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UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 GARY EDWARD KOVALL,
17 DAVID ALAN HESLOP, and
18 PEGGY ANNE SHAMBAUGH

19 Defendants.

No. CR 12-441(A)-MWF

GOVERNMENT'S POSITION PAPER ON THE
WORTH GROUP WITNESSES

Trial Date: February 25, 2014

Location: Courtroom of the
Honorable Michael W. Fitzgerald

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21 At the Court's request, Plaintiff United States of America, by
22 and through its counsel of record, the United States Attorney for the
23 Central District of California and Assistant United States Attorneys
24 Brandon D. Fox and Meghan A. Blanco, hereby files its position paper
25 on the Worth Group witnesses, explaining the proposed scope of the
26 testimony of those witnesses.

27 The government proposes calling three Worth Group witnesses
28 (Douglas Worth, Larry Arnold, and Thomas Bruno) for an extremely

1 limited purpose. Specifically, the government proposes using these
2 witnesses to show: (a) the Worth Group was the existing general
3 contractor when Paul Bardos became owner's representative; (b) the
4 Worth Group bid on additional projects when Bardos was also bidding
5 on those projects; (c) Paul Bardos and defendant Gary Kovall raised
6 issues about the Worth Group's performance; and (d) the defendants
7 saw an opportunity to replace the Worth Group with Bardos when issues
8 arose with respect to the Worth Group's performance.

9 The government understood that the Court's concern was with
10 respect to this last issue and whether the trial would devolve into a
11 battle over whether the Worth Group was or was not in compliance with
12 building codes or with the contracts themselves. To address these
13 concerns, the government will not elicit any testimony on direct
14 examination contesting whether there were indeed problems with the
15 Worth Group's performance. The government will only introduce on
16 direct examination the fact that these issues were raised with
17 respect to the Worth Group to show that the defendants seized upon an
18 opportunity to steer more work to Bardos.¹

19 This testimony will in no way be unfairly prejudicial to the
20 defendants and it is extremely probative to the indictment's
21 conspiracy allegations in paragraph 10(c). That paragraph states the
22 defendants, in part, would accomplish their conspiracy in the
23 following manner: "When additional construction or construction
24 oversight would become necessary, [Bardos] would submit proposals to
25
26

27 ¹ Indeed, the government expects to argue that whether or not
28 the Worth Group was performing adequate work, defendants saw this as
an opportunity to expand their conspiracy and corruption.

1 perform the work, and defendant KOVALL would advise the Tribe to
2 accept defendant BARDOS' proposal."

3 Defendant Kovall's steps to terminate the Worth Group are part
4 of the official acts the government will show that Kovall took in
5 order to carry out the conspiracy and bribery charges. This evidence
6 is in no way unfairly prejudicial to defendants. Further it will not
7 result in a side-show because, to the extent that defendants open the
8 door on cross-examination, the government does not plan on calling
9 additional witnesses to rebut a claim that the Worth Group's work was
10 substandard. Instead, to the extent that the government seeks to
11 admit any evidence to rebut this claim, it will only do so on re-
12 direct examination of these witnesses. Because the probative value
13 is not substantially outweighed by any unfair prejudice, the Court
14 should allow this testimony under Rule 403.

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16 Dated: February 20, 2014

Respectfully submitted,

17 ANDRÉ BIROTTE JR.
18 United States Attorney

19 ROBERT E. DUGDALE
20 Assistant United States Attorney
Chief, Criminal Division

21 /s/ Brandon D. Fox
22 BRANDON D. FOX
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23 Attorneys for Plaintiff
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