UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15580

In the matter of:

ANTHONY CHIASSON,

Respondent-Petitioner.

DECLARATION OF SAVANNAH STEVENSON IN FURTHER SUPPORT OF ANTHONY CHIASSON'S PETITION TO REVIEW THE INITIAL DECISION

I, Savannah Stevenson, Esq., declare as follows:

1. I am a member of the bar of the State of New York and an associate with the law firm Morvillo LLP, located at 200 Liberty Street, New York, New York 10281, which represents respondent-petitioner ANTHONY CHIASSON in the above-captioned matter.

2. I submit this declaration and attached Exhibits A through F in further support of Mr. Chiasson's Petition to Review the Initial Decision.

3. Attached as Exhibit A is a true and correct copy of an excerpt of the July 1, 2014 trial transcript from *United States v. Rengan Rajaratnam*, 13-cr-211 (NRB).

4. Attached as Exhibit B is a true and correct copy of an excerpt of the Government's Requests to Charge filed in *United States v. Rengan Rajaratnam*, 13-cr-211 (NRB).

5. Attached as Exhibit C is a true and correct copy of the July 8, 2014 trial transcript from *United States v. Rengan Rajaratnam*, 13-cr-211 (NRB).

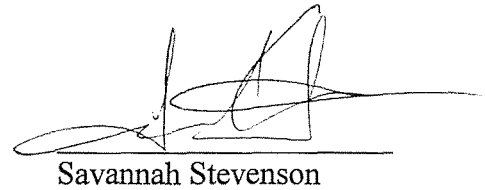
6. Attached as Exhibit D is a true and correct copy of an excerpt of the transcript from the July 1, 2014 proceeding in *United States v. Kuo*, 12-cr-121 (RJS).

7. Attached as Exhibit E is a true and correct copy of the Second Circuit's order holding appeal in abeyance in *United States v. Steinberg*, No. 14-2141, Document 22 (2d Cir., Aug. 6, 2014), and the underlying Motion for Order Holding Appeal in Abeyance and Declaration of Barry H. Berke dated August 5, 2014 (without exhibits).

8. Attached as Exhibit F is a true and correct copy of an excerpt of the November 27, 2012 trial transcript from *United States v. Newman, et al.*, 12-cr-121 (RJS).

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 13, 2014
New York, New York



Savannah Stevenson

E71LRAJ1 Trial

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v. 13 CR 211 (NRB)

RAJARENGAN RAJARATNAM,

Defendant.

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New York, N.Y.
July 1, 2014
9:14 a.m.

Before:

HON. NAOMI REICE BUCHWALD,

District Judge

APPEARANCES

PREET BHARARA
United States Attorney for the
Southern District of New York
CHRISTOPHER D. FREY
RANDALL W. JACKSON
Assistant United States Attorneys

LANKLER SIFFERT & WOHL LLP
Attorneys for Defendant
BY: DAN M. GITNER
MICHAEL D. LONGYEAR
DEREK CHAN

ALSO PRESENT: Special Agent Samuel Moon
Ruby Hernandez, Paralegal
Tea Saiti, Paralegal

E71LRAJ1 Trial

(Trial resumed)

(Jury present)

THE COURT: Good morning, everyone.

You may continue.

MR. GITNER: Thank you, your Honor.

MATTHEW CALLAHAN, resumed.

called as a witness by the Government,

having previously been duly sworn, testified as follows:

CROSS-EXAMINATION (cont'd)

BY MR. GITNER:

Q. Good morning.

A. Good morning.

Q. I placed in front of you a packet of documents. Today I won't have to, hopefully, do a lot of laps. Those should be marked with tabs as we go through the documents.

A. Thank you.

Q. I'm going to try to speak as fast as I can, as fast as the court reporter will allow me, so we can get done as quickly as possible. So forgive me if I speak a little too fast.

I want to turn now to the AMD. You testified about the stock AMD and provided some charts regarding AMD. You recall that, of course, correct?

A. Yes.

Q. If you could look in your book at Defendant's Exhibit 1039, which I offer.

MR. JACKSON: No objection.

THE COURT: Received.

(Defendant's Exhibit 1039 received in evidence)

MR. GITNER: By the way, so I don't forget, I'm also going to offer Defendant's Exhibit 5000, which is not in your book, but which is the table of contents to all of these charts we've been looking at. I don't believe there's an objection to that.

MR. JACKSON: No objection.

THE COURT: Received.

(Defendant's Exhibit 5000 received in evidence)

MR. GITNER: So if we could put 1039 on the screen. You can see -- we can blow it up.

Q. You can see that this shows BCR trading of AMD stock in -- from January through September 2008 on the document, correct?

A. Yes.

Q. And I want to talk about previous, some trades in terms of round trips. Are you familiar with the term round trips?

A. I believe so, yes.

Q. That means sort of buys and sells that when taken together end up with a zero position, right?

A. Yes.

Q. So if we look now at 1040, which I'm also going to offer.

MR. JACKSON: No objection.

THE COURT: Received.

(Defendant's Exhibit 1040 received in evidence)

MR. GITNER: You can put 1040 up.

Q. This is a subset of 1039 that we were looking at before. So these were on 1039, but these are now just certain trades on 1039. Okay?

A. Yes.

Q. If you look at the trade data from -- and this is, you can agree with me this is also from the OMS system, correct?

A. Yes.

Q. If you look at this data in 1040, these buys and sells of AMD by BCR, first, you can see this is just in January and February of 2008, correct?

A. Yes.

Q. And you can see that BCR, Rengan, made a purchase of 500,000 shares of AMD between January 14 and January 17?

A. Yes.

Q. And then he did sort of like a day trade of a hundred thousand shares of AMD on February 8, right? Do you see the buy and sell on the same day?

A. Yes.

Q. That's call a day trade, right?

A. Yes.

Q. And so for the February 8 position, after that buy and sell of a hundred thousand shares, BCR's position was unchanged, correct?

(In open court; jury not present)
THE COURT: I become a pumpkin at 4:30 today, so let's stick to a half an hour. Let's put off the evidence issues. I suspect they are not crucial.
MR. JACKSON: We can figure that out at any point.
THE COURT: Right.
MR. JACKSON: Yes. They're important, but we can figure it out later today.
THE COURT: They're not crucial to the argument. We'll work that out. So let's focus on the Rule 29 argument. If we have time, we'll get to evidence issues, okay.
I'll see you in a half an hour.
MR. JACKSON: Thanks.
MR. GITNER: Thanks.
(Continued on next page)

(Jury not present)
THE COURT: All right. I believe the defendant has a motion to make.
MR. GITNER: Yes, Judge. Pursuant to Rule 29, we move for a judgment of acquittal on all three counts. Thank you.
THE COURT: Let me say that it would be probably the most use to me if we conducted this as a point, counter point. It would not be as helpful to me to hear, you know, a straight half-hour from one side and a half-hour from the other side. I don't want to crimp anyone's style, but it would be I think most helpful to me to start with Clearwire and the substantive counts.
And maybe an initial question there might be whether if one count goes, do both of them go, or is there some way that one can survive and the other not? Just that's a starting intellectual question.
MR. GITNER: Judge, I'm happy to start. I believe the answer is no. Both counts rely on exactly the same evidence with the exception of one count is a trade on the 24th and the other is a trade on the 25th. Otherwise, all of the elements rely on the exact same evidence or, from my point of view, complete lack of evidence. So I don't think one can survive; they both must go. And I don't even think there's close to a theory where one could survive.
I'm happy to just continue and talk about Clearwire.

THE COURT: That would be my inclination. So I'm interested to hear from the government as to whether they have another.
MR. FREY: I don't think we disagree, your Honor. I don't know based on the evidence that there's anything with respect to one day versus the other that would change the calculus. So I think that's right.
THE COURT: That's a beginning.
MR. GITNER: Okay, Judge. I want to begin just with the appropriate standard because I know your Honor saw some letter exchanges between the parties --
THE COURT: I did.
MR. GITNER: -- regarding that. And just to put I guess a point on our view of what the appropriate standard is here, it's stated in United States v. Glenn, Second Circuit case. It's also stated in United States v. Cassese. And it essentially says if all the evidence "viewed in the light most favorable to the prosecution gives equal or nearly equal circumstantial support to a theory of guilt and a theory of innocence, then the reasonable jury must necessarily entertain a reasonable doubt."
And that standard was repeated today, I believe, this morning, in an opinion issued by Judge Gardephe, which I have copies of if your Honor wants it, in a very detailed Rule 29 opinion where he goes through the Rule 29 standard and repeats

again that is the appropriate standard. I have a copy for your Honor if your Honor wants it.
THE COURT: I'm sure I can read it in the next couple minutes. That's the cannibal cop case?
MR. JACKSON: It is, your Honor. And I would just say Judge Gardephe's opinion includes standards that are familiar that are in all of the cases that have been cited. I don't know why -- I don't know if he's citing this for something unique or just because I was one of the prosecutors.
THE COURT: I'm sorry, Mr. Jackson.
MR. GITNER: Sorry to hear that.
It has to do with what's on page 45.
MR. JACKSON: The Court does what's appropriate.
MR. GITNER: Where it says --
THE COURT: Don't take it personally.
MR. GITNER: -- pages 45, 44 to 45, the Second Circuit has made clear that if the evidence viewed in the light most favorable to the prosecution gives equal or nearly equal circumstantial support to a theory of guilt and a theory of innocence, then a reasonable jury must necessarily entertain a reasonable doubt, and it goes on. That was the subject of back and forth of our letters.
So with that standard in mind, your Honor, and I'll focus on Clearwire and try to take it issue by issue, as I think your Honor would prefer. I want to start with the

personal benefit element of Clearwire, the Clearwire counts.

And while I'm focused on the substantive counts, by the way, I think this applies equally to the Clearwire portion of the conspiracy charge because conspiracy is a specific intent crime. So I'll get to that, if your Honor will permit me to, but I don't want my arguments to be seen as focused or applying only to the substantive counts.

There was I guess the testimony offered by the government about a personal benefit with regard to Clearwire was that a loan, some sort of loan/payment was paid to Mr. Goel, there was $500,000 gift to Mr. Goel, and the profit in the trading account.

No witness, no witness other than Mr. Goel gave any testimony about any benefit paid to Mr. Goel. And what did Mr. Goel say about Rengan's specific knowledge of these benefits? It's on page 577 of the transcript -- it might be easier if we can call it up -- at line 6, to 578, line 11:

You testified this morning that Raj Rajaratnam at some point gave you a hundred thousand dollars, I believe, in 2004?

And he goes through what Raj gave him.

And then he says -- keep going to page 578. There we go -- you never told Rengan that Raj lent you that hundred thousand dollars?

No, I did not.

It's correct that you never told Rengan that Raj gave

you that half million dollars, right?

That is correct. I did not tell Rengan.

And you never told Rengan that Raj bought stocks for you and made you that money in your Charles Schwab account, right?

That is correct.

What did else did Mr. Goel say about Rengan? He hadn't even met him until June 2008. He didn't even know he existed really until June 2008. He never knew Rengan. He never knew of him. He didn't know that Rengan worked at Galleon in March of '08.

And the government admitted in a June 25 letter to your Honor that "Goel has not even implicated Mr. Rengan Rajaratnam in his testimony. He has described no incriminating personal interactions with the defendant." That was in the government's letter to your Honor during the course of this trial.

In fact, Mr. Goel said that he expected Raj to keep the information he gave him secret. That's at page 592. And the monetary benefits that Raj gave to Goel occurred in '04 and '05, way before Rengan started working at Galleon.

There's no evidence in this record, there is nothing that suggests Rengan knew about the monetary benefits or any personal benefit at any time. In fact, your Honor heard testimony that Raj and Mr. Goel took great pains to hide the

payments -- the money was sent to Swiss accounts, to India, to Singapore. The trading was done in a personal Charles Schwab account that Rengan could not have known about and there's no evidence that he did know about.

The evidence proves, frankly, that Goel didn't know Rengan existed in March 2008. And to the extent, to the extent, your Honor, that the government wants to suggest that Mr. Goel gave tips to Raj for friendship or one of these intangible benefits in 2008, there are two answers to that.

First, Mr. Goel never said that. The government had the opportunity to bring that out. He never said that. In fact, Mr. Goel was very focused on the money. And second, there's no evidence that Rengan knew about the friendship. There's no evidence that Rengan knew that these two men were talking, let alone that they were friends or that there could be personal benefits in terms of some sort of intangible friendship.

Now, I'm happy to sit down there, your Honor, but I want to anticipate an argument I think the government is going to make because they made it pretrial. They essentially said that there's some sort of evidence in the record that Rengan -- and this is their quote -- knew how the game was played. That was their language in talking to your Honor. And there are many, many answers to this argument. I think they're relying on the last tape that was played without context, without any

sort of description about what was actually being spoken about in that.

But, first, the first answer to this argument is that the government in Martoma and in the Raj case consented to a charge at odds with that argument. In Martoma, the charge was the defendant had to know that the insiders who disclosed tipped in exchange for the person benefit. Same was true in the Raj trial. Essentially, by arguing that, they're trying to say that the standard that should be used for Rengan should be much less than the standard that was used for what everybody is going to call the kingpin in the Galleon prosecution.

And second, second answer to this, your Honor, is that if you think about it even for a moment, if you think about it even for a moment, Judges Gardephe and Holwell have to be right in their charge, the charge they consented to. If all the government were required to prove was that a defendant had some awareness at some point in time that inside information can be obtained if a personal benefit is offered and that knowledge that this happens somewhere else at some other time, if that's sufficient, then anyone, anyone who has knowledge of a personal benefit paid by a tipper to a tipee in one instance, in one stock, are charged with knowledge of personal benefit to a tipee or to a tipper at another time in another stock.

That can't be the law and that's not the law because it suggests that just because you might have knowledge that

someone might pay someone else for material nonpublic information, you know it's done in every case.

The government's argument is the ultimate in bootstrapping and propensity. It's the ultimate in that. They're essentially arguing if you know it one time, then they can argue you know every time, no matter how remote in time and no matter how remote in subject matter. Let's remember that that EMC tape they played, I think that was on July 30, months -- I know we're focused on Clearwire -- it's months after the entire Clearwire thing was done. The government is sort of saying, well, he knew in July, so he must have known in March. That can't be the law.

In fact, if that's the law, then anybody who reads about this case in the newspapers, all of us right now because we've heard at some point that this could have happened, we're all charged with knowledge of a person benefit. We're all charged with knowing how the game is played. And that can't be the law.

Third, your Honor, it's important I think in keeping in mind with regard to this argument what Judge Parker said in the oral argument in the Newman/Chiasson appeal. He explained at the oral argument that clarity is key, particularly in this kind of case, particularly because New York is the financial capital of the world and these rules are very important. People need to know the applicable standards and it can't be

the applicable standard is some sort of soft standard that if you know at some point in time, whether it's remote or not, you always know.

And lastly, fourth, to the extent the government has some evidence of Rengan knowing how the game is played, I want to say this. Again, the Clearwire trades are in March of '08. That EMC tape was July 30 of 2008. The tape has nothing to do with Clearwire or AMD. Raj and Rengan are discussing EMC and Cisco. The tape is later in time, long after it. The limiting instruction that your Honor gave is totally true -- it has nothing to do with insider trading. Nobody testified about what that meant. The government could have called Ender or Surya Panditi or Nadeem, any of the people mentioned. They didn't. There's zero context for what was actually being discussed on that tape. And there's no evidence, there is zero evidence that what they were talking about was confidential information or improper information.

Your Honor heard lots of evidence during this trial about how analysts and traders and money managers are constantly asking questions, and they're constantly asking legitimate questions. And they're allowed to probe, they're allowed to ask questions, they're allowed to do a lot of that; and that's all they're talking about there at best. There's zero evidence they were talking about inside information.

In fact, the best interpretation of that tape, at

best, is just that Raj and Rengan were just talking about EMC and Cisco and trying to learn about EMC and Cisco. And even pretrial, when the government argued about whether that tape was relevant, when we had a big fight over whether that tape should come in, the government didn't try to link that tape to Clearwire even when we argued about it pretrial because it has nothing to do with knowledge of the personal benefit in March 2008.

And I know that the government is not going to try to bolster their argument, I hope, that Rengan knew about the personal benefit in Clearwire because of something having to do with AMD in August because pretrial, again, March 27, this is what the government said in response to a question from your Honor when we were arguing about the duplicity issue. Your Honor will recall this. Your Honor asked a very pointed question and the government said, Mr. Frey said, the government isn't bootstrapping or saying that the AMD -- the Palecek attempts to cultivate that source therefore showed Mr. Rajaratnam knew that Mr. Goel in Clearwire was also being provided a benefit. There would be separate evidence at trial as to what the personal benefit Mr. Goel received and whether that was known to this defendant.

That's what the government said pretrial. There was no separate evidence about what Rengan knew with regard to the personal benefit accorded to Mr. Goel. Zero. There is not a

document, an email, an instant message, a call, nothing. There was no testimony. There wasn't even testimony from a single person at Galleon, let alone testimony about somebody who could have known what was happening there.

In fact, Judge, even if you -- which I don't -- but even if we assume, even if we assume that Raj got information from Goel that was confidential and assume that Raj told Rengan that he got information from Goel -- which, again, I don't -- but even if you take all the other facts or all the other issues out from this case and just focus on this, there's still no evidence that Rengan knew about the personal benefit. The only evidence there is about Rengan's knowledge is that Rajiv Goel did not tell Rengan anything. That's the only evidence that goes to Rengan's knowledge of the personal benefit is that he didn't know. That's the only thing in the case.

That, frankly, should be the nail in the coffin for the Clearwire counts. And that was the government's own witness. And for any jury to conclude that Raj told Rengan something about the person benefit would be complete speculation because it would be based on nothing. You can't possibly conclude beyond a reasonable doubt that Rengan knew about the person benefit. One can only speculate and guess. And to guess the way the government I assume is going to urge would require ignoring the only evidence in the case which is that Raj didn't tell Rengan anything. In fact -- I'm sorry,

that Rajiv didn't tell Rengan anything. In fact, Rajiv testified that he wanted everything to be kept secret and assumed it was being kept secret.

For those reasons, frankly, on this issue alone -- and I know your Honor doesn't want me to continue. I'll stop. But on this issue alone, it's the nail in the coffin on the Clearwire counts. I don't think we have to talk about the other issues with regard to Clearwire, although I'm ready to, because there is no evidence to support the inferences that the government is urging.

MR. FREY: Your Honor, if I could start where defense counsel started which is with the applicable standard under Rule 29. While Glenn does hold that when evidence gives equal or nearly equal circumstantial support to a theory of guilty and a theory of innocence, a reasonable jury must necessarily entertain a reasonable doubt; first of all, the government disagrees the evidence shows an equal or nearly equal circumstantial support at this stage. Second of all, that holding did not abrogate the prior holdings of the Second Circuit, in particular, Autuori and Espaillet.

Autuori, in which the Second Circuit held that in a close case where either of the two results -- a reasonable doubt or no reasonable doubt -- is fairly possible, the court must let the jury decide the matter. And the second case that I referenced, a 2004 decision from the Second Circuit,

Espaillet held that a court may enter a judgment of acquittal only if the evidence the defendant committed the crime alleged is nonexistent or so meager that no reasonable jury could find guilt beyond a reasonable doubt.

That defense counsel has proffered other explanations for various pieces of evidence doesn't lend itself to the inescapable conclusion that the jury would have reasonable doubt here and that the jury would acquit on these counts.

Let me turn, if I may.

THE COURT: I think we should agree that the Second Circuit law in this area is not a hundred percent clear. I think Judge Gleeson did a good job in United States v. Irving pointing that out. Why don't we go on.

MR. FREY: Yes, your Honor. I want to now address the issue of Clearwire transaction and the person benefit. Now, obviously, a lot depends on where your Honor comes out on this with respect to what is legally required. The Second Circuit still has not spoken. But I'll note as an initial matter that, and the government has proposed this, that the applicable standard in this case, the charge that was given by Judge Rakoff --

THE COURT: I'll tell you right now I am using the charge given by Judge Holwell because it seems, given that there are many charges that have been upheld, that to have a more lenient standard applied to Rengan Rajaratnam than was

applied to his brother when he is on any theory a remote tipee strikes me as improper or unfair. So that's not happening. But, in any event, you still have to deal with knowledge.

MR. FREY: Yes, your Honor, of course. And so if I may, I don't expect I'm going to be able to talk your Honor off of it, but I do think because it's relevant to the point that Dan or Mr. Gitner made that --

THE COURT: You can call him Dan. I can't.

MR. FREY: I want to be respectful, of course.

I think it's worth making the point that it's not the case that in Raj and Martoma the government consented to a lesser standard.

THE COURT: Let me also just tell you I spoke to Judge Rakoff. I have some inside information on this. That was not a litigated charge. He wrote it. The parties didn't argue with him. It isn't casting the kind of stone that you'd like it to be.

MR. FREY: But it was upheld by the Second Circuit, your Honor, which I think is meaningful.

THE COURT: But it was also never challenged by the parties at the time. So it isn't the product of some serious adversary debate. So that's part of I share with you that which I know.

MR. FREY: So, your Honor, this Court has already held in ruling on the motions in limine that the government's

evidence does speak to this defendant's knowledge of personal benefits. Your Honor held on May 30 of this year that the reality is there are a number of tapes involving the defendant directly that reflects or can be understood as appreciating how this conspiracy works and the issue generally of the receipt of benefits in exchange for information.

THE COURT: Excuse me, that is not a holding that Rengan had any knowledge of the benefit that Mr. Goel received. I certainly didn't know what he received at any time that I said that. And that's the argument that Mr. Gitner was making that you want to rely on, he knew how the game was played, right? So doesn't it have to be more specific that he knew about the tipper and what benefit the tipper received? And if he never -- the tipper didn't know him and there's no evidence that he knew the tipper, that's the challenge that Mr. Gitner is raising.

MR. FREY: And I think we've established through trial half of that, that the tipper did not know Rengan Rajaratnam at the time the tip was made. It leaves open the question of whether -- through that witness's testimony -- whether the defendant, Rengan Rajaratnam, knew of, knew about Rajiv Goel at the time the tip was made.

THE COURT: What might the evidence of that be?

MR. FREY: Mr. Goel testified -- first of all I'll note that Mr. Goel testified that Raj Rajaratnam may have

mentioned Rengan Rajaratnam in passing prior to March 20 of 2008. So there's at least some indicia that he was aware, first of all. Put that aside for a minute.

There is evidence in the record through the recordings that Rengan Rajaratnam spoke or knew of Danielle Chiesi, knew details about her, knew that she had an intimate relationship with the CEO of AMD, and because he had reported that to David Palecek and then that came back through Anil Kumar to his brother Raj.

THE COURT: You know, it would be very good on this if you left the Palecek stuff out. It would be helpful to tell me what is the evidence if you leave out the Palecek tapes because apart from the temporal issue, Chiesi is not Goel.

MR. FREY: I realize Chiesi is not Goel, your Honor. I do think, if I could quickly make the point and your Honor can give it as much weight as you think it's deserving of, but my point is this. The fact that Rengan knew about Chiesi, although Mr. Gitner went to such pains in cross-examination to establish the fact that Rengan Rajaratnam and Danielle Chiesi had never spoken to one another, we believe it's a reasonable inference because Mr. Rajaratnam shared the AMD information with Rengan Rajaratnam that's reflected on the recorded calls, that -- and I'll get to this in a moment, how we know that he shared the information from Rajiv Goel with this defendant -- but that he also would have shared details about the source,

where it was coming from, this information.

Now, the Wall Street Journal call I think makes very clear that this defendant was in possession of the very information that had been provided to Raj Rajaratnam by Rajiv Goel when he says they don't have the equity splits, specific information that was not in the press, that was not in any of those news reports that we looked at during the government's case, but that Rajiv Goel had provided explicitly to Raj Rajaratnam. The phrase by Rengan Rajaratnam that the article, they're short on details, suggests that he had more information than what was being publicly reported.

That all goes -- it's a reasonable inference for the jury from the totality of the evidence here to draw the conclusion that the defendant knew the same information that Raj knew from Mr. Goel and that Raj would have shared with Rengan the source of that information.

THE COURT: At that time you were taping all of Raj's phones, correct?

MR. FREY: That's not correct, your Honor. We were taping a cell phone. We were not taping or wiretapping any -- and the agents testified to this -- were not wiretapping the office phone, were not wiretapping his home phone, his home, or office in Connecticut during this time. They were wiretapping the cell phone of Raj Rajaratnam. They were never up on a wiretap for this defendant. So to the extent there are calls

between phones that, you know, were not on the wiretaps, those would obviously be missed.

Also, the reality is, this was borne out by what we saw today with the Galleon swipe card records. They work in the same building.

THE COURT: Isn't it a given in this case that you don't even -- for my purposes, certainly, don't have to prove that Rengan Rajaratnam had access to Raj Rajaratnam. They're brothers. They work in the same place. It's a given to me. You may want to do it more dramatically to the jury, but I accept that.

MR. FREY: No, I appreciate that, your Honor. But I guess my point ultimately comes to this. We don't have a wiretap call where Raj Rajaratnam says to Rengan Rajaratnam here's this inside information. My source is Rajiv Goel. He's a good friend of mine.

THE COURT: Actually, no actual reference to Goel at all.

MR. FREY: In the wiretap call between them, no.

THE COURT: No evidence, period, anyplace. There is no evidence in the record that Raj ever shared the name Goel with Rengan, right?

MR. FREY: That's right, there is no evidence in the record. But, your Honor, I will note that there have been insider trading cases where the proof has been deemed legally

sufficient, cases that have gone to the jury -- prior to there being wiretaps in these cases -- where cases have gone to the jury based on a toll record and based on timely trading with respect to that.

Now, here we have toll records. We have them in the office on the very morning of the first trading day after the tip was passed, on the morning of Monday, March 24, before the trades are placed.

And, your Honor, there's evidence subsequent to the fact to the effect that Raj shared Goel's existence with Rengan Rajaratnam. They went on vacation in June of 2008. Now, I realize that's not prior to March.

THE COURT: That has got to be irrelevant.

MR. FREY: I don't think it's irrelevant, your Honor.

THE COURT: To the extent it hurts you.

MR. FREY: I don't think that's true, your Honor, and here's why. It's a small group of individuals for somebody's -- I can't remember where we landed, whether it was Rajiv Goel's 50th birthday or Raj Rajaratnam's 51st birthday. But the reality is it was a birthday, it was an intimate group, and he brings his brother to meet his friend Rajiv Goel on this trip.

THE COURT: I don't think he brought his brother to meet his friend.

MR. FREY: He brings his brother on the trip.

THE COURT: It is true that he was there. But they meet after. That cannot be evidence that either of them knew each other before the trades at issue. That's a good fact for the defense, not a good fact for the prosecution.

MR. FREY: Your Honor, it's not proof they knew before. It's not direct evidence. It's not conclusive proof of that. But it's a fair inference for the jury to find based on I think all of this evidence, including the other wire taped conversations where --

THE COURT: Just it would be best for this purpose, or unless there really isn't anything, to focus on Clearwire. You started with the March 25 tape, right, and the Wall Street Journal tape. It doesn't contain a reference to Goel or any other specific tipper, correct?

MR. FREY: It does not.

THE COURT: It is a fair reading from this that Raj and Rengan had spoken about Clearwire prior to this call. I can draw that inference. I think that's a fair inference.

MR. FREY: And, your Honor, the evidence has to be viewed in the light most favorable to the prosecution.

THE COURT: Okay.

MR. FREY: I think based on all of the evidence, it's a fair inference for this jury to draw that Raj Rajaratnam, even in the absence of an explicit tape recording, would have told this defendant that this information was coming from an

insider and that --

THE COURT: When we know that there are many instances where Raj got information and didn't share it with his brother.

MR. FREY: Yes.

THE COURT: Right?

MR. FREY: But he did --

THE COURT: So it isn't a fair inference that every time he gets information that he shares it.

MR. FREY: Every time, no.

THE COURT: Right.

MR. FREY: The government would submit there is enough evidence in the record for it to be a fair inference for the jury to conclude.

THE COURT: Review what you think that evidence is again.

MR. FREY: Again, I think the other recordings speak to the knowledge on this defendant's part as to how information is received from insiders, that nobody just gives this information up for free, that there's a price to be paid for that information, the information that Rengan is so alarmed about not being -- or thankful, I guess, is not in the Wall Street Journal article is the precise information that Rajiv Goel gave to Raj Rajaratnam.

The fact that just a few months later, in June of 2008, Rengan is on a trip with Rajiv Goel and Raj Rajaratnam in

a fairly intimate selling, it's also a fair inference from that to suggest that prior to June, Raj said something to Rengan about his friend Rajiv Goel.

And, again, I also think the recordings, the Chiesi recordings, are telling in that even though Rengan Rajaratnam never personally spoke with Danielle Chiesi, at least according to the phone records, he knew an awful lot about her. And it's not, based on that, inconceivable to infer that in the way that Raj shared information with Rengan that was coming from Danielle Chiesi and facts about Danielle Chiesi, that Raj would have shared the details about where the Clearwire information was coming from as well.

MR. GITNER: Judge.

THE COURT: Mr. Gitner.

MR. GITNER: What the government just did was everything except answer the question about whether there's evidence that Rengan knew about the personal benefit accorded to Mr. Goel. They focused on every other issue in this case with regard to Clearwire except for that one. And, your Honor, because there is no evidence. There is nothing that he knew.

And what they're trying to do again is bootstrap this EMC tape, which they concede did not result in insider trading and which they put on no witness to explain what the heck they were talking about to try to say, well, that means he knew how the game was played months earlier, so he must have known.

This comes down -- it's exactly the same argument that they made before. It's just that he must have known.

And this argument that the Wall Street Journal tape shows that Raj shared the tip is frankly absurd. The tip, the key part of the tip is the collar. That tells Raj what Clearwire is going to trade at. But we know that the collar is not in the Wall Street Journal article. That's why Raj says, okay, anyway, let's move on in the tape. And that's why Rengan is still upset because he doesn't know about the collar, and that's why Rengan later on trades, shorts below the collar.

It's an absurd inference that the government is urging that Raj shared half the tip and only the really bad half, the part that didn't include the collar. That's what they're arguing here. And at this exact same time that they say Raj shared the really bad half of the tip, we know from the evidence that Raj on the same day, March 24, didn't trade a tip that Kumar gave him, a week later didn't trade a tip about Nuance, and a week earlier didn't trade a tip about Bear Stearns. It all happens essentially within a two-week period.

MR. FREY: May I respond briefly to that, your Honor, while we're on this point?

THE COURT: Sure.

MR. FREY: The collar was not in the Wall Street Journal article. And Rengan Rajaratnam says in the recorded call talking about that article, it's all over the Wall Street

Journal. And Raj says what price does it say? And Rengan says they're not -- they're short on details. But they kind of say, you know, they're looking to raise as much as 3 billion, but they don't have any of the equity split. And then he goes on and they named the certain participants.

"They're short on details" suggests he has a much broader knowledge base than what the Wall Street Journal reporting.

THE COURT: Except that that's inconsistent with all the trading evidence. First, that he trades -- Rengan trades in Clearwire before Raj. He sells out before Raj. There are the shorts on April 21, 22, and 23 that establish that he didn't ever know what the collar was, right? They're inconsistent if you know the collar. Apart from the fact that he loses money, but which may or may not, you know, be dispositive.

MR. FREY: What he also does though, your Honor, is in his personal account at Fidelity, we heard all this testimony, or through cross-examination, all of this testimony about how Rengan Rajaratnam was following Clearwire, had been placing bets on Clearwire at Galleon in February, I believe, in January of 2008. He has that Fidelity account since 2006, at least. We saw that today. He doesn't make a single trade in Clearwire until March 24. So all this time that he's following Clearwire and making all of these bets at Galleon, he's not personally

trading on it until the first day after the tip was conveyed, March 24. He starts trading it then. He trades it on March 25. And he never, after April 21, he never trades it again.

THE COURT: Isn't the tip on March 20?

MR. FREY: On March 20, yes.

MR. GITNER: The tip is on March 20. What the evidence is -- and this is now in evidence that Rengan lost a lot of money in Bear Stearns. You saw the trading records. Millions, tens of millions of dollars he lost, and that was on March 14. On March 17, you see an email saying liquidate Buccaneer. Buccaneer is done. He's out. You can then see that there was no trading in Fidelity. And so once Rengan is out of Buccaneer, trading in Fidelity starts.

And what happens, what do the records in Fidelity records show? He starts trading in other names that were in his Buccaneer account. He starts to essentially recreate the Buccaneer account. And the reason why -- and this is in evidence -- the reason why it's on the 24th is because there's an auction on the 20th. And this is in evidence, it's Government Exhibit, I think, sorry, Defendant's Exhibit 2230. It's one of these reports that tells us that the FCC during that auction raised $19 billion in the auction. And Defendant's Exhibit 2233 explains that that auction which generated -- I'm sorry -- 2230 explains that's more money that

was bid for spectrum than all other auctions combined prior to that day. And there have been -- it's actually double what the government had expected to generate and was more than all other 68 auctions combined in the past. And the first trading day after that is the 24th.

So there is evidence in the record of explaining an innocent reason that's frankly much more, much more dispositive than the government's stretched inferences about why the trading starts on the 24th. Because there's still, the government still has not pointed to any communication between Raj and Rengan where Raj shares the tip, where Raj shares something that Rengan would know was confidential, and where Raj shares the fact that he got the tip in exchange for a person benefit. There's no evidence of any of those three elements, any of them. And the government still hasn't pointed to them.

MR. FREY: Your Honor, may I just respond to a few points?

THE COURT: Absolutely.

MR. FREY: First of all, yes, the tip was -- your Honor was absolutely correct -- the tip was passed from Rajiv Goel to Raj Rajaratnam on March 20. It was done in the evening after the day's trading that day. That was a Thursday. There was no trading on Friday, that was Good Friday of the long Easter weekend. March 24, the date on which Raj and Rengan

both start buying Clearwire, is the very first trading day after the tip was passed.

The spectrum auction is not at all reflected as being what Rengan Rajaratnam is so worked up about given that Wall Street Journal article. He's concerned about the fact that some of the details that they have have just been publicly reported and that they can't maximize the information that they had received. And it's disingenuous to say that Raj just shook it off.

THE COURT: What is the detail?

MR. FREY: He says they're short --

THE COURT: Wait a second. What is the detail that's in the Wall Street Journal that was not by then out there? The references to these other companies I think was the subject of --

MR. FREY: Some was, your Honor.

THE COURT: What?

MR. FREY: Some was, yes. There was a lot of speculation about other participants in this deal, including Best Buy as late as, I believe we looked at an analyst report, March 26. And Best Buy never ended up being part of this deal.

THE COURT: There's no reference in this tape to Best Buy.

MR. FREY: I understand, your Honor.

THE COURT: So, what?

MR. FREY: Well, I think what did Rajiv Goel convey that the Wall Street Journal article did not report? He reported that Intel was making a $1 billion investment. That's not reported in the Wall Street Journal article. There was a billion dollars. The equity division among the strategic investors was not reported in the Wall Street Journal article. In exchange for Intel's $1 billion investment, Intel was to get 10 percent. There was also lengthy discussion about in the recorded conversation between Rajiv Goel and Raj Rajaratnam about what the other strategic investors were going to be receiving for their investment. That's what we refer to, the government referred to as the equity split, the various percentages that the various parties would receive. That Intel board had just approved the deal was certainly not reported in the Wall Street Journal article yet.

THE COURT: That also Rengan doesn't mention that, right?

MR. FREY: What he says, your Honor, is they're short on details.

THE COURT: But he doesn't reveal something --

MR. FREY: You're right.

THE COURT: -- something that he knows that isn't in the Wall Street Journal article.

MR. FREY: Except that to say they're short on details, it is a reasonable inference that he knows more about

the transaction than what is in the Wall Street Journal article.

THE COURT: Or it could be an observation that the article is short on details.

MR. FREY: But in order to appreciate that fact, you have to know more details about the transaction.

THE COURT: If you are in this field, and you knew there were going to be a number of investors, you, without having inside information, the question of how those investments would be split and who was making what investment would be something that a sophisticated person would ask about.

It's like the other day there was an article in the New York Times that the chief of the criminal division, right, was leaving. I read that article and the question came to my mind, where is he going, all right. I could see, because that's something that would interest me as, you know, knowledgeable in the field, to be a question. So I might say it was short on the detail of where he was going. It didn't mean that I knew where he was going.

MR. FREY: Respectfully, your Honor, in the light most favorable to the prosecution, I think the evidence supports the inference that I am arguing and that a reasonable jury could make that inference and that is enough for this to go to the jury based on that.

THE COURT: But you would concede, would you not,

based on the subsequent trading, that there's no evidence that the collar was shared.

MR. FREY: The trading in --

THE COURT: In Clearwire.

MR. FREY: -- Buccaneer account?

THE COURT: Doesn't matter which account, the fact that it is in the Buccaneer account. The short sales are solid evidence that the collar was never passed from Raj to Rengan.

MR. FREY: Your Honor, we don't agree with that.

THE COURT: And he's insane? I mean.

MR. FREY: There could be a whole host of explanations for why the defendant did what he did, including the fact that he was buying Bear Stearns on the day that the stock was falling. It's not -- it's a question of the information only gets you so far, right.

THE COURT: Wait a second. That is not true with respect to a collar, is it?

MR. FREY: The collar only sets the entry price though for the investors.

THE COURT: But he was shorting the stock at 13, if I recall. That means, right, that he's anticipating it going down. If he knows the collar, he knows it has to go up.

MR. FREY: And that's why he buys in his personal account on March 24 and March 25 when he no longer has access to the Buccaneer account. He is buying. The argument that

he's also -- the argument that he's replicating the Buccaneer account in his personal trading --

THE COURT: You're not answering me.

MR. FREY: I understand.

THE COURT: We're talking about the shorts.

MR. FREY: We disagree with the significance of the shorts.

THE COURT: You don't think that's a bad fact?

MR. FREY: I'm saying we disagree with the significance or the import of that fact.

THE COURT: So your argument is he's not really a good trader, so somehow he's forgotten the inside information that he has about the collar and, therefore, he's just making a bunch of really dumb trades?

(Continued on next page)

MR. FREY: Your Honor, there's also evidence today in conversations between Raj and Danielle Chiesi of buying and selling and doing things that you might not think make a whole lot of sense when you are in possession of inside information. There was evidence of that.

MR. GITNER: If I can respond to just some of those arguments.

I'm going to start with they're short on details, and I'm not going to repeat what your Honor said, but I will say this because I agree with what your Honor said: Rengan doesn't just say they're short on details. He's answering a question from Raj when he says they're short on details.

It's at line four, Raj says, What price does it say? And he says they're short on details. So he's not saying they're short on details that we know about that nobody else knows about. He's specifically saying the details in the article don't give you the answer you need to answer the question what price does it say.

And that's exactly what Mr. Viswanathan said when I asked him can you tell, based on this article, what the entry price would be? What the stock price would be? It's the exact same answer Mr. Viswanathan gave; and nobody's going to sit here and say Mr. Viswanathan must have had some sort of confidential information or saying something, taking the inference that the government wants to take.

The second point is that there is evidence in the record at this time -- we shouldn't forget at this time Rengan, again, is being liquidated out of his account. What that means is that -- and there's also evidence that over this weekend, when he's invited to a family dinner his response is Am I in trouble? Am I in trouble he says in that email.

He's not in a particularly close place obviously with his brother. There's no evidence that at this time his brother would be willing to share confidential information; all the evidence actually is to the contrary because we know that at exactly the same time, Raj got information, again, about Nuance, Bear and AMD, and he didn't share.

Lastly, Judge, I would just say that in this entire back and forth, we have moved very far afield from the question at hand, with the initial question at hand, at least: Where is the evidence that Rengan knew of any personal benefit? There is none.

And every time they keep going and talking about Ms. Chiesi doing exactly what they said they wouldn't do pretrial by trying to bootstrap stuff that happened in the AMD part of this case to prove knowledge of the personal benefit in the Clearwire part of this case. There's nothing that shows knowledge of the personal benefit. There's nothing that shows Raj gave a tip. There's nothing that shows, if Raj and Rengan did speak about Clearwire, what was actually said. There's

nothing that shows that regardless of what may have been said, whether Rengan would have understood it as confidential. And there's nothing that shows that Rengan knowingly, purposefully entered into some sort of agreement with his brother with a specific intent of knowing what was going on, that the information was confidential, that someone was getting a personal benefit in exchange for it, for the purpose of trading in securities.

There is a complete lack of evidence in the Clearwire part of this case, and, in particular, a complete lack of evidence on the knowledge of the personal benefit element. And under the appropriate standards, it's our request that this part of the case be dismissed.

MR. FREY: Can I briefly, your Honor. I just want to go back to the call quickly.

Rengan Rajaratnam is very excited about the fact this news has broken, and his language, and I won't say it in court, but I think the language displays that he's upset about this, that it is a fair inference for this jury to draw that they knew more.

THE COURT: His brother wasn't upset?

MR. FREY: Well, his brother says okay, shit, this is page two, line 17. To me, his brother actually is a little upset about this. Now maybe Raj Rajaratnam is getting so much inside information that this doesn't trouble him as much as

someone who is not getting as much, but he's troubled by it. And where there are two fair inferences to be drawn, respectfully, that's a question for the jury to resolve. I think that's the law in this circuit, even to the extent the law is murky.

Also to Mr. Gitner's point, and he keeps raising this, about how the government said in the motion to dismiss stage that we wouldn't bootstrap, that's, to some extent, I suppose a slap at me because I did make that statement, and it was wrong for me to have said that at the time. And we have subsequently made it clear to the Court that that would not be our position. We represented that in multiple letters. We represented that in the motions in limine, between the time of the motion to dismiss and the motion in limine.

I took from your Honor's comments at the motions in limine, and maybe the government was wrong to do so, but I thought that the Court and the government were in agreement that these calls, just a few short months after March of 2008, provide evidence that the defendant knows how this game is played.

THE COURT: That may be evidence of a conspiracy, but that isn't the same. That's not exactly what we're talking about.

MR. FREY: I understand that, your Honor. I also think there is a reasonable inference from that evidence for

the jury to come to the conclusion that the defendant was in possession of the information that Rajiv Goel had provided to Raj Rajaratnam; that he knew where it was coming from; and he knew that it was obtained because there was a benefit.

Again, I'll hearken back to a whole host of cases that have been found to be legally sufficient in the insider trading context where there is no call, there is no wire tap catching an intermediate tipper or an intermediate tipee passing out information further down the chain to the remote tipee. Respectfully, I don't think we have to have that kind of evidence.

THE COURT: You do have to have evidence.

MR. JACKSON: Absolutely, Judge.

Just one thing to put a fine point on it in terms of what we are arguing with regard to the subsequent activity: We definitely understand your Honor is focused on, with the substantive counts that relate to the Clearwire trading in Fidelity, what is the proof that goes to Rengan Rajaratnam's proof of the benefit.

All we're saying is included in all the other things that we point to in what we think viewing the evidence in the light of the most favorable to the government is the proper interpretation of the call, your Honor is also entitled to consider the subsequent activity; and that is exactly the point your Honor made at page 18 of the transcript previously when we

had the discussion in the motion to dismiss.

Your Honor stated, "Although the defendant's comments do not prove that he knew the exact benefit that either insider made by disclosing inside information about Clearwire and AMD, the comments do indicate a general knowledge that furnishing insiders with some benefit was necessary in order to obtain material, nonpublic information," and I'll finish my sentence and stop.

My only point, your Honor, is the subsequent activity, and there are numerous cases where even on a substantive charge your Honor is right, it's relevant to the conspiracy, without question, but even on a substantive charge like this, the question of the defendant's knowledge can be examined on the basis of what we have at the time and also the subsequent activities that explain the nature of the relationship between the defendant and Raj.

MR. GITNER: Judge, even if there is an inference that could be drawn, that doesn't mean the inference be drawn beyond a reasonable doubt. There may be a five-percent chance that an inference could be drawn about that Wall Street Journal call or whatever. That doesn't mean it's sufficient to go. It doesn't even make it plausible, let alone beyond a reasonable doubt.

And to the extent that we're talking about subsequent activity, the key subsequent activity is the fact that -- I can go through it with you if your Honor wants, but the trading

patterns, the trading activity of Rengan and Raj in Clearwire, like with AMD, is totally different. One goes this way, the other one goes that way. They're bumping into each other. They're doing exactly the opposite. One flattens out. One goes up. One goes down. They're clearly not in a conspiracy to share information. They're clearly not doing the same thing there. Again, they pointed to nothing that shows knowledge of the personal benefit.

And it's true, there are lots of cases that don't involve wire taps, but as your Honor pointed out, those cases involve other evidence of the key elements in the case. This case has the wire tap, but doesn't have the other evidence. There is nothing on that element. Frankly, there isn't anything either that's enough to show that Raj tipped Rengan, there's nothing to show what he said to show that Rengan would have appreciated that anything Raj said was confidential, if he said something confidential. We have no idea.

This Clearwire part of the case is completely insufficient.

THE COURT: Why don't we take five minutes.

MR. FREY: May I just make one brief point that may help you as you think about this. Maybe not, but I'd like to make it anyway.

If your Honor takes this away from the jury at this point, the decision is unreviewable. Your Honor can always set

aside the verdict if the verdict went that way after the jury returns.

THE COURT: You don't think there are some consequences?

MR. FREY: I understand the consequences, your Honor, but I just wanted to note that.

MR. JACKSON: Your Honor, I just want to also make one last point on this in terms of the shorting. Only that if your Honor looks at what happens in the Fidelity account, Mr. Rajaratnam goes into the position and he's out of the position by the time we get to he's, like, made his profit in the Clearwire by the time we get to the point where the shorting is taking place in BCR.

So my only point is, if you believe that the market has already absorbed the information about what's going on there, there are a number of reasons why you might engage in shorting of the stock because -- even if you were aware of some subsequent future price because he covers those shorts and there are a number of different reasons a person might engage --

THE COURT: Isn't it accurate - and these are my notes from yesterday, you have thrown a lot at us in the last couple of days - that bottom line, they don't trade the same way; that Rengan does trade in Clearwire before Raj does; that Rengan sells out of Clearwire before Raj does; you have those shorts,

which I don't think there's any reasonable way to read that than he didn't know the collar. I mean, he's betting on it going down. The collar tells you you should bet on it going up.

There's a reasonable explanation for why he is trading in his personal account. The evidence is there. Buccaneer was liquidated after the Bear Stearns fiasco. So the timing is the timing, but it doesn't have some exponential value, which might otherwise be the case if he could trade in both accounts at that time. Okay. Be right back.

MR. GITNER: Thank you, Judge.

(Recess)

THE COURT: Thank you for waiting.

I think there are certain facts and certain aspects of the evidence here that are beyond dispute. First, there is no direct evidence of Raj passing inside information to Rengan. There's also no direct evidence that Rengan knew Goel or of him. There is, in fact, affirmative evidence that Goel did not meet Rengan until June 28, 2008 - well after the trades at issue. Further, I think it cannot be disputed that it the payments that Raj made to Goel were designed to be clandestine.

There is the exhibit tape 506, the so-called Wall Street Journal tape. From that tape, there is certainly a more than reasonable inference that can be drawn that Rengan and Raj had spoken about Clearwire before, but there is nothing in that

tape that establishes that the prior conversations necessarily contained inside information.

The evidence is clear that Raj did not share with Rengan all of the inside information he received on Clearwire, and parenthetically, and significantly, that he didn't share other inside information with Rengan on other stocks. We know this because of the trading patterns of Raj and Rengan in Clearwire. Rengan began to trade in Clearwire before Raj. He stopped trading in Clearwire before Raj -- or he got out of Clearwire before Raj. And the shorts that Rengan made in the Buccaneer account on April 21, April 22 and April 23 are clear evidence that Raj did not pass on the collar information, and, parenthetically, the fact that Rengan lost money in this stock.

After considering the above in the light most favorable to the prosecution, can a reasonable jury find that Rengan traded in Clearwire on the basis of inside information obtained in violation of a duty of confidentiality and with a knowledge that the tipper receive a personal benefit from a tip he provided to Raj, I find that a reasonable jury could not so find, so the Clearwire counts are dismissed.

MR. FREY: Your Honor, we appreciate the Court's decision. We would ask the Court, though, to stay that decision for a short time so that the government can have until the end of the day tomorrow to submit something to the Court in writing that may cause the Court to reconsider its decision.

THE COURT: How do you propose we proceed to the defendant's case then?

MR. FREY: Well, I think the case is already going into next week. Mr. Gitner has represented that he has about a day, day and-a-half of witnesses. So I don't think there's any prejudice in the proposal that I'm making.

MR. GITNER: We have had two, two and-a-half weeks. I have represented from the get-go that I would be making this motion on exactly the theory that I did. I made a prior motion that I asked them to proffer the evidence that they would have on exactly these issues. There's been no surprise at all.

They could have submitted something in writing before today. Your Honor made very clear, I think it was yesterday, that we would have a serious argument today. If they wanted to put something in writing, they could have. It's not going to change the evidence. It's not going to change what your Honor just laid out.

I object, and I think we should just go forward. Thank you.

MR. FREY: I think there are factual and legal arguments to be made to the Court. We did not put anything in writing. It was defense's motion to make. We didn't fully appreciate all of the arguments that he was going to be advancing. Of course, we certainly anticipated a number of them.

THE COURT: What took you by surprise?

MR. FREY: Well, for one, knowing what the Court's charge would be on knowledge of the personal benefit.

MR. GITNER: In the Raj case.

THE COURT: There was so much more to this ruling than that.

MR. GITNER: Thank you.

MR. FREY: To be clear, is the government's request denied then?

THE COURT: Yes. This is a criminal case. It is not a civil case. It's not a matter of let's try it and then we'll do reargument. I think that the government, and I'm very big on fairness and giving everyone the opportunity to be heard, but I think you forewarned here is forearmed. You knew this was coming. You knew it, and it was part of the fact that you always objected to the amount of the defense case that got in during the government's case because you understood and I understood that it was not, as you always said, you didn't object to the evidence coming in. It was all about what was going to come in that could be considered on a Rule 29 motion. That was the real issue. I understood that. I think you understood that.

We have a little more time so let's talk about the conspiracy. Let me just ask a couple of questions to start. Who does the government contend are the members of the

conspiracy charged against Rengan?
MR. JACKSON: Your Honor, we have identified a number of participants. The relevant participants that I think we could focus on today are Raj Rajaratnam, Rengan Rajaratnam, Danielle Chiesi, and Anil Kumar.
THE COURT: Would I be correct in concluding that the government is not alleging that Rengan actually entered into an agreement with Chiesi, Kumar, Ian Horowitz, Hector Ruiz, other people that you've charged?
MR. JACKSON: What we argue, your Honor, is this is a conspiracy where there is an understanding between Rengan Rajaratnam and Raj Rajaratnam that involves that implicates the understanding and/or agreement, there's an agreement or understanding between Raj and Rengan that implicates the agreement or understanding between Raj and these other people and is connected in that way.
So, it is a conspiracy of the type, as we would expect your Honor would instruct, where we don't contend that all the members of the conspiracy were necessarily working, each one working with one another, but certainly we think that Rengan Rajaratnam was aware of the other members of the conspiracy and was aware they were all working in tandem towards the shared goal.
THE COURT: Conspiracy always starts with two people entering into an agreement.

MR. JACKSON: Yes.
THE COURT: Since there's no evidence of direct contact between Ms. Chiesi and Mr. Kumar with Rengan, would it be correct to assume that the other individual that you're asserting that he entered into an agreement with is Raj?
MR. JACKSON: Yes, your Honor.
THE COURT: Okay. Then what is the evidence that he did so and when did he do it?
MR. JACKSON: Your Honor, a number of different recordings, I think we would start with the generalized recording that we introduced at the end of the case today, Government Exhibit 509, where there was a lengthy discussion between Raj and Rengan Rajaratnam about their methods for cultivating sources, for communicating with individuals.
There's a reference in there to the fact that Rengan Rajaratnam talks about understanding it. In order to develop sources of inside information, he figured out it would not be helpful to meet people -- to do it over the phone, like he wouldn't do it over the phone. He refers to the fact that once he realized that he was meeting with people in person, he gave me all the dirt, you know what I mean. This is indicative of the relationship, the agreement between them.
Then when you get into the conversations, and there are a number of them that were introduced between Raj Rajaratnam and Rengan Rajaratnam about the fact that they had

developed information from Anil Kumar and they were attempting to develop information through David Palecek related to the AMD deal, there are a series of communications with them that explicitly demonstrate that there is an agreement or understanding between them that they are going to attempt to get inside information or to exploit the inside information that they already have. So, those calls we think are highly probative of that, your Honor.
Beyond that, we also have the fact that, and this may seem obvious, but it has to be considered in context, he's an employee at Galleon. He's receiving funds that are being paid essentially by Raj Rajaratnam. He's being given the opportunity to trade and gain additional funds on the basis of the potential success of the funds that he's placed in control of. That is the type of evidence, your Honor, that we think has been introduced that strongly supports the conclusion that there is an agreement or an understanding between Raj and Rengan to trade on inside information.
THE COURT: Mr. Gitner, what is your basic argument on the conspiracy charge?
MR. GITNER: My basic argument, Judge, is that, I'm going to hearken back to the standard we talked about before; that the evidence here is at least, at least equally plausible with innocence as it is with guilt.
There is, again, for Mr. Kumar, Ms. Chiesi, there is

no evidence of knowledge with a personal benefit. There is no evidence that Rengan would have known that the information, the handshake deal, was confidential or secret. In fact, the evidence was that handshake deals are common, they fall apart all the time. There isn't even evidence at that time he could have understood it was material.
There's tons of evidence about all of the media buzz at the time about the Mubadala deal. Mr. Kumar actually testified, I believe, that Mubadala had come to Galleon and told Galleon about the deal, and there was nothing improper about that.
The evidence actually is that Rengan, hearing that information, could not have known it was confidential because Galleon had heard it in a proper way.
The evidence was also from Mr. Kumar that AMD told literally hundreds of its customers about what was going on. There's no question the information here was just not confidential, and there's no evidence that Rengan could have known otherwise or would have known otherwise.
The Chiesi tapes, which you heard over and over again, show that she was telling everybody whatever she learned from Hector Ruiz. If you take anything away from those tapes, it was that, that she was going to tell the world about that.
In fact, Mr. Kumar testified that she told Wall Street a lot of things. What he said was, actually, that she tells

everyone on Wall Street, everyone seems to know, it got to be a jock quote/unquote, a joke how public this information was.

My argument also, Judge, is that if you start from the notion that on March 24 Mr. Kumar gave Raj a tip that your Honor pointed out before Raj did not share with Rengan, and you go from there. There is no evidence, none, that Raj gave Rengan any hint that he was getting confidential, improper information from Kumar and Chiesi. It's just not in the case. There's no evidence of knowledge of personal benefit in exchange for that information.

The way I see this case where the AMD chapter is actually sort of two parts: There's the Anil part and what Anil is telling Raj and my view is that Rengan can't know or doesn't know or there's no evidence to support that Raj told Rengan anything or that Rengan could have understood it was confidential; and then there's a second part, there's what I call the Palecek cultivation part of the case. With regard to that, the evidence here is not beyond a reasonable doubt. No jury could reasonably find beyond a reasonable doubt that what Rengan was doing was unlawful or that he was trying to cultivate a source. In fact, the evidence is equally if not more supportive of a completely innocent purpose, and let me go through that.

THE COURT: That was my next question for you.

MR. GITNER: Yes.

First, the lunch, the August 15 lunch, we know that was preplanned, okay? That was not something -- and it was preplanned to include a third person. That's Defense Exhibit 157. That's an email chain. Scott Regan was supposed to be there. At the last second, he canceled. So you know Rengan wasn't going to Palecek for the purpose of doing anything illegal because a third party was supposed to be there.

Second, the first time Raj raised AMD with Rengan was about an hour before that lunch, and during that call, Rengan did not tell Raj he was going to meet with David to find out more. If there was some sort of plan here in the handshake deal call, it would be much more plausible if there was actual discussion about what the plan was - because, remember, this is a conspiracy case, right, there has to be an agreement - but what the plan was between them to go and cultivate that source an hour or so later. There's nothing. It's just an okay, thanks, good-bye, zero, even though he knows he's on his way to meet with Mr. Palecek.

Third, there is no evidence in this record, zero, that Rengan knew who Mr. Palecek's clients were. None. The only evidence in this record is about how secretive McKinsey was, like a vault. They didn't tell anybody who their clients were. And there's no reason to think that Mr. Palecek did anything differently. Mr. Patel testified about that several different times both, I believe, on direct and cross-examination.

Fourth, there is a complete lack of communication for years before August 2008 between Rengan and David Palecek. The phone records show that the prior time they spoke was in 2006. I don't remember the month, but it was -- actually, I do, I had it written down, October 2006. So the first time they're really speaking again is two years later, after two years of no communication whatsoever.

(Continued on next page)

MR. GITNER: And that's in Government Exhibit 414, that's phone records, and Defendant's Exhibits 1126 and 1127. We heard how Raj took years to cultivate his sources, years to soften up Mr. Goel, years to soften up Mr. Kumar. He didn't just pop in after two years of silence and try to corrupt them. This was a slow process. There's no reason to believe that Rengan was going to pop the question on the first date after not having seen him for two years.

The third thing, your Honor, I'm sorry, the fifth thing -- actually, Judge, in connection with that last issue, Mr. Kumar actually said -- I don't know if you recall this -- had Raj questioned him the way the government says Rengan questioned Palecek on the first time after they reconnected, Kumar said something like I would have shut it down immediately. And that's a plausible inference. That's just not the way life works. And Mr. Kumar, their own witness, told us that.

And, in fact, Rengan did not follow up with Mr. Palecek after the call on August 18. I think maybe August 19 there's another call where Raj says, okay, now, go to David and ask him X, Y, and Z. I think that's Government Exhibit 518 or 518 and 519 because it's a continued call. Rengan did not do that. And that's indisputable because the phone records show that the next time they spoke, Rengan on the east coast, Palecek on the west coast, is, let's see,

September 24 or so, and I think that call lasted only for 34 seconds. And then the next time think was a week or so later where they actually have a call that lasts more than a minute.

So, you know, it can't be that a reasonable inference is that there's a plan or an agreement to cultivate Mr. Palecek when Raj is telling Rengan ask him certain questions and we know that Rengan did not do that because there is zero contact between them in the month or 40 days after that call.

And, in fact, on August 18, which is I think the Monday or Tuesday, your Honor may have noticed I think it was yesterday I asked some questions about a trade on August 18 and I compared it to the timing of a phone call between Rengan and Mr. Palecek on August 18. You can see that Rengan bought AMD stock on August 18. But if you actually look at the time that he bought, the instant message as opposed to the OMS data, he bought before he spoke with Mr. Palecek that day. That shows, again, Rengan is not looking to develop material from Mr. Palecek about AMD because the only plausible inference is that if he were, he'd talk to David first, then buy. But here he buys then calls David Palecek.

There's also, Judge, after the August 15 call -- I'm backing up a little bit, I'm sorry about that -- Mr. Palecek reported back to Anil Kumar about his meeting with Rengan. So not only does Rengan call Raj, but Palecek reported back to Anil. Kumar testified about that. And there's an email,

Defendant's Exhibit 195. Actually, sorry, it's Defendant's Exhibit 635. And in that email that Mr. Palecek reported back on the conversation. He doesn't report anything untoward to Mr. Kumar. He just says that Rengan was probing for whether or not a McKinsey/Galleon relationship made sense. It's Defendant's Exhibit, I'm sorry, Government Exhibit 635.

So you know though that had something untoward happened, David would have reported it. Why? A, they hadn't spoken for two years. Why would David owe an allegiance to Rengan. But, B, later on, in Defendant's Exhibit 195, David did report to Anil, even after Rengan swore him to secrecy, about the Galleon relationship eroding and ending. David's allegiance was to McKinsey, not to Rengan. That is the only plausible inference here and, certainly, there cannot be an inference beyond a reasonable doubt to the contrary.

MR. JACKSON: Your Honor, just because you had said point by point. Before we get too far along the rest of it, I want to hear the rest of Mr. Gitner, but maybe I could respond to some of this. I mean.

THE COURT: I'm going to guess what you're going to say. You're going to say there are other inferences that can be drawn from all of this.

MR. JACKSON: Your Honor, that is the big point. If I could just take two minutes just to respond to a couple of these points.

First of all, there's this discussion about -- I just want to first focus very quickly on the instruction of conspiracy that is given in essentially every case in this district which says that it is not necessary the defendant be fully informed as to all of the details of the conspiracy in order to justify inference of guilty knowledge on his part. To have knowledge of a conspiracy, a defendant need not have known the full extent of the conspiracy or all of its activities of all of its participants. It's not even necessary for the defendant to know every other member of a conspiracy. In fact, a defendant may know only one other member of a conspiracy and still be a coconspirator.

There's also a portion of the standard charge on conspiracy that says the duration and extent of defendant's participation in a conspiracy has no bearing on the defendant's guilt. Now, why is that important? One of the arguments that's being made by defense counsel goes to this notion they don't talk for an extended period of time, Raj is taking for whatever amount of time to cultivate sources. That has no bearing on the guilt of Mr. Rengan Rajaratnam in terms of the conspiracy which is charged. We don't even have to prove that the conspiracy was successful.

Here, of course, the proof supports the fact that it was, and I'll highlight that in two seconds. But the first point is this is ignoring -- the arguments that defense counsel

is making are ignoring the most logical, the only really logical interpretation of Government Exhibits 513 and 514. And 513 and 514 are the core calls where Rengan is discussing his conversations with -- Rengan and Raj are discussing what transpired with Palecek and the communications that Rengan is aware of in terms of Anil.

And there is in 514, I'm sorry, 513 at page 2, he describes, Rengan Rajaratnam describes what is happening in his conversations with Palecek. And he says 'cuz he told me. He finally spilled his beans and said -- what is it -- some Arabs are putting money in. And so he is speaking to the AMD transaction. He's speaking to the fact that he had prior knowledge of this from discussions with Raj. And now when he says he finally spilled his beans, the reasonable interpretation of that call is that he has figured out a way to begin prodding him to get information that he and Raj have agreed it is important for them to get.

And defense counsel argued there's no evidence that Rengan knew who Palecek's clients were. Well, that's just contradicted by the transcript because there's no reason that he would be going to Palecek to get information about the AMD deal and saying that he finally spilled his beans about this unless he had some knowledge that Palecek might be a person who would be able to give him information about this.

Two more minutes.

THE COURT: Just, guys, remember, I truly have to leave at 4:30. What I would propose is I'll probably give you a hint as to what I'm going to rule.

MR. JACKSON: Thank you, Judge.

THE COURT: But if we want, we can pick it up. I'll have my clerks call the jury and tell them to come in an hour later so they don't hang out here.

MR. JACKSON: I think it's appropriate for us to take the hint, your Honor, and then if there's additional argument when we get to that, so your Honor can get to your 4:30 appointment.

MR. GITNER: I do have much to say on exactly this point.

THE COURT: All right. Let me just for your planning purposes, my current thinking is to not dismiss the conspiracy count. So I think it's important -- I'm not saying I can't be absolutely dissuaded, but we have been thinking about this for a while. But for planning purposes, I think it's best to share that that's my tentative or current thinking.

So maybe we'll just stop here and we should -- we can have the jury come in at any time. If you think 10:30 is better, we'll tell them 10:30.

MR. JACKSON: Your Honor, I think we've reached a point in the case where defense counsel says they're going to disclose finally their witness list and some clear picture. If

we know just a little bit right now about what we're looking at tomorrow, that could help us.

MR. GITNER: I think the issue right now though is how long do we need to discuss the further Rule 29 motion.

THE COURT: That was the question.

MR. GITNER: So 10:30 seems to work for me. I guess that gives an hour and a half for the discussion. I'm happy --

MR. JACKSON: That's fine for the government. I thought that would be an important point.

MR. GITNER: Of course I will.

THE COURT: We'll compromise at 10:15 for my two thoughts, and then if they wait 15 minutes, no problem.

MR. GITNER: I have a question about your Honor's ruling because it will affect our planning going forward. Does the dismissal of the Clearwire counts mean that the Clearwire scheme or object part of the conspiracy is also out, because it could and likely would impact what I would do going forward. In a nutshell, my argument would be that it has to mean that it's out because conspiracy is a specific intent crime. The government has to demonstrate that Rengan had the specific intent to do all those things that your Honor found a jury could not find beyond a reasonable doubt. So but I just want to make sure I'm understanding the ruling correctly because it will impact which witnesses we call or don't call.

MR. JACKSON: But, your Honor, we disagree because the

Clearwire component of the case, even if your Honor has concluded that there isn't enough for us to substantively establish that those trades were met, it can be considered by the jury as part of the totality of what was going on in terms of the determination. Normally, we would be able to introduce if we proved that up even without additional witnesses the trades that are also we think within the time period that they're appropriately charged something that the jury should consider in terms of what's going on. So there is no reason for that to be excluded as far as the conspiracy.

MR. GITNER: Judge, I don't want to interrupt your thinking. But in order for the conspiracy, the Clearwire object of the conspiracy to survive --

THE COURT: Well, the question is whether the object of the conspiracy is to do insider trading in Clearwire or the object of the conspiracy is simply to do insider trading.

MR. JACKSON: Exactly, your Honor.

THE COURT: And I would have thought that the better understanding would be to do insider trading because since it doesn't have to succeed, it would be sufficient to try to improperly get inside information in the hopes that you would make money on it.

MR. JACKSON: Yes, your Honor.

THE COURT: So I don't know that did the government plead itself out of that theory? I don't think so.

MR. FREY: I think we've been down --

THE COURT: This is part of the pretrial discussion before, so.

MR. GITNER: My view would be that Clearwire essentially now is just like Akamai. There is just no proof of an agreement to do insider trading between Raj and Rengan in Clearwire. It's not an appropriate part of the conspiracy. There's no proof of a tip, and there's no proof of Raj and Rengan agreeing to improperly trade in Clearwire.

THE COURT: I would say that I don't think I necessarily have a definitive answer for you but that the evidence that I found most compelling in terms of the sufficiency of the conspiracy count really was the tapes between Raj and Rengan. A lot of them obviously have to do with the Palecek aspect of the case, which I always assumed was not, you know, was not a successful effort.

I mean I guess you raise something which I didn't fully follow through on and, in part, what do we want to tell the jury about the case.

MR. GITNER: I know your Honor has to leave. We'll be prepared to address this tomorrow morning.

THE COURT: Okay.

MR. GITNER: We'll be prepared either way.

MR. FREY: Your Honor, assuming that the Court continues in its current thinking and the case will go on, I

think it would be appropriate for defense counsel to share with the government who it expects to call.

MR. GITNER: I said I would do that. Your Honor doesn't need to wait for that.

THE COURT: Okay.

(Adjourned to July 2, 2014 at 9 a.m.)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

- v. - :

13 Cr. 211 (NRB)

RAJARENGAN RAJARATNAM, :
a/k/a "Rengan Rajaratnam," :

Defendant. :

- - - - - - - - - - - - - - - - - - - -x

GOVERNMENT'S REQUESTS TO CHARGE

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UNITED STATES DISTRICT COURT
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GOVERNMENT'S REQUESTS TO CHARGE

Pursuant to Rule 30 of the Federal Rules of Criminal Procedure, the Government respectfully requests the Court to include the following instructions in its charge to the jury.

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REQUEST NO. 18

Securities Fraud: First Element - Insider Trading Scheme: Knowledge of the Breach and Benefit[1]

To meet its burden, the Government must also prove beyond a reasonable doubt that the defendant knew that the material, nonpublic information had been disclosed by an insider in breach of a duty of trust and confidence, in return for some actual or anticipated benefit.

As to the defendant's knowledge that the insider has breached the insider's duty of trust and confidentiality in return for some actual or anticipated benefit, it is not necessary that the defendant know the specific confidentiality rules of a given company or the specific benefit given or

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[1] This proposed instruction is adapted from the Honorable Jed S. Rakoff's jury charge in United States v. Whitman, 12 Cr. 125 (JSR) (S.D.N.Y. Aug. 17, 2012). See also id., 904 F. Supp. 2d 363 (S.D.N.Y. 2012) (to establish "tippee" liability, Government must prove that defendant knew the material, nonpublic information derived from an insider had been disclosed not just in breach of a duty of trust and confidence but also in return for a personal benefit). In United States v. Newman, the Honorable Richard J. Sullivan held, contrary to Judge Rakoff's ruling, that the Government need not prove knowledge of benefit in order to establish tippee liability. No. 12 Cr. 121 (RJS), 2013 WL 1943342, at *2. That ruling is the subject of a pending appeal before the Second Circuit. The Government submits that Judge Sullivan's ruling (which the Government requested) is correct and entirely consistent with Second Circuit law governing tippee liability. In an excess of caution, however, and to avoid unnecessary litigation, the Government requests that the Court here issue the instruction that was given in Whitman. (For must the same reason, in United States v. Martoma, the Government did not object to this instruction regarding a tippee's knowledge of the benefit.)

anticipated by the insider in return for disclosure of inside information; rather, it is sufficient that the defendant had a general understanding that the insider was improperly disclosing inside information for a personal benefit. Also, the defendant's knowledge of such facts may be established by proof that the defendant, aware of a high probability that an insider was improperly disclosing inside information for personal benefit, and not actually believing otherwise, deliberately avoided learning the truth; in other words, not that he was merely negligent in finding out a fact but rather that he purposely blinded himself to obtaining actual knowledge of an obvious fact because he had a conscious purpose to avoid learning the truth.

Adapted from the charge of the Hon. Jed S. Rakoff, United States v. Whitman, 12 Cr. 125 (JSR).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
UNITED STATES OF AMERICA,
v. 13 CR 211 (NRB)
RAJARENGAN RAJARATNAM,
Defendant.
----------x
New York, N.Y.
July 8, 2014
9:19 a.m.

Before:

HON. NAOMI REICE BUCHWALD,

District Judge

APPEARANCES

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ALSO PRESENT: Special Agent Samuel Moon
Ruby Hernandez, Paralegal
Tea Saiti, Paralegal

(Trial resumed)

(Jury not present)

THE COURT: Good morning. Some of you didn't sleep last night. Okay. I have the letters.

So let me say that prior to receiving the government's letter with respect to the Palecek communications issue that I was not planning on giving an instruction on that.

MR. JACKSON: Thank you, your Honor.

THE COURT: On the trading issue, Mr. Gitner, if you want to respond, that's fine.

Everyone can sit as far as I'm concerned. Don't have as much of an audience for my charge as you guys did.

MR. JACKSON: Your Honor, before Mr. Gitner responds, can I just put one more fact into the discussion so he can appropriately respond to it. I didn't have access to the underlying trading records at the time, but I just want to point out I had an opportunity to look at them this morning. The buy that is referenced in the chart is at approximately $14. The sale is approximately 15. We're talking about a profit being made on this hundred thousand shares. I think it just further underscores some of the points we're talking about. But I just wanted to add that additional fact, two different prices.

MR. GITNER: I don't think underscores anything other than that they sold and bought at different times. The stock

prices go up and down over time.

Our point -- my point on summation was very simple. His position remains unchanged. And the government, there was a Government Exhibit talked about all of Raj's different codes, TMT, TAM -- I can't remember all of them. Here it is, Government Exhibit 13. Our point was very simple, that on March 26, Raj's position, his position remained unchanged. Whether he went up and down by buying and selling quickly doing a day trade is immaterial to the argument. It's immaterial to the point, frankly, that even the government was trying to make. The point is that his position remained unchanged.

And when Mr. Frey got up and said that what I said was false, he took the extraordinary step of saying what Mr. Gitner said was false, that was misleading because in fact, in fact, it was not. In fact, the position remained unchanged.

All I want to do in the curative instruction is remind the jury what the trading records actually say. I tried to make it balanced. I'm looking for my letter. I tried to use a balanced instruction. If the Court doesn't want to say, to point out that what the government said was incomplete, I'm fine with that. My point is not to have sort of a surrebuttal through limiting instruction, what they said was wrong, what he said was right.

My point is just so that the jury has in front of it the correct records because I think it's almost impossible for

somebody without spending a lot of time and having a significant education in how to read these records to read them. I know the documents can be before the jury and maybe I think there's somebody who's a quant on the jury, maybe he can do it, but it is really hard to go through them. And it's not fair for the last thing they hear about what happened on March 26, such an important day, to be that Raj sold when in fact his net position remained unchanged. So all I want is for that fact to be clear.

MR. JACKSON: All I want is to be adopted by like a billionaire, but that's not relevant to the question of whether or not anything that Mr. Frey said was false.

Nothing Mr. Frey said was false. You don't get a curative instruction just because you'd like the jury to focus specifically on something else that you want to look at. And it does matter to the argument that Mr. Gitner made because if we look at what he actually said, he says, who sells stock at under $17 if you know it's going to 17 bucks a share. People playing the market like everyone else. That's who.

But what actually happened on March 26 is that Raj buys at 14 and sells at 15, netting himself a hundred thousand dollar profit. So if that is the case, why was Raj selling? The bottom line being Raj sold on that day. And the most important point is what Mr. Frey said was literally accurate. What Mr. Gitner said was literally inaccurate. And so it's up

to the jury to look at whatever records they want that are appropriate.

But we're having a completely different discussion when we start -- let me just finish -- we're having a completely different discussion when we're talking about whether or not there should be a curative instruction. There should only be a curative instruction if there was something Mr. Frey said that was false, and he has not been able to point to one thing that he said that was false.

MR. GITNER: Let me do that. "Raj's position did not in fact remain unchanged." That's what he said.

MR. JACKSON: Accurate. When you buy --

MR. GITNER: Let me finish please, sir.

MR. JACKSON: That's not remaining unchanged.

MR. GITNER: The point is at the end of the day -- this is rebuttal summation, remember that -- my point was that at the end of the day his position remained unchanged. That's true. That's true. And it's untrue that his position did not remain unchanged.

And also we don't know if Raj bought or sold first. The timing of whether he bought or sold first is not in evidence, and I don't think it's frankly findable based on the OMS records. It's impossible to know if he bought or sold first. All we know is that he bought and sold and made a profit. It's unclear what Raj's motives were there. And all

I'm asking for is that the facts be clear because they're not right now based on what Mr. Frey said.

THE COURT: Look, I think I'm not inclined to give this curative instruction because had the defense summation ended with Raj's position remained unchanged, period, Mr. Frey could not have said what he did, but it didn't end that way. There were two references to Raj not selling. I don't think that calling it false is appropriate.

But I think that if the jury gets into this issue in a granular way, I would expect that we would receive a note from them. If we receive such a note, they're going to get the complete story. But I think that if they are that curious on this issue, and if you're correct that there is nothing, no exhibit that they could easily discern what actually happened on March 26, they would ask us a question about it and at that point they will learn that there was one trade that was a buy, one trade that was a sell, that it was at the end of the day Raj's funds were in the same numerical position as at the beginning of the day.

I don't think I would be inclined to tell them about the prices because of the fact that we don't know what the order of the trades was in and the pricing would matter much more depending on the order, what was first, what was the buy, what was the sell. If we don't know that, I think there's a limited argument, a limited good argument that can be made from

that.

MR. JACKSON: Judge, we think the Court's ruling is entirely appropriate. We think it's appropriate to point the jury, if we get to that granular point you're describing, whatever evidence will aid that. I'll note when we get to that point, I think we may have a slightly different view of the evidence. There is some information in the evidence that is in evidence about timing of some of those transactions. But that's not a discussion that we need to address right now. We'll have the appropriate, if that comes up, that's an appropriate thing we can figure out.

MR. GITNER: That's fine. I'm confident that the evidence that's in evidence does not address the timing of when the trades were actually made, just when they were booked. I have no doubts about that, actually, but we can address that later.

THE COURT: All right. Let me say one of the reasons we're slightly delayed in coming down is that I had the joy of rereading the charge on the train coming in this morning and just noticed a couple of very small things. But let me just tell you if I remember now what they were.

One on page, I think it's still page 10, with respect to the transcripts, I've made it clear that they are getting, instead of the transcripts, they're getting a computer with the tapes on them.

In terms of charts and summaries, we've taken out references to either charts or summaries being based on testimony since they aren't.

There's a reference at the end -- there was a sentence that said if you want to see any of the exhibits that you don't have, you can come back to court. There are no drugs and there are no guns here so it's irrelevant. It just was a line I took out.

We took out the reference to character evidence because there was none.

And as we had discussed, we edited the limiting instruction pursuant to our conversation yesterday.

I think that covers anything that we did between Thursday and now.

MR. GITNER: Your Honor, I have a brief request. Just looking at it this morning, on page 16, in the uncalled witnesses charge, there's a sentence, just getting into it, you should not draw any inferences or reach any conclusions about what these uncalled witnesses would have testified to had they been called. The next sentence concerns my request. It says, their absence should not affect your judgment in any way.

I actually think that sentence should be deleted. I think that I'm allowed to argue lack of evidence and that can affect their judgment. And so I think the point of this is that they shouldn't draw inferences about what someone would or

wouldn't say. But the point of the charge, I think, is not that whether their absence should affect their judgment. I think I'm allowed to argue on the evidence or lack of evidence, and this sentence I think is contrary to that.

So I'd ask that this sentence be deleted. I don't think it affects the main thrust of the charge.

THE COURT: Well, you did bring up the point that the government failed to call any Galleon witness. That was in your --

MR. GITNER: Yes.

THE COURT: -- summation yesterday.

MR. GITNER: Yes.

THE COURT: The government, to balance it, there is the investigative techniques charge, which --

MR. GITNER: The charge is actually quite balanced that they don't need to do anything. But I think this particular sentence is not quite right. So I'm asking this sentence be deleted.

THE COURT: What he says makes sense to me.

MR. JACKSON: Can we just have a moment, your Honor.

Your Honor, we're fine with taking it out.

MR. GITNER: Thank you.

THE COURT: Elena reminds me that the defendant decided not to request a description of the defense.

MR. GITNER: Yes.

THE COURT: We just added the kind of standard sentence at the top of 18 that the defendant denies the charge against him and contends that the government has failed to prove this charge beyond a reasonable doubt.

MR. GITNER: Thank you, Judge. Is that from the standard? It sounds standard. I'm just wondering.

THE COURT: Elena specifically found that in Judge Gardephe's charge and somebody else's. Judge Sullivan.

MR. GITNER: Good enough for me. Thank you.

MR. JACKSON: Your Honor, just one small thing that we noticed this morning. On page 26 of the charge, your Honor makes reference -- I'm actually not sure it's current page 26.

THE COURT: Just tell me what the paragraph begins with.

MR. JACKSON: Absolutely, Judge. It's paragraph that talks about essential element of the crime is intent.

THE COURT: Right.

MR. JACKSON: It says, it follows that good faith on the part of the defendant is a complete defense to a charge of securities fraud. That's the first time the term securities fraud is used in the charge. Your charge makes clear that it's the securities laws. We just thought that the fix for that, just so there's no confusion --

THE COURT: Fine.

MR. JACKSON: -- would be when your Honor is

explaining the element on page --

THE COURT: Why don't we just change it.

MR. GITNER: Change it to charge, is a complete defense to the charge, period.

THE COURT: Works.

MR. JACKSON: I think that that would be potentially fine, but I think it would be -- I personally think it would be more accurate to just where your Honor says insider trading and conspiracy to engage in insider trading the first time, just say, comma, which is a form of securities fraud.

THE COURT: I am not charging that.

MR. JACKSON: That's fine, Judge.

MR. GITNER: Thank you, Judge. So we would just say good faith on the part of the defendant is a complete defense to --

THE COURT: -- this charge.

MR. GITNER: -- this charge. I think that works. Thank you.

THE COURT: I guess we can bring the jury in now.

(Jury present)

THE COURT: Good morning, everyone.

Ladies and gentlemen, my duty at this point is to instruct you as to the law. I will endeavor to be as clear as possible. It is your duty to accept these instructions of law as I give them to you and apply them to the facts as you

determine them. I know that you will try the issues that have been presented to you according to the oath which you have taken as jurors in which you promised that you would well and truly try the issues in this case and render a true verdict.

You should not single out any instruction as alone stating the law, but you should consider my instructions as a whole when you retire to deliberate in the jury room. To that end, you will all be permitted to take a copy of these instructions with you into the jury room.

You, the members of the jury, are the sole and exclusive judges of the facts. You pass upon the weight of the evidence; you determine the credibility of the witnesses; you resolve any conflicts in the testimony; and you draw whatever reasonable inferences you decide to draw from the facts as you have determined them.

By the way, let me just say to the people in the audience that if you choose to stay for the charge, you must stay until the end. You cannot get up and down, so, okay.

The defendant in this case, Rengan Rajaratnam, entered a plea of not guilty to the indictment. As I told you before, the law presumes the defendant to be innocent of the charges against him. I therefore instruct you that the defendant is to be presumed by you to be innocent throughout your deliberations until such time, if ever, you as a jury are satisfied that the government has proven him guilty beyond a reasonable doubt.

The burden is on the prosecution to establish the defendant's guilt beyond a reasonable doubt with respect to every element of the offense charged. The burden of proof never shifts to a defendant in a criminal case, and the law never imposes on a defendant the obligation of doing anything in a criminal trial. Nor does the law impose on a defendant the burden or duty of calling any witness or producing any evidence. The presumption of innocence alone is sufficient to require an acquittal of the defendant unless and until, after careful and impartial consideration of all the evidence, you, as jurors, unanimously are convinced of the defendant's guilt beyond a reasonable doubt.

The question naturally comes up is what is a reasonable doubt? The words almost define themselves. It is a doubt founded in reason and arising out of the evidence in the case or the lack of evidence. It is a doubt that a reasonable person has after carefully weighing all of the evidence. Proof beyond a reasonable doubt must therefore be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs.

The law does not require that the government prove guilt beyond all possible doubt; proof beyond a reasonable doubt is sufficient to convict. Reasonable doubt is a doubt that appeals to your reason, your judgment, your experience,

your common sense. It is not caprice, whim, or speculation. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for the defendant.

If, after fair, impartial, and careful consideration of all the evidence, you can candidly and honestly say that you are not satisfied of the guilt of the defendant, that is, if you have such a doubt as would cause you, as a prudent person, to hesitate before acting in matters of importance to yourself, then you have a reasonable doubt, and in that circumstance it is your duty to acquit.

On the other hand, if, after a fair, impartial, and careful consideration of all the evidence, you can candidly and honestly say that you are satisfied of the guilt of the defendant and that you do not have a doubt that would prevent you from acting in important matters in the personal affairs of your own life, then you have no reasonable doubt, and under such circumstances you should convict.

The evidence before you consists of the answers given by witnesses -- the testimony they gave, as you recall it -- the exhibits that were received in evidence, and the stipulations entered into by the parties.

As I indicated to you at the beginning of the trial, certain things are not evidence and must not be considered by you in your deliberations.

First, the exhibits marked for identification but not

received may not be considered by you as evidence.

Second, what lawyers say in their opening statements, in closing arguments, or in objections is not evidence. Similarly, you should bear in mind that a question put to a witness is never evidence. It is only the answer that is evidence. Be mindful that it is the duty of the attorney for each side of a case to object when the other side offers testimony or other evidence that the attorney believes is not properly admissible. Nor is anything I may have said during the trial or may say during these instructions with respect to a matter of fact to be taken in substitution for your own independent recollection, nor should you consider anything that I have said or may say as indicating that I have an opinion as to what your verdict should be. However, testimony that the Court has excluded or told you to disregard is not evidence and must not be considered. If you are instructed that some item of evidence is received for a limited purpose only, you must follow that instruction.

Third, anything that you have heard outside the courtroom is not evidence and must be disregarded. You are to decide the case solely on the evidence presented here in the courtroom.

Fourth, any notes that you may take are not evidence. Your notes may be used solely to assist you and are not to substitute for your recollection of the evidence in the case.

The fact that a particular juror has taken notes does not entitle that juror's views to any greater weight than those of any other juror.

A word about stipulations. In this case, you have heard evidence in the form of stipulations that contain facts that were agreed to be true. You must accept those facts as true.

In this case, you also heard evidence in the form of stipulations of testimony. A stipulation of testimony is an agreement among the parties that, if called, a witness would have given certain testimony. You are to treat stipulated testimony just as if the witness actually appeared in court. It is for you to determine the effect to be given that testimony.

There are two types of evidence that you may properly use in reaching your verdict.

One type of evidence is direct evidence. Direct evidence is when a witness testifies about something he knows by virtue of his own senses -- something he has seen, felt, touched, or heard. Direct evidence may also be in the form of an exhibit where the fact to be proved is its present existence or condition.

Circumstantial evidence is evidence that tends to prove a disputed fact by proof of other facts. There is a simple example of circumstantial evidence that is often used in

this courthouse.

Assume that when you came into the courthouse this morning the sun was shining and it was a nice day. Assume that the courtroom blinds were drawn and you could not look outside. As you were sitting here, someone walked in with an umbrella that was dripping wet. Then a few moments later another person also entered with a wet umbrella. Now, you can not look outside of the courtroom and you can not see whether or not it is raining, so you have no direct evidence of that fact. But on the combination of facts that I have asked you to assume, it would be reasonable and logical for you to conclude that it had been raining.

That is all there is to circumstantial evidence. You infer on the basis of reason, experience, and common sense from one established fact the existence or nonexistence of some other fact.

Circumstantial evidence is of no less value than direct evidence. You may consider both in reaching your conclusion as to whether the government has proven its case against the defendant.

Many material facts -- such as state of mind -- are rarely susceptible of proof by direct evidence. Such facts may be established by circumstantial evidence and the reasonable inferences that you draw.

During the trial you have heard the attorneys use the

term "inference," and in their arguments they have asked you to infer by using your reason, experience, and common sense, the existence of some fact from one or more established facts. An inference is not a suspicion or a guess. It is a reasoned, logical decision to conclude that the disputed fact exists on the basis of another fact that you know exists. In drawing inferences, you should use your common sense. There are times when different inferences may be drawn from facts, whether proved by direct or circumstantial evidence. The government asks you to draw one set of inferences while the defense attorneys ask you to draw another. Whether or not to draw a particular inference is, of course, a matter exclusively for you to determine, as are all determinations of fact.

You have heard testimony about and seen evidence derived from telephone calls which were tape recorded without the knowledge of the defendant and others, but with the consent and authorization of the Court. All of this evidence was lawfully obtained and properly admitted in this case and may properly be considered.

In connection with these tapes, the parties have been permitted to display transcripts of the recordings. These documents were shown to you as an aid or guide to you in listening to the recordings. However, they are not in and of themselves evidence, and therefore may not be considered by you during your deliberations. However, you will be provided with

a computer on which you may play the tapes which have been admitted into evidence.

During the trial, you have heard argument by counsel that the government did not utilize specific investigative techniques. There is no legal requirement that the government use any specific investigative techniques to prove its case. Your concern, as I have said, is to determine whether or not, on the evidence or lack of evidence, the defendant's guilt has been proved beyond a reasonable doubt.

You have been presented with exhibits in the form of charts and summaries. These exhibits purport to summarize the underlying evidence that was used to propose them and were shown to you to make the other evidence more meaningful and to aid you in considering the evidence. They are no better than the documents upon which they are based and are not themselves independent evidence. Therefore, you are to give no greater weight to these charts and summaries than you would give to the evidence on which they are based.

It is for you to decide whether the charts an summaries correctly present the information contained in the documents on which they were based. In the event that a chart or summary differs from the actual documents on which the chart or summary is based, you are to rely on the actual document and not the chart or summary. You are entitled to consider the charts and summaries if you find that they are of assistance to

you in analyzing and understanding the evidence.

You have had an opportunity to observe all of the witnesses. It is now your job to decide how believable each witness was in his testimony. You are the sole judges of the credibility of each witness and of the importance of his testimony.

Your decision whether to believe a witness may depend on how that witness impressed you. Was the witness candid, frank, and forthright? Or did the witness seem as if he was hiding something, being evasive, or suspect in some way? How did the way the witness testified on direct examination compare with how the witness testified on cross-examination? Was the witness consistent in his testimony or did he contradict himself? Did the witness appear to know what he was talking about, and did the witness strike you as someone who was trying to report his knowledge accurately?

How much you choose to believe a witness may be influenced by the witness's bias. Does the witness have a relationship with the government or the defendant that may affect how he testified? Does the witness have some incentive, loyalty, or motive that might cause him to shade the truth or does the witness have some bias, prejudice, or hostility that may have caused the witness -- consciously or not -- to give you something other than a completely accurate account of the facts he testified to?

Even if the witness was impartial, you should consider whether the witness had an opportunity to observe the facts he testified about. Also ask yourselves whether the witness's recollection of the facts stands up in light of all the other evidence.

A witness may be inaccurate, contradictory or even untruthful in some respects and yet may be entirely credible in the essence of his testimony. It is for you to say whether his testimony in this trial is truthful or not in whole or in part, in light of his demeanor, statements, and all of the evidence.

Additionally, the fact that the prosecution is brought in the name of the United States of America entitles the government to no greater or no less consideration than that accorded to any other party in the litigation. All parties, whether the government or individuals, stand as equals under the law.

You have heard testimony from government witnesses who have pleaded guilty to the same or similar charges. You are instructed, however, that you are to draw no conclusions or inferences of any kind about the guilt of the defendant merely from the fact that a witness for the prosecution or a coconspirator pleaded guilty to the same or similar charges. The decisions of those individuals to plead guilty were personal decisions about their own guilt and may not be used by you in any way to infer the defendant's guilt.

You have heard the testimony of law enforcement officers and of employees of the government. The fact that a witness may be employed as a law enforcement officer or government employee does not mean that his testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness. It is your decision, after reviewing all the evidence, whether to accept the testimony of the law enforcement witness and to give that testimony whatever weight, if any, you find it deserves.

You have heard evidence during the trial that witnesses have discussed the facts of the case and their testimony with the lawyers before the witnesses appeared in court. Although you may consider that fact when you are evaluating a witness's credibility, I should tell you that there is nothing either unusual or improper about a witness meeting with lawyers before testifying so that the witness can be aware of the subjects he will be questioned about, focus on those subjects, and have the opportunity to review relevant exhibits before being questioned about them. Such consultation helps conserve your time and the Court's time. In fact, it would be unusual for a lawyer to call a witness without such consultation.

Again, the weight you give to the fact or the nature of the witness's preparation for his testimony and what inference you draw from such preparation are matters completely

within your discretion.

The defendant did not testify in this case. Under our Constitution, a defendant has no obligation to testify or present any evidence because it is the prosecution's burden to prove a defendant guilty beyond a reasonable doubt. As I stated earlier, the burden remains with the prosecution throughout the entire trial and never shifts to the defendant. A defendant is never required to prove that he is innocent. The right of a defendant not to testify is an important part of our Constitution. It is for that reason that you may not attach any significance to the fact that the defendant did not testify. No adverse inference may be drawn against the defendant because he did not take the witness stand. You may not consider this against the defendant in any way in your deliberations.

There are people whose names you heard during the course of the trial who did not appear and testify. The government is not required to prove its case through any particular witnesses. Nor does the defendant have any burden or duty to call any witnesses or produce any evidence. You should not draw any inferences or reach any conclusions about what these uncalled witnesses would have testified to had they been called. Again, your concern is to determine whether, on the evidence that has been admitted or the lack thereof, the defendant's guilt has been proven beyond a reasonable doubt.

Further, you are not being asked whether any person other than the defendant here on trial has been proven guilty. In that vein, you may not draw any inference, favorable or unfavorable, toward the government or the defendant, from the fact that certain persons are not on trial in this case. You may not speculate as to why other people are not on trial before you now.

Your verdict must be based solely on the evidence developed at trial or the lack of evidence. It would be improper for you to consider, in reaching your decision as to whether the government sustained its burden of proof, any personal feelings you may have about the defendant's or witness's race, religion, national origin, sex or age. The parties in this case are entitled to a trial free from prejudice, and our judicial system cannot work unless you reach your verdict through a fair and impartial consideration of the evidence.

Your verdict may be based exclusively on the evidence or lack of evidence in the case, for once you let fear or prejudice, bias, or sympathy interfere with your thinking, there is a risk that you will not arrive at a just and true verdict.

With these preliminary instructions in mind, let us now turn to instructions of law.

The indictment charges the defendant, Rengan

Rajaratnam, with conspiring to violate the securities laws by engaging in what is referred to as insider trading. The defendant denies the charge against him and contends that the government has failed to prove this charge beyond a reasonable doubt. As I instructed you at the outset of this case, the indictment is a charge or accusation. It is not evidence, and it is not to be considered by you as any evidence of the guilt of the defendant.

A conspiracy is a kind of criminal partnership -- an agreement of two or more persons to join together to accomplish some unlawful purpose.

Here, the conspiracy charged is alleged to be an agreement in 2008 between Rengan Rajaratnam and his brother Raj Rajaratnam and others known and unknown to violate the securities laws of the United States by engaging in insider trading.

The actual commission of a substantive crime is not an essential element of the crime of conspiracy. Rather, the coconspirators must simply have agreed to commit a scheme that, if carried out, would have met all the requirements of the crime of insider trading, as I will define it for you. Indeed, you may find the defendant guilty of the crime of conspiracy even if you find that the charged conspiracy was not successful and no insider trading was ever actually committed.

I will now instruct you about the elements of the

conspiracy offense.

To sustain its burden of proof on the charge of conspiracy, the government must prove each of the following elements beyond a reasonable doubt:

First, the existence of the conspiracy charged in the indictment; that is, an agreement or understanding among at least two people to commit insider trading.

Second, the government must prove beyond a reasonable doubt that the defendant knowingly became a member of the conspiracy, with intent to further its illegal purpose.

Third, the government must prove beyond a reasonable doubt that one of the coconspirators -- not necessarily the defendant -- knowingly committed at least one overt act in furtherance of the conspiracy.

Now let us separately consider these elements.

As I just indicated, the first element that the government must prove beyond a reasonable doubt to establish the offense of conspiracy is that two or more persons entered into the unlawful agreement alleged in the indictment. In other words, the government must prove that there is in fact -- excuse me. Let me just say that again. In other words, the government must prove that there in fact was an agreement or understanding to violate those provisions of the law which make it unlawful to engage in insider trading. The first element of the crime of conspiracy thus has two parts: one, the unlawful

agreement; and, two, the object of the conspiracy.

Now, the government is not required to show that two or more people sat around a table and entered into a solemn pact, orally or in writing, stating that they had formed a conspiracy to violate the law and spelling out all the details. Common sense tells you that when people in fact agree to enter into a criminal conspiracy, much is left to the unexpressed understanding. It is rare this a conspiracy can be proven by direct evidence of an explicit agreement.

In order to show that a conspiracy existed, the evidence must show that two or more people, in some way or manner, through any contrivance, explicitly or implicitly, that is, spoken or unspoken, came to a mutual understanding to violate the law and to accomplish an unlawful plan.

When people enter into a conspiracy to accomplish an unlawful end, they became agents or partners of one another in carrying out the conspiracy. In determining whether there has been an unlawful agreement as alleged, you may consider the acts and conduct of the alleged coconspirators that were done to carry out the apparent criminal purpose. In addition, in determining whether such an agreement existed, you may consider direct as well as circumstantial evidence. The old adage, "actions speak louder than words," applies here. Often, the only evidence that is available with respect to the existence or nonexistence of the conspiracy is that of disconnected acts

and conduct on the part of the alleged coconspirators. When taken all together and considered as a whole, however, those acts and conduct may warrant the inference that a conspiracy existed or did not exist as conclusively as would direct proof. On this question, you should refer back to my earlier instructions on direct and circumstantial evidence and inferences.

So you must first determine whether the evidence proves beyond a reasonable doubt the existence of the conspiracy charged in the indictment. It is sufficient to establish the existence of the conspiracy, as I've said -- as I have already said, if, from the proof of all the relevant facts and circumstances, you find beyond a reasonable doubt that the minds of Rengan Rajaratnam and at least one other alleged coconspirator met to accomplish, by the means alleged, the objectives of the conspiracy. In this case, the government alleges that there was a meeting of the minds between Rengan Rajaratnam and Raj Rajaratnam.

The second part of the first element relates to the object, or objective, of the conspiracy -- some illegal goal that the members of the conspiracy agree they will try to accomplish. The conspiracy charged has as its object a scheme to engage in insider trading.

In order to establish the object of the conspiracy, the government must prove beyond a reasonable doubt that two or

more coconspirators agreed to obtain, in or about 2008, material nonpublic information from one or more companies for the purpose of trading on the companies' stock, knowing that the information had been obtained from an insider who had provided the information in violation of that insider's duty of trust and confidence and in exchange for or in anticipation of a person benefit.

An "insider" is one who comes into possession of material, nonpublic information about a specific security or stock by virtue of a relationship that involves trust and confidence. Such a relationship can, for example, arise out of a person's employment relationship with a company, or out of a client relationship, or out of a relationship as a board member to a company. The law forbids an insider, who is expected to keep certain information confidential, from trading in the securities in question or assisting others to trade in securities on the basis of that information.

The law also prohibits a person who is not actually an insider from trading in securities based on material, nonpublic information, if the person, who is known as a tippee, knowingly received material, nonpublic information from other individuals and wrongfully used it for his own benefit when he knew that the inside information had been disclosed in violation of a duty of trust or confidence and in exchange, directly or indirectly, for a personal benefit. The benefit may be, but

need not be, financial or tangible in nature. It could include, for example, obtaining a useful networking contact, enhancing a witness's reputation or power, obtaining future financial benefits, or maintaining or furthering a friendship.

Information is nonpublic if it was not available to the public or authorized to be disclosed to the public through such sources as press releases, Securities and Exchange Commission filings, trade publications, analyst reports, newspapers, magazines, television, radio, word of mouth, or in response to requests. The confirmation by an insider of unconfirmed facts or rumors may itself be inside information. However, the law permits analysts and portfolio managers to meet and speak with corporate officers and other insiders, as well as experts affiliated with such companies, in order to ferret out and analyze information useful in making investment decisions.

Information is "material" if a reasonable investor would have considered it significant in deciding whether to buy, sell, or hold securities, and at what price to buy or sell securities.

An insider trading scheme involves the use of the material, nonpublic information in connection with a stock purchase or sale of securities -- in other words, the information would be at least a factor in the decision to buy or sell. An insider trading scheme must also involve the use

of an instrumentality of interstate commerce, in other words, the mails, telephone, wire, or any device or facility that can be used to transmit information or communications across state borders, or of a national securities exchange, such as, for example, the New York Stock Exchange or the NASDAQ, in furtherance of the scheme. This might include placing a telephone call or placing an order with a trader or a brokerage firm to buy or sell a security on a national exchange.

If you conclude that the government has proven beyond a reasonable doubt that the charged conspiracy existed and that the conspiracy had as its object the illegal purpose charged in the indictment, then you must next determine whether Rengan Rajaratnam joined in the conspiracy with knowledge of its unlawful purpose and in furtherance of its unlawful objective. The government must prove beyond a reasonable doubt that Rengan Rajaratnam unlawfully, knowingly, and intentionally became a member of the charged conspiracy.

"Knowingly" means to act voluntarily and deliberately, rather than mistakenly or inadvertently. "Intentionally" means to act deliberately and with a bad purpose, rather than innocently, and to act with an intent to defraud and thereby harm the company from which the inside information was obtained.

The question of the defendant's intent is a question of fact that you are called upon to decide, just as you

determine any other fact at issue. A person's intent involves the state of his mind and the purpose with which he acted at the time of the -- start that again. A person's intent involves the state of his mind and purpose with which he acted at the time the acts in question occurred. Direct proof of knowledge and intent is almost never available, and it is not required to find that such proof exists. It would be a rare case where it could be shown that a person wrote or stated that as of a given time in the past he had committed an act with fraudulent intent. Such direct proof is not required.

Knowledge and criminal intent, though subjective, may be established by circumstantial evidence, based on a person's outward manifestations, his words, his conduct, his acts, and all the surrounding circumstances disclosed by the evidence and the rational or logical inferences that may be drawn therefrom.

Since an essential element of the crime charged is intent to defraud, it follows that good faith on the part of the defendant is a complete defense to this charge. It is for you to decide whether the defendant acted in good faith or not. If you decide that the defendant at all relevant times acted in good faith, it is your duty to acquit him. The law is not violated if the defendant acted in good faith and held an honest belief that his actions were proper and not in furtherance of any illegal venture. In this respect, I would remind you that the defendant has no burden to establish the

defense of good faith, however. The burden is on the government to prove criminal intent and consequent lack of good faith beyond a reasonable doubt.

I want to caution you that mere knowledge or acquiescence, without participation, in the unlawful plan is not sufficient. Moreover, the fact that the acts of a defendant, without knowledge, merely happen to further the purposes or objectives of the conspiracy, does not make the defendant a member. What is necessary is that the defendant must have participated in the conspiracy with knowledge of its unlawful objective and with the intention of aiding in the accomplishment of that objective.

It is for important for you to note that a defendant's participation in the conspiracy must be established by evidence of his own acts or statements. However, you may consider the defendant's acts and statements in the context of the acts and statements of the alleged other conspirators, and the reasonable inferences that may be drawn therefrom.

To become a member of the conspiracy, the defendant need not have known the identifies of each and every other member, nor need he have been apprised of all their activities. In fact, a defendant may know only one other member of the conspiracy and still be a coconspirator. Moreover, the defendant need not have been fully informed as to all of the details, or the scope, of the conspiracy in order justify an

inference of knowledge on his part.

Nor is it necessary that the defendant receive any monetary benefit from participating in the conspiracy. While proof of a financial interest in the outcome of a conspiracy is not essential, if you find that the defendant had such an interest, that determination is a factor which you may properly consider in determining whether or not the defendant was a member of the conspiracy charged in the indictment.

If you determine that the defendant became a member of the conspiracy, the extent of his participation in that conspiracy has no bearing on the issue of his guilt. A conspirator's liability is not measured by the extent or duration of his participation. Indeed, each member may perform separate and distinct acts and may perform them at different times. Some coconspirator -- I'm sorry. Some conspirators play major roles, while others play minor roles in the scheme. An equal role is not what the law requires. In fact, even a single act may be sufficient to draw the defendant within the ambit of the conspiracy.

I want to caution you, however, that a defendant's mere association with one or more members of the conspiracy does not automatically make the defendant a member himself. A person may know, be friendly with, be a colleague of, or be related to a criminal without being a criminal himself. Mere similarity of conduct or the fact that they may have assembled

together and discussed common aims and interests does not necessarily establish membership in a conspiracy.

It is not required that the government show that the defendant, in addition to knowing what he was doing and deliberately doing it, also knew that he was violating some particular federal statute. But to meet its burden, the government must establish beyond a reasonable doubt that the defendant acted with the intent to help carry out some essential step in the execution of the scheme to defraud that is alleged in the indictment.

The third element that the government must prove beyond a reasonable doubt is that at least one of the conspirators -- not necessarily the defendant -- committed at least one overt act in furtherance of the conspiracy, during the time that the conspiracy was in existence. The overt act element is a requirement that the agreement went beyond the mere talking stage, the mere agreement stage.

This burden may be met by the government showing that Rengan Rajaratnam or one of his coconspirators knowingly and willfully committed an overt act in furtherance of the conspiracy. This is because such an act becomes, in the eyes of the law, the act of all the members of the conspiracy.

However, you must all agree on at least one overt act that a conspirator committed in order to satisfy this element. In other words, it is not sufficient for you to agree that some

overt act was committed without agreeing on which overt act was committed.

You should bear in mind that the overt act, standing alone, may be an innocent, lawful act. You are therefore instructed that the overt act does not have to be an act which in and of itself is criminal or constitutes an objective of the conspiracy.

Finally, in considering whether the government has proven the charged conspiracy and whether the government has proven the defendant's participation in the charged conspiracy, you may not rely on evidence of the defendant's trades in Clearwire securities, but you may consider other evidence related to Clearwire in deciding whether the government has proven the charged conspiracy and the defendant's participation in the charged conspiracy.

As I mentioned to you throughout this trial, you have heard references to companies other than Clearwire and AMD on some of the wiretapped phone calls. These references included Cisco, EMC, and other companies. This evidence was not introduced to show that the defendant engaged in insider trading in those stocks and there is no evidence that he did.

Now, in addition to dealing with the elements of the conspiracy, you must also consider the issue of venue, namely, whether any act in furtherance of the unlawful activity occurred within the Southern District of New York. The

Southern District of New York encompasses Manhattan, the Bronx, Westchester, Rockland, Putnam, Dutchess, Orange, and Sullivan County. So, anything that occurs in those counties occurs in the Southern District of New York.

In this regard, the government need not prove that the crime itself was committed in this district or that the defendant himself was present here. It is sufficient to satisfy this element if any act in furtherance of the crime occurred within this district. Such an act would include, for example, the placing of a telephone call to or from the Southern District of New York or the execution or settlement of a securities trade within this district.

I note that on this issue, and this issue alone, the government need not offer proof beyond a reasonable doubt and that it is sufficient if the government proves venue by a mere preponderance of the evidence. A preponderance of the evidence means to prove that the fact is more likely than not true. Thus, the government has satisfied its venue obligations if you conclude that it is more likely than not that any act in furtherance of the crime you are considering occurred within the Southern District of New York.

The government, to prevail, must prove each essential element of the crime charged beyond a reasonable doubt. To report a verdict, it must be unanimous.

Each juror is entitled to his or her opinion; each

should, however, exchange views with his or her fellow jurors. That is the very purpose of jury deliberation -- to discuss and consider the evidence; to listen to the arguments of fellow jurors; to present your individual views; to consult with one another; and to reach an agreement based solely and wholly on the evidence -- if you can do so without violence to your own individual judgment.

Each of you must decide the case for yourself, after consideration with your fellow jurors of the evidence in the case. But you should not hesitate to change an opinion which, after discussion with your fellow jurors, appears erroneous.

However, if, after carefully considering all the evidence and the arguments of your fellow jurors, you entertain a conscientious view that differs from the others, you are not to yield your conviction simply because you are outnumbered.

Your final vote must reflect your conscientious conviction as to how the issues should be decided.

I want to say a word about punishment and sentencing. The question of possible punishment of the defendant is of no concern to the jury and should not, in any sense, enter into or influence your deliberations. The duty of imposing sentence rests exclusively with the Court. Your function is to weigh the evidence in the case and to determine whether or not the defendant is guilty beyond a reasonable doubt, solely on the basis of such evidence. Under your oath as jurors, you cannot

allow a consideration of the punishment which may be imposed upon the defendant, if convicted, to influence your verdict in any way or in any sense enter into your deliberations.

Now that I have charged you as to what the law is, you are about to go into the jury room and begin your deliberations. I am going to have the exhibits that have been admitted into evidence brought to you in the jury room. If you want to review any of the testimony, that can also be done if you send us a note. But, please remember that it is not always easy to locate what you might want, so be as specific as you possibly can in requesting portions of the testimony that you may want.

I will also give you a copy of -- a number of copies of this charge on the law for use during your deliberations. If you feel that you need any of the legal principles clarified during your deliberations, I will be happy to do so.

Your requests for testimony or for additional instructions on the law -- in fact, any communication with the Court -- should be made to me in writing, signed by your foreperson, and given to one of the court officers. I will respond to any questions or requests that you have as promptly as possible, either in writing or by having you return to the courtroom so I can speak with you in person. In any event, do not tell me or anyone else how the jury stands on the issue of the defendant's guilt until after a unanimous verdict is

reached.

At this time I want to tell you that juror No. 1, Isabel Tirado, will serve as the jury's foreperson. The foreperson will be responsible for signing all communications to the Court on behalf of the jury and for handing them to the marshal during your deliberations. This should not be understood to mean that an individual cannot send the Court a note should the foreperson refuse to do so. After you have reached a verdict, your foreperson will advise the officer outside your door that you are ready to return to the courtroom.

I will stress once again that each of you should be in agreement with the verdict that is announced in court. Once your verdict is announced by your foreperson in open court and officially recorded, it cannot ordinarily be revoked.

The custom and tradition in this court requires, although I know it is totally unnecessary, that I admonish you to be polite and respectful towards each other in the course of your discussions in the jury room so that each juror will have his or her position made clear and so that when you reach a verdict you will know that it is a just one.

Finally, let me state that your oath sums up your duty and that is: without fear or favor to anyone, you will well and truly try the issues between the government and the defendant, based solely on the evidence and this Court's

instructions as to the law.

Let me ask counsel if there's anything we need to talk about on the charge.

MR. JACKSON: No, your Honor.

MR. GITNER: One moment, Judge.

Thank you, your Honor.

THE COURT: All right. There are 13 of you left standing, but a jury can only be 12. So at this time I'm going to inform Mr. Jones that you're actually the alternate. You are not, however, excused. You may leave, but you're not legally excused.

What that means is that should it happen, and occasionally it does, that during deliberations somehow we lose a juror, we will need to call you back in. So that means that the admonition that you can't talk about the case continues. We will, I promise, call you within, you know, 15 minutes of there being a verdict to let you know what it is and to let you know that you're really excused.

But before you go I want to thank you for your service. We talked a little bit about that Thursday. That's essentially what I say to all jurors. We very much appreciate your attention and your time and your taking the time out of your normal life to participate in this really special American tradition of jury service. And, again, on behalf of the entire court and the parties, we thank you.

So I think we have to swear in the marshal, the court officer.

(Marshal sworn)

THE COURT: So as I said, just practically, the exhibits are going to be brought to you, you're going to be given verdict forms, you already have note pads. There are, I understand, envelopes which you can put any note already in the jury room. You're going to get the scrubbed computer that only has the tapes that were admitted into evidence. Your snack should come on time. And I don't know if there are any other details at this point that we need to talk about.

So the moment, in a sense, that you've been waiting for to be able to talk is a moment away, but let Mr. Jones leave before you start to deliberate. You don't have to walk out. Just when you leave, before you guys talk, just say good-bye, say it was nice to meet you and let him go, okay.

We have cell phone for you, contact information, right, in case we need contact you, right, Mr. Jones?

JUROR: Yes.

THE COURT: Okay. Great. Thank you.

(Jury retired to deliberate; time noted: 10:30 a.m.)

MR. JACKSON: Your Honor, just to clarify, and I'm sure when your clerks pass all the exhibits over they can explain this, but the scrubbed computer doesn't actually contain the recordings. The parties have assembled disks that

have all the recordings, which are marked, and the computer can play all the recordings. It's of no moment. There's a password that's on the computer; it's pasted on there. It's very simple.

MR. GITNER: Before I discuss that, Judge, I didn't want to do it in front of the jury. I just want to repeat just for the record my -- I'll phrase them as exceptions. To the extent that I had made certain requests like multiple conspiracy charge, I think to make my record more perfect I need to repeat that now just to state that I have made those exceptions. I would request them again. I understand your Honor is denying them and is not going to do that.

I think we have, with regard to the tapes, I do think we've worked together and created a disk and index. I think we have one dispute about one item on the index that might make sense for the lawyers to talk about before this stuff goes back. And I think we just have to look at the paper exhibits, that shouldn't take long, and they can go back.

I think that was it. Your Honor, could we get a copy of the verdict sheet?

THE COURT: We gave it to you yesterday.

MR. GITNER: I think I saw it but I think in the confusion we -- I can't find it.

(Continued on next page)

MR. GITNER: Thank you.

THE COURT: Could I get clarification. Are the exhibits ready to go back?

MR. GITNER: They are. I think literally we need to put our eyes on it and then it can go back. One last thing, one thing. I know it's the government's computer that's been scrubbed, but I'm not sure where the speakers are. I actually thought they would come with better speakers than just the single computer. I'm not sure if the government then brought speakers for the computer.

MR. JACKSON: We can bring up some extra speakers if that will be helpful. I'll get them after we bring the computer in there, then we did use that. It will be simple. It will be easy to plug in. In fact, I assume as defense counsel is doing its duties, we can retrieve extra speakers.

MR. GITNER: Thank you. That's it.

I think we have to discuss something. There's one issue on the index that I think there was some disagreement over. We have to figure that out.

(Recess pending verdict)

(In open court; jury not present)

MR. JACKSON: We have a dispute because we removed, pursuant to your Honor's order regarding the Clearwire trades from the government exhibits, the chart which depicted Rengan Rajaratnam's personal trades in his Fidelity account. We took

that out. We also took out another related chart to that compensation.

What we do still have are two charts the defense objects to, Government Exhibits 24 and 25 which depict trading in Clearwire by certain Galleon portfolio manager codes from March 24 through April 21, 2008 and a second one depicts the realized profit or loss during that same time period.

Mr. Gitner's objection is that the very last entry on this chart is a 657 -- it's an almost negligible trade that occurred on 4/21, 2008, Mr. Gitner says that it's his belief that that's Rengan Rajaratnam's trade.

What we have said is, we don't think that there's any evidence in the record supporting that that's his trade and so these charts don't need to be altered in any way in order to go back to the jury.

However, we offer, if the defendant likes, we'd be willing to redact that trade from it and have the charts offered as redacted. But the defense is suggesting that the entirety of these charts needs to be removed when they have clearly been the subject of a lot of discussion at the trial, and I don't think they run afoul of your Honor's order in any way.

MR. GITNER: It's not quite my objection. I don't have a copy. If I can borrow it? We agree the charts mark 14, 26 and 27 are not going to go back pursuant to your Honor's

order. So what's at issue are Exhibits 24 and 25. Twenty-four is a chart that --

THE COURT: Which ones are not going back?

MR. GITNER: We have agreed that Government Exhibits 14, 26 and 27 are not going back.

What's at issue are 24 and 25. If it's okay, I'm going to talk about 25 first because I have it in front of me. This is the one that is realized profit or loss from trading in Clearwire, associated with certain Galleon portfolio manager codes from March 24 through April 21, 2008. And although it ends on April 21, 2008, the government clearly has argued that Rengan had some control over BCR prior to April 21, 2008.

The second -- the second chart, 24, my objection is the same: It's not just that I can prove, which I did, that Rengan regained control by April 21. It's that the government has argued that Rengan had control before then. And prior to my proving that by Bear Stearns and the loss be with it was the government's position I think that Rengan had some control over BCR much earlier, in fact, they didn't put in any proof about Rengan losing control. Without me, the jury would think that he had control the entire time over BCR.

So I think these charts as government exhibits are misleading. They're not just misleading, but they concern what the government has said are Rengan's trades. And I think your Honor's order was that Rengan's trades are not proof of

Rengan's participation in the conspiracy. And my memory of when we discussed this earlier was that the charts about Clearwire trading were not going to go back, so that's my objection.

I can hand these back to the government if they want to talk about.

MR. JACKSON: If what defense counsel just said is confusing, I think it's because it doesn't really make sense.

THE COURT: You can't have it both ways.

It's accurate, is it not, that it was only the defense that put in evidence that Rengan lost trading authority over his portion of the Buccaneer fund?

MR. JACKSON: Yes, your Honor, that's their theory.

MR. GITNER: Exactly.

MR. JACKSON: I'm not sure what that "exactly" refers to, but my only point, your Honor, is that there has clearly been --

THE COURT: So, if you take the opposite position, then these charts reflect Rengan's trading in Clearwire, which you may not argue from and you may not give the jury exhibits reflecting.

MR. JACKSON: Judge, we haven't taken the opposite position. We put evidence in that showed that BCR was his general trading code. They put in evidence showing that he was demoted during this time period, and we haven't contested that

evidence at all. So what this reflects is what is very relevant to the case: Galleon, Raj's activity in Clearwire throughout this time period.

The only reason that there's reason to believe that the BCR trade, which is the last one on here which is almost negligible, the 4/21 BCR trade of just 657 shares, the only reason there's reason to believe that trade is attributable to Rengan is because after proving up that Mr. Rengan Rajaratnam --

THE COURT: The BCR trades are going back, those are Rengan trades, right?

MR. JACKSON: No. The defense has --

THE COURT: Wait a second. Your exhibit?

MR. JACKSON: Yes, your Honor, but he has stated those are Raj's trades and we haven't contested that.

MR. GITNER: They actually did.

Mr. Jackson himself, in cross-examining Mr. Sito, who was the witness who testified about what happened, challenged his credibility, challenged his bias. Mr. Jackson himself did that. They have stated that.

And I have no burden. If I had sat here and done nothing, what would this chart say? And what if some juror on there decided to tune me out every time I spoke? That's the danger of this chart.

MR. JACKSON: That's a mischaracterization of what

happened with Mr. Sito. The fact that I cross-examined Mr. Sito does not mean that I ever said, and by the way no questions will be evidence anyway, but I never posed a question to him suggesting that this was actually Rengan's trading. We haven't contested that this was Raj's trade.

THE COURT: You didn't create this chart believing that Rengan had nothing to do with the purchase of Clearwire on March 24 and March 25.

MR. JACKSON: Judge --

THE COURT: Because there would be no purpose in your creating this chart this way unless you believed that this was his trade, not the block trade by Raj divided in three ways.

MR. JACKSON: No, your Honor, we respectfully disagree.

From our perspective, this is relevant to show what Galleon, what Raj was doing. Raj's trading in Clearwire throughout this time period is relevant in this case; and it's also admissible under your Honor's ruling, which speaks to the conspiracy in this case.

We have not contested their theory that this is all Raj's trading, but to excise from the case charts that reflect what was happening at Galleon that don't specifically reference Rengan trading, your Honor, will create an unfair depiction of what is going on, and what is going on in terms of Raj's trading is relevant. It's critical to the conspiracy.

THE COURT: The jury wants Government Exhibits 514, 516 and 518.

(At 11:00 a.m., a note was received from the jury)

MR. GITNER: 514, 516 and 518?

THE COURT: Yes. Plus they want the charge. Can we get that to them? Get it in.

MR. JACKSON: We're just waiting on defense to finalize the redactions on the disk.

MR. GITNER: I think they'll have all of them in just a few moments.

MR. JACKSON: Just to put Government Exhibit 25 in its context, far from smearing the defendant, this chart doesn't even depict any profit being made in Buccaneer.

Even if you assumed, as defense is attempting to suggest, that the jury might construe this as some of Rengan's trading, that portion of it is consistent with the defense argument, but it doesn't, it doesn't in any way suggest that Rengan was involved --

THE COURT: Can we get them what you guys have agreed to because they obviously want to get to work.

MR. JACKSON: Yes. We're just waiting for the process.

THE COURT: I expected this to all be done, counsel. I really had.

MR. GITNER: We apologize, your Honor.

MR. JACKSON: Your Honor, to go back to the bottom line with regard to these charts --

THE COURT: Aren't there a lot of other exhibits?

MR. GITNER: I think we can send the paper exhibits back.

MR. JACKSON: We have all of our recordings ready. We can send our recordings back and that will be responsive to request.

THE COURT: What's the problem?

MR. GITNER: There was a tape that apparently wasn't redacted the right way that the government noticed, so we had to redact it now and they're burning it right now. It's not like you can just cross it out. You have to sort of process that has to happen to redact it so it works. So we have somebody from Doer here doing it now and he's literally tapping as we speak. We can send back all of the paper exhibits and then the disk can go back in a few minutes.

MR. JACKSON: Perhaps we can start the set-up of the computer. If we can have permission -- I don't know if one of your law clerks want to do it or Ms. Hernandez can do it with instructions not to speak to the jury.

MS. HERNANDEZ: There are instructions.

MR. JACKSON: We can give the computer.

MR. GITNER: And the paper exhibits.

MR. JACKSON: They can start setting it up.

MR. GITNER: The disk will be on its way in a minute or two.

MR. JACKSON: May I say a quick couple of things about this. Your Honor's ruling, which the government completely understood and corresponded with by voluntarily removing all of those -- we took it upon ourselves to make sure we removed from our submitted exhibits all of the exhibits that referenced Rengan's tradings. Your Honor's ruling was with respect to Clearwire trades done by Rengan Rajaratnam.

Now, it's the government's position that there is no evidence in the record, excepting what the defense put in, that identifies these as Rengan Rajaratnam's.

THE COURT: If the jury sees BCR, what thought process do you think they could go through and conclude that BCR does not mean Rengan?

MR. JACKSON: Because the defense spent a huge percentage of their case throughout the case emphasizing that Rengan Rajaratnam was demoted during this period; that these are Raj's trades.

Your Honor, we're left, if we have our exhibits which show the overall Galleon portfolio and what happened with Galleon --

THE COURT: You want to put a nice, red --

MR. JACKSON: Bar over 657?

THE COURT: No.

Do you want to put nice in writing "None of the trades on this exhibit are trades by Rengan"?
MR. JACKSON: If that's what they want, that's fine, your Honor. We'd be willing to redact the 657, but this is our only --
THE COURT: And what about the rest of them?
MR. JACKSON: Or we'd be willing to put that on there, but your Honor this is our only proof that shows what Raj was doing in the trades during Clearwire. It's critical proof. It's not excluded by your Honor's ruling, so we should be allowed to put this in.
THE COURT: What if, in nice, big letters, there was a note: "This exhibit only reflects trades by Raj Rajaratnam, not Rengan Rajaratnam"?
MR. JACKSON: If that's what your Honor thinks is appropriate.
THE COURT: If that's your position if you agree that it should not be understood as reflecting trades by Rengan.
MR. GITNER: I appreciate that suggestion, Judge, but the problem is still that the 4/21 trade on Exhibit 24 is Rengan.
THE COURT: You said you'd take that out.
MR. GITNER: Okay. I'm not sure how we'd do that.
MR. JACKSON: We have technology that allows us to do that.

THE COURT: Even I might know how to do that.
MR. GITNER: Exhibit 25, the realized profit/loss would have to be changed because, as I understand it, that includes the BCR trade on the 21st.
MR. JACKSON: That's a negligible trade that would only increase the profitability of this period. If he wants us to redo the calculation and boost this number up from nine --
THE COURT: Look, it's the same time period by date.
MR. GITNER: I understand. The problem with 25 is it says realized profit and loss from date A, March 24 through date B, April 21. It's completely inaccurate if you include BCR at all because BCR also shorted that day.
MR. JACKSON: That's false because it says realized. There was no realized profit or loss from shorts that were enacted on that date. Mr. Callahan was very clear when he testified that he was aware during this time period, shorting activity wasn't reflected because it wasn't realized.
THE COURT: Look. I have my markup copy, which has lots of marks on it, and one of them was that the 4/21 leaves out a short of 145,000 shares.
MR. GITNER: Right.
MR. JACKSON: First of all, correct me if I'm wrong, but the shorting is not on 4/21. The short starts to take place subsequent to that.
THE COURT: That's not -- 145,000 on 4/21.

MR. JACKSON: But they're not realized. They're not covered.
THE COURT: They're shorts, but the point is that they --
MR. GITNER: That's the problem with 24, too. It says it goes through April 21. So, even if you take off the 21st, you have to completely change this and make it go through April 20, I suppose, or April 18. It's just an inaccurate chart. It's completely inaccurate and it concerns trades by Rengan and it shouldn't go in.
MR. JACKSON: I would just argue this is an unfair point for the defense to be raising this. We had the witness on the stand. He cross-examined him. We had taken away the charts that were inconsistent with your Honor's ruling, and now he wants to obscure the picture of what Raj was doing during the time period. The jury is entitled to know what Raj was doing during this time period. And if we put the footnote on this chart, Government 24, he should have no objection to these charts going in. He just wants the jury not to be able to see these Clearwire trades that Raj was doing.
MR. GITNER: It shouldn't be a footnote. It should be a watermark.
THE COURT: It's better and larger than the typing.
MR. GITNER: Exactly. What the government did here in their first chart, in their first Exhibit 24, they didn't break

out the way they broke it out here, which was produced on the eve of trial or right in the middle of trial. What these trades are on each day on the 24th and 25th and 26th, they're actually block trades like we discussed at the side bar, all made by Raj and then allocated into different accounts.
The reason the government decided to break them out this way is to make them look like they are three separate trades when, in fact, it's one trade at one time and the intranet data proves it. It then gets allocated into the different accounts.
So the whole chart is made to look like -- because at the time, the government thought Rengan ran BCR because they hadn't heard Mr. Sito -- to make it look like BCR, Rengan, was making these trades. That was essentially what they opened on and that was their theory. And even though now Mr. Jackson accepts that their theory was wrong, he never got up and said I'm wrong. He is just doing that now when the jury is not here. Again, the jury, just because he's accepting it there could be a juror or two or three that doesn't accept it, that tuned me out, whatever. They put this before the jury and now the jury is allowed to make whatever determination it wants.
This is misleading and the government put in evidence to make it look like Rengan did these trades, and now they want to send this chart back, which was devised to look like Rengan did these trades. So even with a big red thing attached to it,

I still think it's misleading.

MR. JACKSON: Nothing is devised to make it look like anything. The chart reflects what is in the OMS data. It doesn't make any suggestions beyond that. It doesn't say Rengan Rajaratnam on it. It refers to technology codes. It refers to portfolio manager codes. And Mr. Gitner's made his record about who was responsible for those.

Your Honor has excluded trades done by Rengan Rajaratnam and told the jury not to consider those in terms of proof. I would just point out one additional thing: The defense introduced, again, a lot of evidence about what was transpiring on the 21st, the 22nd and the 23rd during the course of their case.

They made that stuff relevant to the case regardless of what -- after your Honor's ruling, they made that decision. So the idea that we need to excise that from the government's charts when that was a major portion of the defense, it doesn't even make sense. But more to the point, under the defense theory, these are Raj's charts. These are Raj's trades. They come in.

The defense's attempt to obscure the picture of what Raj was doing now, even beyond what Rengan was doing, is unfair. The jury should be able to see Raj made trades in Clearwire during this time period and that he profited from them.

THE COURT: If the 4/21 trade, the sell is out of 24, what is the impact on 25?

MR. JACKSON: I would have to do a little calculation just to know exactly what the 657 shares does to the picture, but I can tell you that the sale was 657 shares. We're talking about hundreds of dollars I would believe in terms of the alteration here.

MR. GITNER: It would be thousands.

MR. JACKSON: No, not in terms of the realized profitability. Maybe it's a couple thousand if that's what they want to argue, but it's certainly not a meaningful change to the number.

THE COURT: Wait a minute.

MR. GITNER: I don't want to interrupt.

THE COURT: I don't care if it's meaningful or not, but it's inconsistent with the ruling to have that trade on the chart and the chart was an advocacy document in the first place. It was never an attempt to be comprehensive.

MR. JACKSON: It was an attempt to be comprehensive about what the realized profit and loss was from trading in Clearwire at Galleon during the time period in question. And it accurately reflects what the realized profit and loss was from trading in Clearwire at Galleon associated with these portfolio manager codes was during this time period.

The defense wants us to put on here that none of this

stuff was Rengan Rajaratnam's, we'll put that on there. If the defense wants us to basically put that these are Raj's trades, we'll put that on there that these are Raj's trades. If the defense wants an additional note on Government Exhibit 25 that says this does not reflect, note, the $8,600 loss in Buccaneer, you know, it's actually, you know, there's also a 657 share trade you should disregard, that's fine, but I think that would just be confusing unnecessarily.

It doesn't create any meaningful change in the chart and the chart is our only evidence that gives the jury a clear picture of how Raj was able to make money on Clearwire during this period.

We don't have the ability after Rule 29, after your Honor has made its decision, to recall our witnesses and redo the charts. This is the portion of the case that your Honor did not exclude, and so we should be able to retain that to the extent that it's not misleading.

We're not trying to do anything misleading. It's not dirtying up Rengan. It doesn't say Rengan. It says BCR and it notes the loss in BCR.

THE COURT: That argument is a loser.

The question is, if we're going to revise this to limit it, limit them both, clearly identified as only being Raj's trades, which we can certainly do by eliminating the 657 shares, that line can come out; and we can certainly have in

nice, bold type that this chart only reflects trades by Raj and does not reflect any trades by Rengan.

I can deal with that.

MR. GITNER: You also have to change the date at the top, but that's easy.

THE COURT: Right. Yes. We'll make it through 4/18. That we can do, but how do we deal with --

MR. JACKSON: We don't have to change the date if we're putting the note that says it only reflects Raj's trades because it reflects all of Raj's trades during that time period. It's just taking away --

MR. GITNER: It says Galleon portfolio manager codes.

MR. JACKSON: But the note is going to say that this chart is only reflecting Raj's trades, so if we redact the last one, if we redact the last trades, it reflects Raj's trades.

MR. GITNER: Why would you not agree?

MR. JACKSON: Judge, I'm just trying to not have this chart -- once we start making a million changes, we have more confusion.

THE COURT: Who is being confused? If there's no trade for 4/21, why would a juror be concerned about the heading at the top?

MR. JACKSON: Because we have our price chart reflects the time period, the subsequent chart Government Exhibit 25 reflects the time period.

THE COURT: But it wouldn't then, right, because the only trade on 4/21 is -- well, I don't know what it would do. I see what you mean, that if there would still be Buccaneer trades on 25 and if that -- well, I guess the question is what date does that go through? I don't know why it would go through 4/21, but the point is, how can the Buccaneer profit/loss number be adjusted properly?

MR. GITNER: It's actually exceedingly difficult to adjust because we have to determine we're going to have a FIFO determination, a LIFO determination. It's not necessarily so simple.

THE COURT: This is all short trading. This is no long gains.

MR. JACKSON: It's a short trade. You can look at the elements. Can we pull up the elements that are in now.

MR. GITNER: It's actually quite complicated from an accounting point of view about what exactly the profit or loss would be. It's not like these codes are -- you're buying at one time and you're selling at another time. They're buying and selling over time, and so when you sell on April 21, you don't necessarily know your profit. It's going to be like a weighted average. It's a very complicated formula to determine what the numbers were.

I could have crossed Mr. Callahan for quite some time, frankly, over his determination of these numbers. I chose not

to because I thought it was not necessarily the most relevant point in this case, but it is relevant to making the numbers accurate and it's not simple at all.

MR. JACKSON: Judge, we're talking about --

MR. GITNER: In fact, I made a motion on this, I don't know if your Honor recalls, about keeping profit numbers out because it was subject to opinions essentially about what the profit or loss could be based on very complicated transaction calculations.

MR. JACKSON: It's not that complicated. And your Honor, if now we're talking about the accuracy --

THE COURT: The issue he's raising is how do you match a trade on a certain day, the sell with the buy. Which buy are you allowed to match it against?

MR. JACKSON: Typically, we're talking about first, you know, we're talking about the last trade and the last sell, right?

Your Honor, let me just say this. Very respectfully, defense counsel is basically creating an issue out of an issue. Your Honor's determination right now that we should put on 24 something indicating this is all Raj's trading clears completely the ambiguity that they are concerned with. Now they're talking about or are concerned about the accuracy of the chart that's in 25 when 25 is already accurate. It reflects all of the realized profit and loss.

There's an artificial issue being created when they now say oh, but we need to take the 657 out because this is inaccurate. All that would happen if we take the 657 out is that this number goes up. It just goes up by either a couple of hundred or a couple thousand dollars. But it doesn't in any way -- if we're talking about what realistically could be perceived by the jury, it doesn't in any way affect the jury's determination as to anything with regard to Rengan Rajaratnam. We don't need to change this to the extent that it's already -- it is accurate; it reflects all of the realized profit and loss.

When we put on the previous exhibit the notation that your Honor instructed where it says "this is Raj's trading," that should cure their concern about ambiguity. The concern about the accuracy or the method utilized to calculate by Agent Callahan, that's far afield of what we should be addressing just when we're putting the exhibits into the jury room.

I'd also like to ask whether the defense has finished burning his disk.

MR. GITNER: It's on its way.

MR. JACKSON: I would request permission to send the government's disk back because --

MR. GITNER: No. We're having one disk. It's one disk with all of the calls. That was the agreement with Mr. Frey: One disk with all of the calls. That's what's

taking so long. It can't be two disks.

MR. JACKSON: It can be two disks. The agreement with Mr. Frey was contingent upon our expectation that they would have the appropriate stuff done.

MR. GITNER: No, no, no. This is not fair. We just happen to be the people doing it. It's not that we didn't have the appropriate stuff done.

THE COURT: Apparently, the government failed to redact some things that should have come off, so it has to be done again.

MR. JACKSON: No. The defense failed to redact. The defense failed to redact things that should have come off. Our disk with regard to our exhibits, everything is accurate. It's prepared.

MR. GITNER: The reason why we're having a delay now is because we had an understanding that it would be one disk. And then the government -- I don't want to push blame on anybody, my team was under the impression from the government without going through me there should be two disks. Now we're just making one disk. It's happening right now. It should be ready at any moment.

THE COURT: Would you object if Mr. Gardner tried to help the jury start the computer.

MR. JACKSON: No objection?

MR. GITNER: No objection.

MR. JACKSON: I'll note for Mr. Gardner, the password is taped on to the computer. It's actually physically on the computer.

THE LAW CLERK: Okay.

MR. GITNER: We're literally putting the label on the disk right now.

THE COURT: And if the 657 shares sold at a profit, sold at loss? Forget the details.

MR. GITNER: You're asking a question, was it profit or loss?

THE COURT: Yes.

MR. JACKSON: Your Honor, I think we can clarify this. The last purchase of BCR in Clearwire occurs on 3/28 of 25,000 shares. Those are purchased at $14.59.

The sale then, the 657 sale, to the extent that it comes out of that is at 13.39, about 1.20 difference on those 600 shares. And you can theorize that would be an additional loss of 657 times a dollar 20, which amounts to $788. So, it's an additional loss if you include -- it's part of the loss calculation is $788.

So to make this accurate, if we took that off of there, we would increase the number from 969 -- not accurate, I want to be clear, it's already accurate -- but if we were to change this to reflect what Mr. Gitner is asking for to take away this, it would change it from 969,114 to 969,902. The

number goes up to 969,902, which we're perfectly happy to do.

THE COURT: Could someone clue me in as to what is going on about this disk?

MR. GITNER: I'm not sure, Judge.

MR. FREY: We had prepared a disk of government admitted audio files that we understand that defense counsel was going to be preparing a defense version, a separate disk. We understand from speaking with counsel this morning that they would like to combine all of that onto one disk.

The problem is that there were a few calls where your Honor either had ruled portions come out for various reasons or defense counsel submitted portions and not the full version. And my understanding is hat that wasn't done prior to this morning; the government's were, but not the defense side. So we're just working through the combining and the splicing issues.

MR. JACKSON: Judge, since the jury is clearly engaged in their deliberations and they requested it, there's no reason this all has to be on one disk. They can send in the defense disk when they finish with it and we can send in the government exhibit disk now which the jury has requested so the jury is not delayed at this point.

THE COURT: Is there any reason that we could not send the government's disk in now. When you get the combined, we'll trade out the disks?

MR. GITNER: I suppose we can do that. I think it's going to be ready I'm told in a few moments. It was ready but apparently they tried to write something over. One file didn't get written over, so it still existed.

MR. JACKSON: We've been waiting for more than a few moments. So we ask to send this stuff in and when they get their --

MR. GITNER: I understand the technical difficulties. I apologize. I think it's exceedingly unfair in this case to only send in the government's tapes even if just for a few minutes, and I understand there's been a note, but given the fact that what I have been told, it should be less than three minutes, we'll have the whole thing. It just seems exceedingly unfair to send in the government exhibits because Mr. Jackson is pushing, pushing, pushing as he's good at doing. We can just wait three minutes and the government will have it.

MR. JACKSON: I'm not pushing, okay. The jury has requested these exhibits. It's not exceedingly unfair. Being in courtrooms, we only send in what the jury has requested. And they're going to get the defense exhibits as soon as the defense pulls its tech together. So, we should send in what we have and allow the jury not to be impeded in their deliberations.

MR. GITNER: I'm told less than two minutes according to the clock on the computer.

THE COURT: Are we going to get to the government has to check whether it's accurate or not?

MR. FREY: Yes, we would want to check it.

THE COURT: Okay. The government will act extraordinarily quickly to confirm, no delays. I'm going to stay here and I'm going to watch you, but I think that we have to respect the jury and the government disk can go in and it's going to be taken right out as soon as the single disk is created.

MR. JACKSON: Thank you, Judge.

THE COURT: Can we go back to Exhibit 24, put a nice huge header on it to clarify what it is and take out the 4/21 trade and the question is whether they -- if we also put on Exhibit 25 --

MR. JACKSON: Can we have one person from defense team on this issue really quickly, government Exhibit 25, your Honor.

THE COURT: Can we put a header on it. Instead of bothering to adjust the numbers, which might be more accurate, but is also immaterial by any definition of materiality, that to say that these reflect the realized profits and loss from trading by Raj.

MR. GITNER: I understand the materiality issue, Judge, I fully appreciate it. My issue is that I do not want in any way to suggest that anything that happened on April 21

is Raj. It's not. That's the problem.
April 21 is when the shorts occur, and your Honor will remember in argument in letters to your Honor, the government was arguing that there was no proof that Rengan directed those shorts. They have taken the position before this Court that that's not Rengan's shorts, and it wasn't until I had to point them to a few instant messages that they have sort of backed off. They have taken that position. It's not fair to suggest that what happened on the 21st is not Rengan.
THE COURT: Then can we agree that instead of the calculation being in accordance with GAAP or whatever other standard is utilized, that we do what is referred to as a back-of-the-envelope calculation like Mr. Jackson just did and adjust the numbers.
MR. GITNER: And move the date.
THE COURT: Move the date, adjust the number.
MR. JACKSON: If we move the date, how are we adjusting the number, your Honor?
THE COURT: Because when you take out the 4/21 trade, which is at a loss of a-dollar-something or other a share, it obviously comes out of both the Buccaneer number and the total.
MR. JACKSON: Okay.
THE COURT: That's how you do it. It's not that hard.
MR. JACKSON: So we'll just agree pursuant to stipulation of the parties that we're going to change

Government Exhibit 25 to reflect – we'll change the Buccaneer number by the $788 and we'll change the date to April 18.
THE COURT: Right.
MR. GITNER: Right.
MR. JACKSON: Then we'll have the total number be $969,902.
THE COURT: Since it's in the Buccaneer fund, you make the adjustment.
MR. JACKSON: In the Buccaneer fund.
THE COURT: In the Buccaneer fund, and in the total.
MR. JACKSON: Great. I'm going to go make those changes right now.
THE COURT: Show it to Mr. Gitner. I'll be upstairs in case you need me.
MR. GITNER: They're doing the final check on the disk.
THE COURT: Right.
MR. GITNER: Everything seems fine. We have a thumbs up. We need to look at it for two seconds.
THE COURT: So we're going to trade out the disk right now.
MR. GITNER: Just so your Honor knows, what we propose to do, I think the government is fine with this. We each basically have an index, defense exhibits, their government exhibits, because the file name just says 510. The index says

the date and the participants. So we'll send in our respective indices as well with this disk if your Honor is okay with that.
THE COURT: Fine.
THE LAW CLERK: They need an extension chord.
MR. GITNER: That I don't have.
THE COURT: The Court has one.
MR. JACKSON: I'll also take a look and see if we have one.
THE COURT: Switch out the disk.
MR. GITNER: Should one of your clerks bring it in to swap it out?
THE COURT: Yes.
(Recess pending verdict)
(In open court; jury not present)
MR. JACKSON: Actually, I placed a copy on the judge's bench, as well as yours.
After conferring, the parties agree that we revert back to the original exhibits, but we would place this coversheet on Government Exhibit 24 that is in front of your Honor.
Just for the record, the coversheet says "The parties agree that the trading reflected in Government Exhibit 24 from March 24, 2008 through April 18, 2008 was caused by Raj Rajaratnam." So that's actually stapled now on the original Government Exhibit 24 and we're reverting back to the original

Government Exhibit 25.
Just to be clear, that's the Government Exhibit 24 that includes the April 21 BCR trade and the Government Exhibit 25 that comes to a total calculation of $969,114.
MR. GITNER: So rather than have the header on the exhibit, the header is essentially on a coversheet essentially. The exhibit remains the same rather than altering the exhibit.
THE COURT: If it's agreeable to you, I don't have any objections.
MR. JACKSON: Thank you very much, Judge.
THE COURT: The only one that has to be swapped out is 24?
MR. JACKSON: I don't think we actually sent back 24 and 25.
MR. GITNER: That was my understanding. The folders were actually pulled.
THE COURT: I'm sorry. I thought I got some word from my law clerk that there was a swapping issue.
MR. GITNER: I think the swapping was amongst me and the government.
MR. JACKSON: It was between ourselves.
THE COURT: So all that has to happen now is that 24 and 25 need to be given to the jury, and I assume your exhibits were in a card or box.
MR. JACKSON: Yes, we have them in the same format

that the rest of the exhibits are. They're here in original folders.

THE COURT: So we can just ask the court officer to add them. They're in a box, right?

MR. JACKSON: Yes. They're in a container of some kind. It may be a red well or a box, but this can be placed into it.

MR. GITNER: If the court officer can go and place it in obvious order.

THE COURT: Explain to the court officer what he should do.

MR. GITNER: My concern would be the court officer throws it on the table.

THE COURT: And highlights it.

MR. GITNER: Exactly. It should just be placed.

THE COURT: The collection was missing something.

MR. GITNER: Exactly.

MR. JACKSON: Judge, two housekeeping questions before we let the Court have its lunch.

THE COURT: It's much too early for my lunch.

MR. JACKSON: I know that sometimes judges instruct the parties that they can be away from the courthouse during the lunch hour. Is that your Honor's expectation?

THE COURT: No. I don't want you to starve, but we haven't even inquired of the jury as to whether they want

lunch.

MR. JACKSON: Absolutely.

THE COURT: We'll probably not ask that question for about another 25 minutes, unless they contact us first. If they're eating lunch, it would probably be about 2:00. I don't have any reason to believe that they will necessarily stop talking just because they're eating, even if it's rude to talk with food in your mouth.

MR. JACKSON: We'll stay within the current range of the courthouse.

THE COURT: We have your cell. If you're in the cafeteria or something, we'll have no problem getting ahold of you.

MR. JACKSON: Great. That was the other thing I was going to pass up to your law clerk if it's permissible because I actually don't know if you have our cell numbers.

MR. GITNER: Chris gave it. Chris' handwriting is actually better than the typed version.

THE COURT: Just to let you know, we really won't be sitting past 4:30, 4:40 today, assuming all that time is used up.

MR. JACKSON: Absolutely. Thank you very much.

(Recess pending verdict)

(In open court; jury not present)

THE COURT: As we have been informed, we understand the jury has reached a verdict. I guess you'll stand for them.

(At 2:34 p.m., jury present)

THE COURT: Everyone may be seated.

THE LAW CLERK: Will the jurors please answer present when your name is called.

(Jury roll called; all present)

THE LAW CLERK: Will the foreperson please rise. Has the jury agreed upon a verdict?

THE FOREPERSON: Yes, we have.

THE LAW CLERK: The question on the verdict form reads: Do you find that the government has proven beyond a reasonable doubt that the defendant, Rajarengan Rajaratnam, also known as Rengan Rajaratnam, is guilty of conspiracy to commit insider trading?

How do you find, guilty or not guilty?

THE FOREPERSON: Not guilty.

THE LAW CLERK: Ladies and gentlemen of the jury, listen to your verdict as it stands recorded.

On the question of whether the jury finds that the government has proven beyond a reasonable doubt that the defendant, Rajarengan Rajaratnam, also known as Rengan Rajaratnam, is guilty of conspiracy to commit insider trading, the jury finds the defendant not guilty.

Madam foreperson, is that the jury's verdict?

THE FOREPERSON: Yes, it is.

THE COURT: Is there a request to poll the jury?

MR. FREY: No, your Honor.

THE COURT: Are we thanking the jury again for their service or do we need to keep them any further?

MR. FREY: No, your Honor.

THE COURT: I understand that there's a request that I speak with you.

THE FOREPERSON: Yes.

THE COURT: Could you just wait for me in the jury room.

THE FOREPERSON: Should we all leave?

THE COURT: Yes. Just go and wait for me.

(Jury excused)

THE COURT: Is there anything else we need to cover?

MR. GITNER: I just ask that bail be extinguished.

THE COURT: Absolutely.

MR. GITNER: Thank you, your Honor.

THE COURT: You can still get back to Brazil for the finals.

THE DEFENDANT: Absolutely.

MR. JACKSON: Thank you, your Honor.

MR. GITNER: Thank you, Judge.

(Adjourned)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

v. 12 Cr. 121 (RJS)

DANNY KUO,

Defendant.

----------x

New York, N.Y.
July 2, 2014
4:10 p.m.

Before:

HON. RICHARD J. SULLIVAN,

District Judge

APPEARANCES

PREET BHARARA
United States Attorney for the
Southern District of New York
ANTONIA APPS
Assistant United States Attorney

SECARZ & RIOPELLE
Attorneys for Defendant
BY: ROLAND G. RIOPELLE

cooperators. I agree with everything Ms. Apps said. I mean, these cases are hard to make. Without things like wiretaps, they are harder to make. And cooperators who can testify and explain what went on, can corroborate each other and can be corroborated by other bits of evidence as part of a mosaic of evidence that can be used to demonstrate guilt, those types of cooperators are really important, and that's not lost on me, clearly entitled to and deserve a substantial reduction.

The hard part, as I said, is the balancing of all of this. The balancing, I guess that's why I get paid the big bucks. This is a case where my inclination is, frankly, to impose a well-below-guideline sentence, but I am still inclined to impose a sentence of six months because I think that that is appropriate in light of the conduct. This is a case in which cash was paid by Mr. Kuo to Mr. Lim. This is a case where the trading that went on was explicit, and repeated and clearly the parties knew this was confidential information.

I'll tell you what gives me pause. The only thing that really gives me pause are two things. One, I'd like to hear from the government in particular, and Mr. Riopelle can weigh in, as to whether a six-month sentence which is well below the guidelines will have a chilling effect on future cooperation. I'm not sure if it would be enough to change my view, but I'd be curious of the government's view. You're the professionals in that area. You deal with this more than I do.

So that I think is a live question.

The other question I have, and I'm not sure how to resolve that here, is that there are appeals before the Second Circuit now and it's not clear how they're going to come out. If they were to come out and rewrite the law as I see it on insider trading and suggest that there had to have been knowledge, explicit knowledge, of the benefit that went to Mr. Choi or the benefit that went to Rob Ray, I'm not sure that, frankly, in the guilty plea there's a sufficient basis to conclude that Mr. Kuo had that knowledge.

So, some part of me is reluctant to impose a sentence that, depending on how the circuit comes out on certain things, might result in Mr. Kuo doing more time than the people who benefited substantially more than he did from this crime in terms of dollars and who didn't cooperate at all, and, in fact, who didn't even accept responsibility.

That is something that also weighs on me and suggests that maybe we ought to think about whether we put this off or whether there is some other alternative that might be appropriate. Mr. Riopelle, that's a lot to think about.

MR. RIOPELLE: Yes, your Honor. I guess I begin by pointing out that Mr. Kuo's boss, Mr. Dosti, who clearly was a co-conspirator, we've heard that today, benefited from the conspiracy more than Mr. Kuo. He hasn't been prosecuted at all. It strikes me as a strange thing for Mr. Kuo to suffer a

period of incarceration when Mr. Dosti has not even suffered a conviction.

THE COURT: I think the difference between Mr. Dosti and some of the others that I'm thinking about is that with Mr. Dosti, I don't know why he wasn't charged. I presume because there wasn't sufficient corroborating evidence that made his prosecution something that the prosecutor was willing to do.

In the case of Mr. Kuo vis-a-vis some others who are appealing, it seems to me his knowledge or lack of knowledge of the explicit benefit that was paid to the original sources of the information is, frankly, on par. It would seem unfair for him to do more time than others when the state of the evidence would be the same.

MR. RIOPELLE: I think that's exactly right.

THE COURT: Ms. Apps, may have a view as to why the evidence is not the same, and I will give her a chance to speak to that. But that at least crossed my mind.

MR. RIOPELLE: Certainly on that issue he's in the same position they are. He'd be in a position to put in a petition for habeas corpus, I suppose, if he was in jail and serving his sentence and the appeal came out in his favor.

It strikes me that the Court is exactly right, that it doesn't make sense for Mr. Kuo to be exposed to a jail sentence in a circumstance in which coconspirators who are far more

culpable than he may escape a sentence and perhaps a conviction altogether by virtue of a successful appeal.

THE COURT: On an element where it's hard for me to see the difference between the two.

MR. RIOPELLE: I think that's exactly right. As I say, he might be able to have a successful petition for habeas corpus at that point, having now sat at someplace for three or four months assuming the --

THE COURT: There are options. We could give him bail pending appeal. We could put off sentencing until after the appeal is decided.

MR. RIOPELLE: We could. I would urge the Court to reconsider the sentence. I do think that a sentence that does not include a period of incarceration in this case would be right down the middle of the typical sentences of white collar defendants who are first offenders in a case of this magnitude. I can tell the Court that my anecdotal experience is that a first offender in a case of this kind who does cooperate successfully, as Mr. Kuo has, is a probationary sentence. That's what happens typically.

I had two recent sentences of that kind. One that springs immediately to mind was an accounting fraud case in front of Judge Crotty in which the loss amount, because it was an accounting fraud of a public company, was huge. The guidelines were life for that defendant. Judge Crotty

sentenced him to time served and a year of supervised release partly because that defendant had been on bail for some six or eight years as the government puttered along toward getting the case tried against his company defendants. That defendant did testify. So that is a difference there.

I would point out that David Blake, whom we had together, had exactly the same guidelines range as this defendant. Mr. Blake did testify that is a difference.

THE COURT: I think his cooperation was nominal in a sense. It's hard to compare apple and oranges when it comes to cooperation, but the quality of that cooperation struck me as really exceptional. That's not to denigrate the cooperation for Mr. Kuo, but I think there they are somewhat quantitatively different.

MR. RIOPELLE: Every case is unique, no question about it judge. But in that case, again a white collar case, first offense, he cooperated right away. The mine run of those cases is a probationary disposition of some kind.

THE COURT: I don't know whether that's true as an empirical fact. If it is, I imagine that defense lawyers would want to make those arguments to juries going forward.

MR. RIOPELLE: I can only speak from my personal experience, which, as your Honor knows, is somewhat extensive. I'm an old man at this point, at least I feel like it sometimes.

The other thing that I would emphasize is this defendant's importance to his family as a bread winner, as an English speaker, as a guy who is the bridge between a very traditional Asian household and the world at large in America. To take him away for six months -- as important as it is to demonstrate that this is a serious crime, we don't dispute that in any way. Insider trading is a bad thing. We take that head on here. But to impose this on his daughter and wife in this circumstance seems to me unnecessary.

The court has talked about how important it is to reward cooperation, encourage it. I think that a probationary sentence here would do that more, obviously, than a sentence of a modest period of jail. There are lots of reasons why a probationary sentence is the appropriate one here. I've tried to point them out to the court. I would ask the Court to reconsider.

THE COURT: I thought you said a minute ago that you were prepared to accept whatever sentence I hand out.

MR. RIOPELLE: That's exactly what I will do. But I do want to encourage the Court to do what I think is right.

THE COURT: All right.

MR. RIOPELLE: I could give you my whole perspective on deterrence at large, which is based on long experience of the criminal justice system from another side. I don't think there really is such a thing. I think that there is a type of

criminal that is deterred by sentences, a career criminal. I can tell you that I've represented career burglars. They never carry anything to a burglary other than a screwdriver because they know that carrying a gun will get them a longer sentence.

White collar crime like this, it just doesn't occur to the people who commit them that they might get caught. They will get caught. They shouldn't do it. They slip into it. It's a terrible thing. It's too easy. I just don't believe that general deterrence is as important in a case like this. I say that simply so the Court knows my view based on long experience. This is what I do for a living.

THE COURT: I don't share that view, and I don't think Congress shares that view, either. I'm willing to bet a dollar Ms. Apps doesn't share it, either.

MS. APPS: I do not share that view at all, your Honor, particularly as we've watched over the years the reaction amongst the industry to the investigations, and so forth. I think there is affirmative evidence of deterrence, in my personal judgment.

THE COURT: My view is a little different, at least for today's purposes, which is the deterrent effect on future cooperation that flows from a six-month sentence which is well below the guidelines. It's basically a 20 percent sentence on what the guidelines would call for at the low end.

MS. APPS: Your Honor, as you're aware, when we moved

for the --

THE COURT: You don't make sentencing recommendations. I'm not asking you to. I'm asking if you think this will chill future cooperation if the fact that even cooperators get some jail time in white collar cases. If that were true, if it did have a deterrent effect, I guess the government could ensure against it by giving non pros to people where they feel it's a guarantee. But I am curious as to your views as to whether or not you think that a six-month sentence under circumstances like this one will make it harder to get cooperators in the future.

MS. APPS: Your Honor, I think it's impossible to make that judgment call to some degree. I guess what goes hand in hand with my view that deterrence matters is that in the investment community they are very sophisticated players. They watch what goes on intently, I believe. I think that happens on both ends of the spectrum of cooperating witnesses and for defendants who are not cooperating witnesses and who go to trial and receive a prison sentence. I think people watch that intently one way or another.

I can't make a judgment call as to whether or not a six-month sentence will chill future cooperation. I think that is a very difficult judgment call for anyone to make.

THE COURT: Well, it's more intuitive than scientific. But you're not taking the bait. Do you want to respond?

MS. APPS: Can you return to one point about the question about benefit. I certainly won't engage in speculation on how the Court of Appeals might rule on this issue. I found your Honor's opinion in the Steinberg case particularly compelling. I thought the arguments that we presented on appeal were compelling. I don't want to take a position beyond that, your Honor.

With respect to the facts as to Mr. Kuo individually, I would point out, as the government submitted in its sentencing submission for Mr. Kuo, that Mr. Lim told Mr. Kuo that he had a friend in the finance department at Nvidia.

THE COURT: Lim.

MS. APPS: He told Mr. Kuo the information was coming from a friend. That must be, I would submit, knowledge that the information was disclosed for personal benefit to some degree.

THE COURT: I'm not sure it necessarily follows that there is no other explanation for how the information came to be passed on. Certainly, given what I've read about the oral argument, there seemed to be some question as to whether a benefit in the nature of a friendship is enough to even constitute a benefit. I don't know if there's case law that says that, but the panel seemed to be skeptical.

MS. APPS: There were questions to that at the oral argument. Whether or not the Court of Appeals now decides Otis

says something other than how the government has read Otis with respect to the benefit issue. There are so many cases in this circuit and elsewhere, not to mention the Supreme Court in addition, expressly stating that friendship is a sufficient benefit under the law.

Unless the Court of Appeals is going to overturn a substantial line of authority expressly stating that when you tip, you know, friendship is sufficient for benefit, I think the evidence here for Mr. Kuo fully meets that requirement.

THE COURT: His awareness of the fact that Lim had a friend?

MS. APPS: Right, that Lim was a friend -- that the information was passed through a friend. I think the relationship between the insider Choi and Hyung Lim clearly meets the test of benefit under the law most recently in the Zhou case.

THE COURT: You're preaching to the choir on this. I'm just saying it's not clear what, if anything, is going to change. Should we hold off on sentencing Mr. Kuo until we know where things stand? With respect to Mr. Ray, I don't think there's any suggestion that he knew the details of Mr. Ray's relationship to Tortora or others.

MS. APPS: Again, we haven't marshaled the evidence for the purposes of that discussion, your Honor. Mr. Kuo admitted he knew that the Dow information came from somebody

inside the company. This is an experienced investment professional. He himself is tapping his friends for what is clearly confidential information, the nature and the frequency of the information that was provided.

All the same arguments that your Honor is familiar with that we've made with respect to Mr. Newman and Chiasson would apply to Mr. Kuo and his knowledge of the Dow inside information. It is simply that for somebody of any level, any small level of sophistication in this industry to receive the type of information that they received on Dell quarter after quarter after quarter --

THE COURT: I get that. This is the same argument for the most part that you're making with respect to Mr. Chaisson, Mr. Newman, and ultimately Mr. Steinberg, although that hasn't been briefed.

MS. APPS: That is correct. The argument I was making earlier with respect to Nvidia information is that there is additional evidence on the Nvidia side that I think potentially does distinguish Mr. Kuo from other defendants on the knowledge of the benefit issue. But that doesn't answer the question about whether to adjourn.

THE COURT: Right. Okay.

MS. APPS: If you want to take a two-minute recess, I will consult with the office.

THE COURT: You may want to consult with Mr. Riopelle.

Mr. Riopelle, do you have any thoughts on that.

MR. RIOPELLE: I certainly would be willing to adjourn the sentence until such time as the Court of Appeals has decided the issue. Then we can brief the issue of whether Mr. Kuo is guilty of a crime based on the record before the Court. If he's not guilty of a crime, we can dismiss the indictment.

THE COURT: That is simply one scenario, I suppose. I guess the question is do you want to hold off on sentencing? Do you want to go forward with sentencing and delay a surrender date until such time as the circuit decides, or do you want to just get this done now because Mr. Kuo and his family I think understandably have the desire for some kind of closure here?

MR. RIOPELLE: I'd like a moment to consult with my client.

THE COURT: Why don't you take a minute and think about that. I will step off for a minute. I apologize to those who are here. I don't mean to have a lot of handwringing over this, but I only get to do this once, so it is important that we discuss all of the issues and make sure that the sentence imposed is the right one in light of all the circumstances. Here there's certain moving parts that make that a little more complicated than in a typical case perhaps.

All right. Let's take a couple minutes.

MR. RIOPELLE: Thank you, your Honor.

(Recess)

THE COURT: I gather the lawyers have conferred and Mr. Kuo has presumably conferred with Mr. Riopelle. What do you think?

MR. RIOPELLE: Your Honor, from Mr. Kuo's perspective, I think he would prefer to adjourn the sentencing for now. We can pick a control date or adjourn it sine die until a mandate comes down in that other case or the other case is decided. We can pick a date, whatever is the Court's preference, but he would prefer to adjourn for today.

THE COURT: Does the government have a view on that?

MS. APPS: Your Honor, we consent to the adjournment.

THE COURT: I think that that's not unreasonable in light of what's going on and some of the issues that we've talked about today. This is an important day for Mr. Kuo and his family, and I think it's important that we have complete information before we go forward with the sentencing.

I'm sure it's a bit disappointing not to have the closure that you thought you were going to get here today, Mr. Kuo, and I apologize for that. Hopefully, it won't be too long.

I'll set a date by which the parties should submit a letter to me apprising me of what's going on or whether they've changed their view. Once the circuit decides, I'll probably learn about the same time you do. Send me a joint letter

within 24 hours of that, but in no event later than four months, which would put us at November 2. Which is what day of the week?

MS. APPS: Can we make it 48 hours?

THE COURT: Forty-eight hours is fine. I'll issue an order to this effect. Otherwise, we'll remain adjourned until that November 3. November 3 or within 48 hours of the circuit's decision, whichever is earliest.

Mr. Kuo, in the meantime you'll continue on bail the way. You have to continue to comply with all of the conditions.

For Mr. Kuo's family members who came here today, thanks for being here. I'm sorry you're not getting the closure that you may have hoped for as well. If nothing else, I hope you can see that this is not something that we do lightly. Sentencing is the hardest and in many ways the most important thing that I do. And I want to make sure that I get it right on full information. Even if you disagree with where I come out so far or disagree with ultimate conclusions, I hope at the very least you see that it's a process that's done very carefully and with respect and not rashly or vindictively in any way.

So thanks to all of you. Let me thank the court reporter as well. I'll see you in a few months I guess.

(Adjourned)

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UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 6th day of August, two thousand and fourteen.

Before: Ralph K. Winter,
Circuit Judge.

United States of America,
Appellee,

v.

Michael Steinberg,
Defendant-Appellant,

Todd Newman, Danny Kuo, Hyung G. Lim, Jon Horvath, Anthony Chiasson,
Defendants.

ORDER
Docket No. 14-2141

Appellant moves to hold this appeal in abeyance pending the disposition of 13-1837 and 13-1917.

IT IS HEREBY ORDERED that the motion is GRANTED.

For the Court:
Catherine O'Hagan Wolfe,
Clerk of Court

UNITED STATES SECOND CIRCUIT COURT OF APPEALS

Catherine O'Hagan Wolfe

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 14-2141 Caption [use short title]

Motion for: order holding appeal in abeyance United States of America v. Newman (Steinberg)

Set forth below precise, complete statement of relief sought:

Mr. Steinberg respectfully requests that his appeal, including the briefing schedule, be held in abeyance until this Court decides the lead case, United States v. Newman, No. 13-1837, and the related case, United States v. Newman (Chiasson), No. 13-1917.

MOVING PARTY: Michael Steinberg
☐ Plaintiff ☑ Defendant
☑ Appellant/Petitioner ☐ Appellee/Respondent

OPPOSING PARTY: United States of America

MOVING ATTORNEY: Barry H. Berke

OPPOSING ATTORNEY: Harry A. Chernoff

[name of attorney, with firm, address, phone number and e-mail]

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Court-Judge/Agency appealed from: U.S. District Court, S.D.N.Y. - Hon. Richard J. Sullivan

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
☑ Yes ☐ No (explain):

Opposing counsel's position on motion:
☑ Unopposed ☐ Opposed ☐ Don't Know

Does opposing counsel intend to file a response:
☐ Yes ☑ No ☐ Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? ☐ Yes ☐ No

Has this relief been previously sought in this Court? ☐ Yes ☐ No

Requested return date and explanation of emergency:

Is oral argument on motion requested? ☐ Yes ☑ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? ☐ Yes ☑ No If yes, enter date:

Signature of Moving Attorney:
/s/ Barry H. Berke **Date:** August 5, 2014 Service by: ☑ CM/ECF ☐ Other [Attach proof of service]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,	:	
Appellee,	:	
v.	:	
	:	No. 14-2141
TODD NEWMAN, ANTHONY CHIASSON, JON HORVATH, DANNY KUO, HYUNG G. LIM,	:	DECLARATION IN SUPPORT OF MOTION TO HOLD APPEAL IN ABEYANCE
Defendants,	:	
MICHAEL STEINBERG,	:	
Defendant-Appellant.	:	

BARRY H. BERKE, pursuant to 28 U.S.C. § 1746, hereby declares as follows:

1. I am an attorney duly admitted to practice law in the State of New York and before this Court. I am a member of the law firm Kramer Levin Naftalis & Frankel LLP, counsel for Defendant-Appellant Michael Steinberg in this appeal. I make this declaration in support of Mr. Steinberg's unopposed motion for an order holding his appeal in abeyance pending this Court's decision in *United States v. Newman*, No. 13-1837, and *United States v. Newman (Chiasson)*, No. 13-1917 (collectively, "*Newman/Chiasson*"). Mr. Steinberg's opening brief is currently due on September 22, 2014.

2. As explained in further detail below, the factual and legal issues presented by the *Steinberg* and *Newman/Chiasson* cases overlap significantly. Staying the current briefing schedule in this case would be most efficient for the Court and the parties because one of the legal issues that could result in reversal of Mr. Steinberg's convictions – whether in an insider trading case the government must prove, among other things, that a remote tippee defendant knew that the company insider disclosed confidential information in exchange for a personal benefit– has also been briefed in the *Newman/Chiasson* case, which was argued and submitted several months ago.

3. The government has advised me that it does not oppose Mr. Steinberg's request to hold his appeal in abeyance pending this Court's decision in the *Newman/Chiasson* appeal.

The *Newman* and *Chiasson* Cases in the District Court

4. On August 28, 2012, a grand jury charged Todd Newman and Anthony Chiasson with committing securities fraud and conspiring to commit securities fraud based on allegations that, on behalf of the hedge funds for which they served as a portfolio managers, they traded securities of Dell Inc. ("Dell") and Nvidia Corp. ("Nvidia") while in possession of material nonpublic information disclosed by corporate insiders in violation of 15 U.S.C. §§ 78j(b) and 78ff and 17 C.F.R. §§ 240.10b-5 and 240.10b5-2. Specifically, the indictment alleged that the

defendants traded on information their employees had obtained from analysts at other investment firms. According to the government, those analysts obtained the information from other individuals, who received the information directly or indirectly from Dell and Nvidia insiders.

5. At the joint trial of Messrs. Newman and Chiasson, Judge Sullivan instructed the jury that the government had to prove that the defendants knew the inside information was disclosed by the insiders in breach of a duty of trust and confidence, and rejected the defendants' request that the jury be charged that the defendants had to know that the insiders received a personal benefit in exchange for their improper disclosures. (*Newman* Tr. 3346-53, 3594-605).[1]

6. On December 17, 2012, a jury found Messrs. Newman and Chiasson guilty on all counts. Judgments were entered in May 2013, and Messrs. Newman and Chiasson timely appealed their convictions and sentences to this Court.

7. Judge Sullivan denied Newman's and Chiasson's requests for bail pending appeal. However, a panel of this Court reversed that denial and granted defendants' Rule 9(b) motion from the bench, agreeing that the issue of whether, to be guilty of insider trading, a tippee must know of an insider's personal

[1] All cited transcript pages from the *Newman* trial are attached hereto as Exhibit A.

benefit presented a substantial question of law likely to result in reversal or a new trial. Order, *Newman* (2d Cir. June 21, 2013); *see also* 18 U.S.C. § 3143(b)(1)(B). Subsequently, a separate panel noted that this Court had "yet to decide whether a remote tippee must know that the original tipper received a personal benefit in return for revealing inside information." *United States v. Whitman*, 555 F. App'x 98, 106 (2d Cir. 2014).

8. This Court heard oral argument in *Newman/Chiasson* on April 22, 2014.[2]

The *Steinberg* Case in the District Court

9. On March 29, 2013, following the *Newman/Chiasson* trial, the government charged Mr. Steinberg in a superseding indictment with unlawfully trading securities based on fourth-hand information that his research analyst, Jon Horvath, had obtained from analysts at other investment firms. The *Newman/Chiasson* and *Steinberg* cases included the same "tipping chain" of analysts who obtained the information from other individuals who, in turn, obtained that information from Dell and Nvidia insiders.

10. At Mr. Steinberg's trial – and just as Messrs. Newman and Chiasson had done – Mr. Steinberg asked the district court to instruct the jury that, to find him guilty of insider trading, the government must prove that he knew that

[2] An unofficial transcription of the *Newman/Chiasson* oral argument is attached hereto as Exhibit B.

an insider breached a duty of trust or confidence "in exchange for a personal benefit to the insider." *See* Docket No. 309 (Proposed Joint Requests to Charge) at 15-16 & n.8; *id.* at 16-18, 22-26, 31. Additionally, in a supplemental submission, Mr. Steinberg objected to the district court's decision to omit from its jury charge any instruction relating to proof of knowledge of a benefit. Docket No. 323 (Dec. 15, 2013 letter from Barry H. Berke) at 3. In response, the district court stated that, during the trial of Messrs. Newman and Chiasson, it had "already ruled on" the proposed instruction of a "tippee's knowledge of the personal benefit" and was "not going to revisit" the issue. (Tr. 3442).[3]

11. The district court ultimately instructed the jury that the law prohibits "trading in securities based on material nonpublic information if the person knows that the material nonpublic information was intended to be kept confidential, and knows that the information was disclosed in breach of a duty of trust or confidence." (Tr. 3697). While the district court further instructed the jury that it would have to find that the insiders "personally benefited in some way, indirectly or directly, from the disclosure," the court did not require the jury to find that Mr. Steinberg knew about any such personal benefit. (Tr. 3699-3700).

[3] All cited transcript pages from Mr. Steinberg's trial are attached hereto as Exhibit C.

12. On December 18, 2013, the jury found Mr. Steinberg guilty of all charges. Judge Sullivan sentenced Mr. Steinberg to 42 months' imprisonment on May 16, 2014 and entered judgment three days later.

13. Recognizing that the "knowledge of personal benefit" issue was pending before this Court in *Newman/Chiasson*, Judge Sullivan granted Mr. Steinberg's unopposed motion for release pending his appeal. Mr. Steinberg timely filed a Notice of Appeal, and his opening brief and appendix are due to this Court on September 22, 2014.

The Pending Appeals in This Court

14. This case and the *Newman/Chiasson* appeal share the same substantial question of law—a question that this Court has found sufficiently viable that it warrants bail pending appeal. Each case raises the question whether the jury should have been instructed that to find a remote tippee guilty of insider trading, the government had to prove, among other things, that the tippee knew that a corporate insider disclosed information in exchange for personal benefit. And if this Court agrees with appellants that reversible error occurred, the remaining question in each case will be whether the district court should enter judgments of acquittal or proceed with new trials on remand.[4]

[4] Mr. Steinberg intends to advance additional arguments for reversal in his appeal, but they are not directly relevant to this application.

15. Following the oral argument in *Newman/Chiasson*, a civil case, an administrative proceeding, and a criminal sentencing have all been stayed in recognition of the potential impact of the *Newman/Chiasson* appellate decision. *See* Order, *SEC v. Steinberg*, No. 13-cv-2082 (HB) (S.D.N.Y. May 12, 2014) (granting application for stay based on joint letter from the SEC and Mr. Steinberg stating, *inter alia,* that "if the Second Circuit reverses or vacates the convictions of Messrs. Newman and Chiasson, it likely will grant the same relief to Mr. Steinberg after his conviction is entered and appealed") (attached hereto as Ex. D); *In the Matter of Steven A. Cohen*, Administrative Proceeding No. 3-15382 (May 29, 2014) (granting application of U.S. Attorney's Office to stay SEC administrative proceeding against Steven A. Cohen, based on government's argument that the SEC's allegations against Mr. Cohen are "premised" on the presumption that Mr. Steinberg engaged in criminality and thus a stay was "necessary" because Mr. Steinberg's appeal would raise the "precise legal issue" that this Court is expected to decide in the *Newman/Chiasson* case) (order and application attached hereto as Ex. E); Transcript of Hearing, *United States v. Kuo*, No. 12 Cr. 121 (RJS) (S.D.N.Y. July 1, 2014), at 35 (Judge Sullivan adjourning the July 1, 2014 sentencing of cooperating witness Danny Kuo until after this Court renders its decision in the *Newman/Chiasson* appeal) (attached hereto as Ex. F).

The Relief Sought by This Unopposed Motion

16. Because the *Newman/Chiasson* and *Steinberg* cases indisputably present the same important and potentially outcome-dispositive legal issue, and because the *Newman/Chiasson* case is ripe for decision, it is in the interest of judicial economy to postpone briefing in Mr. Steinberg's case until this Court clarifies the elements of tippee liability.

17. Three related grounds support holding Mr. Steinberg's appeal in abeyance. First, such an order would spare Mr. Steinberg the burden of presenting (and would spare this Court the burden of considering) questions this Court is already positioned to address in an appeal that has been submitted for decision. Second, it would allow the parties to brief the issues in Mr. Steinberg's appeal with the benefit of knowing the effect of the *Newman/Chiasson* decision on those issues. Finally, an abeyance would allow the panel that is assigned to Mr. Steinberg's appeal the opportunity to consider and decide the effect of the decision in *Newman/Chiasson* on the issues that Mr. Steinberg's appeal raises. *See Bechtel Corp. v. Local 215, Laborers' Int'l Union*, 544 F.2d 1207, 1215 (3d Cir. 1976) ("In the exercise of its sound discretion, a court may hold one lawsuit in abeyance to abide the outcome of another which may substantially affect it.").

18. This Court has repeatedly held appeals in abeyance where, as here, another pending appeal (i) is closer to a decision and (ii) may significantly

inform the merits of the issues presented. *See, e.g.*, Order, *Pedersen v. Office of Prof'l Mgmt.*, Nos. 12-3273 & 12-3872 (2d Cir. May 16, 2013) (granting motion to hold appeal in abeyance pending Supreme Court's decision where movants argued that a stay would allow the parties to provide the court of appeals with "briefing that takes into account the Supreme Court's opinion")[5]; Order, *United States v. Miller*, No. 05-1203 (2d Cir. Aug. 15, 2005) (holding appeal in abeyance pending this Court's issuance of decisions in *United States v. Amerson*, No. 05-1423, and *United States v. Graves*, No. 05-1063); Order, *United States v. Grullon-Jiminez*, No. 05-1170 (2d Cir. Aug. 8, 2005) (same); Order, *In re Herald, Primeo & Thema Funds Sec. Litig.*, No. 12-184-cv (2d Cir. Apr. 6, 2012) (granting appellants' motion in consolidated appeal to hold briefing in abeyance pending decision in lead appeal where question presented by subsidiary appeal was also presented by lead appeal).

WHEREFORE, Mr. Steinberg respectfully requests that his appeal, including the briefing schedule, be held in abeyance pending this Court's decision in *United States v. Newman*, No. 13-1837, and *United States v. Newman (Chiasson)*, No. 13-1917. As noted at the outset, the government, by Assistant U.S. Attorney Harry A. Chernoff, does not oppose this request.

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[5] The *Pedersen* order and motion are attached hereto as Exhibit G.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 5, 2014
New York, New York

/s/ Barry H. Berke
BARRY H. BERKE
Attorney for Defendant-Appellant
Michael Steinberg

F

In The Matter Of:

UNITED STATES OF AMERICA, v

TODD NEWMAN,

November 27, 2012

SOUTHERN DISTRICT REPORTERS

500 PEARL STREET

NEW YORK, NY 10007

212 805-0330

Original File CBRFNEWF.txt

Min-U-Script® with Word Index

A. It is.
Q. What do you understand Mr. Kuo to be saying when he says, I get a non-GAAP GM of 37.8 percent?
A. He had taken out that inventory charge and this is the number that he got for non-GAAP.
Q. Let's go to the top of the e-mail.
Who does Mr. Tortora forward that to?
A. To Todd Newman.
THE COURT: Why don't we take a break here. Let's stop here for an afternoon break. I'll see you in about ten minutes. Don't discuss the case, of course. But you can use the restroom, stretch your legs, get a cookie or something. Thanks.
All rise for the jury.
(Jury not present)
THE COURT: Anything we need to discuss?
You have ten minutes. See you in a bit.
(Recess)
THE COURT: Let's bring in the jury.
MR. NATHANSON: Your Honor, one brief matter. The last exhibit that the government went over is Exhibit 805, and I believe the last question that was just asked was whether or not at the top of that e-mail that Mr. Tortora forwarded it to Mr. Newman. I don't think that's an appropriate question. Mr. Adondakis isn't on that portion

of the e-mail. It's really just a point for summation. Mr. Adondakis just said yes, it is and he sees that it is.
I mention it now because there are at least two other exhibits, 810 and 820, that have similar strings that at the top they get forwarded to Mr. Newman. This witness can't possibly add anything to those. He is not on those top communications.
I just ask that there be no questions about whether or not Mr. Tortora, after it was forwarded to Mr. Adondakis, then forwarded it to Mr. Newman.
THE COURT: But the exhibit is in evidence, so the jury can infer that it was forwarded.
MR. NATHANSON: Sure. There is no reason to ask this witness to show him that part of the e-mail and say, was this forwarded on to Mr. Newman? It's not something within the purview of his knowledge other than the fact that he is seeing an e-mail, which I understand is in evidence. It doesn't seem like an appropriate question to ask.
MR. ZACH: Your Honor, the documents are in evidence. The jury is having a lot of documents thrown at them. I am asking the question to point out that it was to Mr. Newman. There is so many documents coming in, there is nothing wrong with the witness reading from it. I don't intend to do it that much more.
THE COURT: It's in evidence. I think you can ask a

witness to read in from it. If you want to go into on cross if he knows nothing about what was actually done, I think you can. I don't think it's an improper thing with an exhibit that's in evidence.
Let's bring in the jury.
(Jury present)
THE COURT: We are going to resume the examination of Mr. Adondakis by Mr. Zach.
Go ahead, Mr. Zach.
MR. ZACH: Thank you, your Honor.
Q. Before we broke Mr. Adondakis, we had been looking at Government Exhibit 805 which had information from an accounting manager at Nvidia being passed along to a variety of people.
Do you recall that?
A. Yes.
Q. Now, what did you tell Mr. Chiasson about this inside information that you were getting from Nvidia?
A. I explained to him that a friend of Jesse Tortora would be getting information from Nvidia through a friend of his who he went to church with and that the contact was -- it would have an Nvidia contact, essentially.
Q. When you say Nvidia contact, did you express where that Nvidia contact worked?
A. I didn't specifically say at Nvidia, but based on contacts that we had at other companies, I assumed --

MR. WEINGARTEN: Respectfully object.
THE COURT: Hold on.
Did you express where that Nvidia contact worked, yes or no?
THE WITNESS: No.
THE COURT: Next question.
Q. Had you had a course of dealing in talking about sources of information with Mr. Chiasson that you referred to in a specific way?
A. Yes.
Q. What was the way that you referred to him?
A. When I would refer to contacts I would refer to them as those that worked at companies.
Q. When you said that a contact at a company, did that mean that that contact worked at the company?
A. That's correct.
Q. Now, turning to Government Exhibit 810, it's already in evidence, have you seen this document?
A. Yes.
Q. Let's look at the lower e-mail.
THE COURT: Hold on one second. Just take that down. I don't have that in. Maybe I just missed it. Does anybody else who is keeping score have it in? There has been a lot of documents. I don't suggest that I am infallible on this point.
MR. TARLOWE: Our records suggest that it was admitted