance
19 instruction may be given in conspiracy case).

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21 DATED: June 7, 2023

Respectfully submitted,

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25 /s/ Aaron P. Arnzen
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