UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	14 CR 135
v.	)	
	)	Honorable Virginia Kendall
JOHN BILLS	)	

MOTION TO CONDITIONALLY ADMIT EVIDENCE PURSUANT TO FED.R.EVID. 801(d)(2)(E)

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The UNITED STATES OF AMERICA, by and through its attorney, ZACHARY T. FARDON, United States Attorney for the Northern District of Illinois, moves this Court, pursuant to Federal Rules of Evidence 104(a) and 801(d)(2)(E) as well as *United States v. Santiago*, 582 F.2d 1128 (7th Cir. 1978), to admit certain statements against defendant John Bills.

I. INTRODUCTION

The government seeks admission of statements pursuant to Rule 801(d)(2)(E) and requests a pretrial ruling of admissibility from the Court, in accordance with *Santiago* and established practice in the Seventh Circuit. *See United States v. Alviar*, 573 F.3d 526, 540 (7th Cir. 2009); *United States v. Harris,* 585 F.3d 394, 398, 400 (7th Cir. 2009).

Below, the government first provides a brief overview of the scheme and conspiracy that will be established at trial. Next, the government discusses the law governing the admissibility of coconspirator statements under Rule 801(d)(2)(E). Finally, the government summarizes the evidence supporting the admission of coconspirators' statements.

II. OVERVIEW OF THE CHARGED SCHEME/CONSPIRACY

From 2003 to at least 2012, John Bills and others, including Redflex agents and executives, schemed to deprive the City of Chicago of money and honest services through the payment of cash bribes and other benefits to Bills, a City employee, in exchange for Bills' assistance in winning and growing City contracts and business

regarding Chicago's Digital Automated Red Light Enforcement Program (DARLEP). Specifically, Bills received personal benefits from Redflex, including trips, meals, rental cars, over $600,000 in cash, and a condominium in Arizona, while Bills continued to assist Redflex in obtaining, keeping and expanding the DARLEP contracts. Bills' co-schemers in this corrupt endeavor included, among others, Bills; Aaron Rosenberg (Redflex's Vice President of Sales and Marketing), who the government expects to call as a witness at trial under a grant of immunity; Bruce Higgins (Redflex's CEO from 2001-2005); Karen Finley (Redflex's Vice President of Operations from 2001-2005 and then CEO from 2005-2013), who has pled guilty to conspiracy and will testify under a cooperation plea agreement; and Martin O'Malley (Redflex's independent contractor from 2003-2012), who also has pled guilty to conspiracy and will testify under a cooperation agreement.

At trial, the government will prove the charged scheme and conspiracy, including Bills' participation in it, through testimony from numerous witnesses, including City employees, Redflex employees, and cooperating witnesses, including Finley and O'Malley, as well as the introduction of exhibits, including numerous emails that confirm and corroborate the scheme and how it worked.

III. APPLICABLE LAW

Federal Rule of Evidence 801(d)(2)(E) provides that a "statement" is not hearsay if it "is offered against a party" and is "a statement by a coconspirator of a party during the course and in furtherance of the conspiracy." Fed.R.Evid. 801(d)(2)(E). Admission of such coconspirator statements against a defendant is

proper where the government establishes by a preponderance of the evidence that: (1) a conspiracy or joint venture existed; (2) defendant and the declarant were members of the conspiracy or joint venture; and (3) the statements were made during the course and in furtherance of the conspiracy or joint venture. *United States v. Cruz-Rea*, 626 F.3d 929, 937 (7th Cir. 2010); *see also Bourjaily v. United States*, 483 U.S. 171, 175 (1987); *United States v. Haynie*, 179 F. 3d 1048, 1050 (7th Cir. 1999); *United States v. Lindemann*, 85 F.3d 1232, 1238 (7th Cir. 1996); *Santiago*, 582 F.2d at 1130-31; *United States v. Kelley*, 864 F.2d 569, 573 (7th Cir. 1989).[1]

In this Circuit, the preferred way for the government to makes its preliminary factual showing as to the admissibility of coconspirator statements is by filing a pretrial written proffer of the government's evidence in support thereof, known as a *Santiago* proffer. *Santiago*, 582 F.2d at 1128. *See also United States v. Rodriguez*, 975 F.2d 404, 406 (7th Cir. 1992); *United States v. Boucher*, 796 F.2d 972, 974 (7th Cir. 1986).

A district court's preliminary determination of admissibility for purposes of Rule 801(d)(2)(E) is distinct from the standard required in determining on appeal whether sufficient evidence exists to uphold a jury verdict in a conspiracy case. The

1 No Sixth Amendment confrontation issues are posed by the use of a non-testifying coconspirator's statements offered for their truth against a defendant. Such statements are not testimonial, and therefore are not subject to the Confrontation Clause. *United States v. Nicksion*, 628 F.3d 368, 374 (7th Cir. 2010) (citing *Davis v. Washington*, 547 U.S. 813, 823-24 (2006) and *Crawford v. Washington*, 541 U.S. 36 (2004)); *see also United States v. Hargrove*, 508 F.3d 445, 448-49 (7th Cir. 2007) (providing that "coconspirator statements … are neither hearsay nor 'testimonial' as the Supreme Court has defined that term in *Davis*").

standard to be applied in the context of admissibility under Rule 801(d)(2)(E) is the preponderance of the evidence standard. *Lindemann*, 85 F.3d at 1238 (citing *Bourjaily*, 438 U.S. at 175-76). In making this determination, the judge must decide "if it is more likely than not that the declarant and the defendant were members of a conspiracy when the hearsay statement was made. . . ." *Id.* at 1143 (citation omitted); *see also United States v. Hoover*, 246 F.3d 1054, 1060 (7th Cir. 2001). If the Court determines the statements are admissible, the jury may consider them for any purpose. *United States v. Thompson*, 944 F.2d 1331, 1345 (7th Cir. 1991).

1. *Existence of and Membership in the Conspiracy*

A. General

While the court may consider the proffered statements themselves (i.e., the statements to be admitted) as evidence of both the existence of a conspiracy and a defendant's participation in it, *United States v. Brookins*, 52 F.3d 615, 623 (7th Cir. 1995) (providing that "the content of the hearsay statement may be considered to determine its admissibility under Rule 801(d)(2)(E)"); *Bourjaily*, 483 U.S. at 176-81; *United States v. Harris*, 585 F.3d 394, 398-99 (7th Cir. 2009), the contents of the proffered statements alone are generally not sufficient. The government must typically present some supporting evidence or facts, independent of the statements themselves, corroborating the existence of the conspiracy and the defendant's participation therein. *Harris*, 585 F.3d at 398-99; *Lindemann*, 85 F.3d at 1238.

The evidence showing the existence of a conspiracy and a defendant's

membership in it may be either direct or circumstantial. *See United States v. Johnson,* 592 F.3d 749, 754-55 (7th Cir. 2010); *United States v. Irorere*, 228 F.3d 816, 823 (7th Cir. 2000). The Seventh Circuit has consistently held that "because of the secretive character of conspiracies, direct evidence is elusive, and hence the existence and the defendants' participation can usually be established only by circumstantial evidence." *United States v. Redwine*, 715 F.2d 315, 319 (7th Cir. 1983). *See also Lindemann*, 85 F.3d at 1238 (discussing the secretive nature of conspiracies as one reason for coconspirator exception to hearsay rule).

B. Existence of the Conspiracy

The legal principles governing the admissibility of coconspirator statements under Rule 801(d)(2)(E) apply not only to conspiracies but also to joint ventures, such as a scheme to defraud. *See e.g., United States v. Jackson*, 540 F.3d 578, 592 (7th Cir. 2008) (applying 801(d)(2)(E) to bank fraud scheme); *Kelley,* 864 F.2d at 573. There is no requirement, for admissibility under Rule 801(d)(2)(E), that the government establish all elements of "conspiracy," such as a meeting of the minds and an overt act. *United States v. Coe*, 718 F.2d 830, 835 (7th Cir. 1983); *United States v. Gil*, 604 F.2d 546, 548-50 (7th Cir. 1979). The government need only establish the existence of a joint venture for an illegal purpose (or for a legal purpose using illegal means) and participation in the joint venture by the defendant and the maker of the statement at issue (as well as that the statement was in furtherance of the venture). "[I]t makes no difference whether the declarant or any other 'partner in crime' could actually be tried, convicted and punished for the crime of conspiracy."

Gil, 604 F.2d at 549-550; *see also Coe*, 718 F.2d at 835.

While there is a distinction between conspiracy law and admissibility under Rule 801(d)(2)(E), certain principles of general conspiracy law are relevant to the Rule 801(d)(2)(E) inquiries. For instance, "[a] conspiracy may exist even if a conspirator does not agree to commit or facilitate each and every part of the substantive offense." *Salinas v. United States*, 522 U.S. 52, 63 (1997); *see also United States v. Longstreet,* 567 F.3d 911, 919 (7th Cir. 2009); *United States v. Jones*, 275 F.3d 648, 652 (7th Cir. 2001). The government need not prove that a defendant knew each and every detail of the conspiracy or played more than a minor role in the conspiracy. *United States v. Curtis*, 324 F.3d 501, 506 (7th Cir. 2003). Further, a defendant joins a criminal conspiracy if he agrees with another person to one or more of the common objectives of the conspiracy; it is immaterial whether the defendant knows, has met, or has agreed with every coconspirator or schemer. *Longstreet,* 567 F.3d at 919; *Jones*, 275 F.3d at 652.

C. Membership in the Conspiracy

Once the conspiracy or joint venture is established, "only slight evidence is required to link a defendant to it." *United States v. Shoffner*, 826 F.2d 619, 627 (7th Cir. 1987).

A defendant (or other declarant) may be found to have participated in a conspiracy even if he joined or terminated his relationship with other conspirators at different times than another defendant or coconspirator. *United States v. Noble*, 754 F.2d 1324, 1329 (7th Cir. 1985); *see also United States v. Handlin*, 366 F.3d 584, 590

(7th Cir. 2004) ("it is irrelevant when the defendant joined the conspiracy so long as he joined it at some point"). Under Rule 801(d)(2)(E), a coconspirator's statement is admissible against conspirators who join the conspiracy after the statement is made. *United States v. Sophie*, 900 F.2d 1064, 1074 (7th Cir. 1990). A conspirator who has become inactive or less active in the conspiracy nevertheless is liable for his conspirators' further statements unless he openly disavows the conspiracy or reports it to the police. *See United States v. Feldman*, 825 F.2d 124, 129 (7th Cir. 1987).

The government is not required to prove the identity of the declarant; nor must the declarant's identity be confirmed in the statement itself. *See United States v. Bolivar*, 532 F.3d 599, 604-05 (7th Cir. 2008). Rather, the government need only prove (from the statement, the context and/or other evidence) that the declarant was in fact a coconspirator. *Id.*

2. *Statements Made "In Furtherance of" the Conspiracy*

In determining whether a statement was made "in furtherance" of the conspiracy, courts evaluate the statement in the context in which it was made and look for a reasonable basis upon which to conclude that the statement furthered the conspiracy. *See Cruz-Rea,* 626 F.3d at 937; *United States v. Johnson*, 200 F.3d 529, 533 (7th Cir. 2000). Under the reasonable basis standard, a statement may be susceptible to alternative interpretations and still be "in furtherance" of the conspiracy. *Cruz-Rea*, 626 F.3d at 937-38. The "coconspirator's statement need not have been made exclusively, or even primarily, to further the conspiracy" in order to

be admissible under the coconspirator exception. *Id.* at 937 (quotations and citations omitted).

Given the government's "relatively low burden of proof on this issue," *Shoffner*, 826 F.2d at 628, the Seventh Circuit has found a wide range of statements to satisfy the "in furtherance" requirement. *United States v. Herrero*, 893 F.2d 1512, 1527-28 (7th Cir. 1990), *abrogated by other grounds by United States v. Durrive*, 902 F.2d 1221 (7th Cir. 1990); *United States v. Cozzo*, No. 02 CR 400, 2004 WL 1151630, at *2-3 (N.D. Ill. Apr. 28, 2004) (collecting cases). In general, a statement that is "part of the information flow between conspirators intended to help each perform his role" satisfies the "in furtherance" requirement. *United States v. Alviar*, 573 F.3d at 545 (quotations and citations omitted). *See also United States v. Gajo*, 290 F.3d 922, 929 (7th Cir. 2002). These include statements made: (1) to identify other members of the conspiracy and their roles, *United States v. Magee*, 821 F.2d 234, 244 (5th Cir. 1987); *United States v. Roldan-Zaoata*, 916 F.2d 795, 803 (2d Cir. 1990); (2) to control damage to an ongoing conspiracy, *United States v. Van Daal Wyk*, 840 F.2d 494, 499 (7th Cir. 1988); (3) to keep coconspirators advised as to the progress of the conspiracy, *United States v. Potts*, 840 F.2d 368, 371 (7t Cir. 1987); (4) to conceal the criminal objectives of the conspiracy, *United States v. Kaden*, 819 F.2d 813, 820 (7th Cir. 1987); (5) to plan or to review a coconspirator's exploits, *United States v. Molt*, 772 F.2d 366, 368-69 (7th Cir. 1985); or (6) as an assurance that a coconspirator can be trusted to perform his or her role, *United States v. Buishas*, 791 F.2d 1310, 1315

(7th Cir. 1986).[2] *See also United States v. Doerr*, 886 F.2d 944, 951 (7th Cir. 1989).

Finally, it has long been the rule that any statement made by a conspirator during and in furtherance of a conspiracy is admissible against all coconspirators. *Beeson v. United States*, 90 F.2d 720 (7th Cir. 1937); *Lindemann*, 85 F.3d at 1238; *see also United States v. Rivera,* 136 F.App'x 925, 926 (7th Cir. 2005) ("Whether any other conspirator heard (or, in this instance, saw) that statement is irrelevant; agency, not knowledge, is the theory of admissibility.").

3. *Alternative Bases for the Admissibility of Statements*

A. Defendant's Own Statements

Many of the statements described herein and sought to be admitted against Bills are independently admissible and do not require a Rule 801(d)(2)(E) analysis. For example, a defendant's own admissions are admissible against him pursuant to Federal Rule of Evidence 801(d)(2)(A), without reliance on the coconspirator-statement rule. *United States v. Maholias*, 985 F.2d 869, 877 (7th Cir. 1993). A defendant's own admissions, moreover, are relevant to establishing the factual predicates for the admission of coconspirator statements against him. *See Potts*, 840 F.2d at 371-72.

B. Non-Hearsay Statements

The coconspirator statement rule does not apply when a statement is not being offered for the truth of the matter asserted, and thus does not constitute

2 Statements that prompt the listener to act in a manner that facilitates the carrying out of the conspiracy are also made "in furtherance" of the conspiracy. *See United States v. Monus*, 128 F.3d 376, 392 (6th Cir. 1997).

"hearsay" as defined by Federal Rule of Evidence 801(c). Accordingly, statements by alleged coconspirators may be admitted against a defendant, without establishing the *Bourjaily* factual predicates set forth above, when such statements are offered to show, for instance, the existence, the illegality, or the nature or scope of the charged conspiracy. *See United States v. Guyton*, 36 F.3d 655, 658 (7th Cir. 1994) (statement that defendant was out of cocaine was not hearsay because it was not offered for its truth but as evidence of membership in conspiracy); *United States v. Herrera-Medina*, 853 F.2d 564, 565-66 (7th Cir. 1988) ("war stories" about the drug trade were not offered for the truth); *Van Daal Wyk*, 840 F.2d at 497-98 (statements had non-hearsay value in establishing knowledge of and membership in conspiracy); *United States v. Tuchow*, 768 F.2d 855, 867-69 (7th Cir. 1985) (pre-conspiracy statements admissible to set forth scope of the anticipated conspiratorial scheme).

The coconspirator statement analysis also is not triggered when the relevant verbal declaration is not a "statement" within the meaning of Federal Rule of Evidence 801(a), which defines "statement" as "an oral or written assertion" or "nonverbal conduct of a person, if it is intended by the person as an assertion." Thus, a statement that is incapable of verification, such as an order or a mere suggestion, is not hearsay and does not invoke the analysis under Rule 801(d)(2)(E). *See Tuchow*, 768 F.2d at 868 n.18.

IV. THE EVIDENCE REGARDING THE EXISTENCE OF THE CHARGED CONSPIRACY, DEFENDANT'S PARTICIPATION IN THE CONSPIRACY, AND COCONSPIRATOR STATEMENTS MADE IN FURTHERANCE OF THAT CONSPIRACY[3]

The evidence of the scheme and conspiracy, summarized below, is strong and meets the preponderance of the evidence standard applicable here. At trial, the government will present witnesses and materials establishing as follows:

Overview of Chicago DARLEP Contracts from 2003 until 2011

In or around October 2003, the City of Chicago signed a contract (PO 3220) with Redflex Traffic Systems Inc. for the installation, maintenance and operation of the City's first-ever Digital Automated Red Light Enforcement Program, commonly known as DARLEP. DARLEP used cameras to automatically record and ticket drivers who ran red lights. Redflex was awarded PO 3220 through a City-run Request for Proposal process, also known as an RFP. In an RFP process, the Department of Procurement Services works with the City department requesting the services in drafting the RFP. The RFP is a lengthy document that details, among

3 The government does not detail here all of its evidence in support of the existence of the conspiracy and defendant Bills' and other declarants' participation in it. Rather, this proffer highlights for the Court some of the government's evidence in order to establish, by a preponderance of the evidence, the existence of the conspiracy and the roles of the various conspirators. Therefore, this proffer does not list all of the government's witnesses, nor does it provide all of the evidence that will be presented by those witnesses who are named. In the same way, the government does not detail here each and every proposed coconspirator statement of each witness or document it intends to introduce at trial; rather, the government proffers a representative sample of the statements it anticipates introducing at trial. Further, by presenting statements attributed to particular witnesses, the government is not committing to calling each of the witnesses for each of the statements attributed. Of course, the government is committed to establishing the *Bourjaily* predicates at trial, and the ultimate admissibility of coconspirator statements is governed by the trial evidence.

other things, the scope of services and specifications required by the City for that particular service, as well as other requirements. By practice, an RFP is not shared with the vendors until its release in order to ensure a level playing field. Redflex and another competitor – ACS – were the two finalists in the 2003 DARLEP RFP, and Redflex was awarded the contract after a pilot phase in which both companies installed their systems on chosen intersections in Chicago. PO 3220 was expanded and continued three times through amendments before ending in October 2008.

On February 21, 2008, Chicago signed another contract with Redflex (PO 16396), awarded through another RFP process. This contract was essentially the same as the original DARLEP contract insofar as it provided for the installation, operation, and maintenance of additional red light camera systems. In October 2008, Chicago signed a third contract with Redflex (PO 18031) for the operation and maintenance of camera systems already installed under PO 3220. PO 18021, which was effective February 1, 2008, was "sole sourced," meaning that it was awarded to Redflex without a competitive procurement process.

In all, these contracts cost the City an estimated $131 million.

Bills managed the City's DARLEP program from the time PO 3220 was initiated in 2002 until his retirement in 2011. From 2001 to 2006, Bills was an assistant commissioner at the Chicago Department of Transportation (CDOT). From 2007 to 2010, Bills was an assistant director at the Office of Emergency Management and Control (OEMC), the department to which the red light camera program was transferred for a period of time until it was transferred back to CDOT

in or around 2010. From 2010 until his retirement in June 2011, Bills was the managing deputy commissioner at CDOT. Bills served as a voting member on the 2003 DARLEP evaluation committee and served as an advisory, non-voting member on the 2007 DARLEP RFP evaluation committee.

Award of 2003 DARLEP Contract to Redflex

In 2002, Aaron Rosenberg, Redflex's Vice President of Sales and Marketing, who the governments expects to call as a witness at trial under a grant of immunity, learned that the City of Chicago was interested in implementing red light enforcement cameras. Rosenberg contacted Bills and subsequently gave a presentation to Bills regarding Redflex's red light camera technology. On or about December 21, 2002, the City of Chicago issued the RFP for the red light camera contract. On or about January 3, 2003, the City of Chicago held a pre-bid meeting for vendors interested in the red light camera RFP, at which City officials outlined the DARLEP RFP. Rosenberg attended on behalf of Redflex. Rosenberg and Bills thereafter communicated often.

At or around the time of the pre-bid conference in Chicago or shortly thereafter, Bills told Rosenberg that he and some friends were going to the Super Bowl in San Diego but that they were going to Los Angeles first. Rosenberg responded by asking if there was anything he could do for Bills while in Los Angeles. Either at that time or during a follow-up telephone conversation, Bills asked Rosenberg if he could get a hotel room for Bills. According to Rosenberg, he understood that Bills wanted him to pay for a hotel room, not simply to recommend

or reserve a hotel. Rosenberg advised his superior of the request – Bruce Higgins, Chief Executive Officer of Redflex from 2001 to 2005 – who approved it. Rosenberg booked one room for Bills and his friends in Los Angeles, and then expensed the room to Redflex. Redflex expense records show that the "Chicago team" stayed in a hotel in Los Angeles from January 20, 2003 through January 23, 2003, and that they were there for a "site visit." According to Rosenberg, while Redflex has a small office in Culver City, California,[4] Bills did not visit that office on the trip.

At some point before or during the RFP process, Jimmy Johnson, the owner of Network Electric, approached Bills about the red light camera contract. According to Johnson, Bills stated that there were several contractors bidding on the contract, but that a company called Redflex had the best product. Also in early 2003, Rosenberg asked Bills if he and CDOT preferred any specific subcontractors. Bills recommended Network Electric for red light camera construction, and arranged for Johnson and Rosenberg to speak. Redflex ultimately hired this company as its subcontractor, according to Rosenberg, to please Bills.

On or about February 3, 2003, the City announced the finalists for the pilot phase – Redflex and ACS. On February 6, 2003, Rosenberg sent an email to Higgins and Karen Finley, then the Vice-President of Operations at Redflex, entitled "CHICAGO UPDATE: VERY IMPORTANT." In the email, Rosenberg recounted that "[m]y contact (Deputy Commissioner) met with the Commissioner of the Chicago DOT (the head guy over the entire City) and Mayor Daley; and I have been fully

4 Redflex is based in Scottsdale, Arizona.

assured that the best technology will win, with no undue political influence (but who actually knows)." Rosenberg detailed the additional information he received from his "contact," specifically that Redflex and ACS were the two finalists and that a kick-off meeting would take place on February 14 or February 17, at which the City would provide the vendors with the "required engineering drawings and city contracts." At the end of the email, Rosenberg noted the following: "My contact has already told me that he primed Mayor Daley that Redflex has the best system in the market – bar none."

On February 12, 2003, according to Redflex expense reports, Rosenberg had a breakfast meeting with Bills and Johnson. Two days later, on or about February 14, 2003, the City held a kick-off meeting for the beginning of the DARLEP RFP pilot phase. The pilot phase would last 30 days, and the purpose of the pilot phase was to give the City the chance to evaluate the selected vendors' equipment in the field. At the end of the pilot phase, the winner of the contract would be selected. Representatives from Redflex and ACS attended the kick-off meeting, at which the City explained the rules and requirements during the pilot phase.

The night before the kick-off meeting on or about February 13, 2003, Finley, Rosenberg, and other Redflex personnel met with Bills for drinks at a restaurant in the John Hancock Center. There, according to Finley, Bills provided information and advice to Redflex that gave Redflex an advantage over its competitor in the pilot phase. Over the course of the pilot phase, Bills provided inside information to Redflex in order to give it a competitive advantage. For example, Bills spoke to

Rosenberg about how ACS was doing and what Redflex needed to do. Bills also told Johnson that ACS was struggling.

Email correspondence demonstrates how Bills continued to guide the contract towards Redflex up to the final vote of the evaluation committee on May 28, 2013. In an email dated May 18, 2003, from Rosenberg to Higgins, Rosenberg stated how he had a "long talk with Mr. Bills this weekend" and went on to recount the latest updates with the pilot phase, including providing inside information as to what would happen next in the RFP process. For example, Rosenberg recounted how "[t]here will not be oral presentations – no final presentations" because "we [i.e., Bills and Rosenberg] felt it was prudent to not allow ACS" to stress the fact that ACS had a local Chicago office, among other things. Rosenberg went on to recount how Bills and another committee member – Matthew Darst – would be the only members of the selection committee who will evaluate the vendors. Rosenberg explained that both "John and Matt understand that [sic] value, benefit, competency and ability of the Redflex program" and "[t]his is the only way we were able to ensure a significant Redflex margin of excellence over ACS!!!" Rosenberg noted how he and Higgins needed to schedule a trip to Chicago to help Bills "develop and codify elaborate, accurate and articulated responses to substantiate his evaluation," "exemplify the Redflex strengths and exploit the ACS weaknesses," and prepare Bills for "hard questions and potential protests." Rosenberg concluded:

> We could not be in a better situation – trust me! We have almost removed all the unknowns; the politics and we have positioned the evaluation to ensure a positive (and

significant) Redflex outcome.

In response to the email on May 19, 2003, Higgins agreed as to the plan, and acknowledged that "John B is on the ball."

Over the last weekend of May 2003, Redflex experienced problems with its "Web Ops" program, which was a web interface system that allowed the City to review images of possible violations remotely and then authorize the issuance of violation tickets. In an email dated May 23, 2003, at approximately 9:17 p.m., Rosenberg advised Higgins and Finley that he had been "working with Mr. Bills this evening on his responses" and that Web Ops is still not available. In a follow-up email the next day from Rosenberg, he noted that Web Ops was working, and that "John was initially concerned that ACS might have hacked into our system . . . ." The next day (Sunday, May 25, 2003), Rosenberg sent another email to Higgins and Finley and again stressed the importance of Web Ops working that weekend because "John is spending most of the weekend in his office and he keeps running into Web Ops issues . . . ." Rosenberg noted the need for everything to run smoothly in anticipation of Tuesday (May 27, 2003), when the evaluation committee will review the vendors.

On or about May 26, 2003, according to Johnson and Rosenberg, Bills met with them at the CDOT offices after hours.[5] At the CDOT offices, Rosenberg and Bills asked Johnson if he could construct the camera systems at the quoted price, and Johnson stated that he would try. Johnson reviewed documents that evening at

5 Airline records and emails confirm Rosenberg's presence in Chicago that evening.

the CDOT office, and he eventually left early, leaving Rosenberg and Bills behind. According to Rosenberg, Rosenberg and Bills reviewed red light photographs taken by Redflex and ACS during the pilot phase. Out of the photographs they reviewed, there were photographs that showed the equipment working well and working poorly for both Redflex and ACS. Bills and Rosenberg cherry-picked photographs that showed Redflex's equipment working well and ones that showed ACS's cameras working poorly. Bills stated that he intended to show these photographs to the evaluation committee. In addition, Bills wrote out the names of the members of the committee on placards and placed them around the table in the room. Bills stated that he arranged the seating to control the voting order, specifically putting committee members who he (Bills) knew would vote for Redflex first so that their vote would influence other members. Besides Bills, Johnson, and Rosenberg, no one was else was present for this late-night meeting, including any representative from Redflex's competitor, ACS.

On May 27, 2003, the Tuesday after Memorial Day, the evaluation committee, which included Bills as a voting member, awarded the DARLEP contract with the City of Chicago to Redflex in a unanimous vote: 7-0.

In or around early June 2003, according to Rosenberg and Johnson, Bills, Johnson, and Redflex officials, including Rosenberg and Higgins, met for dinner in Los Angeles. According to Rosenberg, at some point before dinner in a bar area, Bills stated to Rosenberg words to the effect of, "It's time to make good," and indicated that he wanted money in return for his help in getting Redflex the contract and his

continued efforts on Redflex's behalf in growing the contract. Bills and Rosenberg discussed how much money Bills wanted and how he would be paid. Bills mentioned numbers in the amount of $100,000 and $200,000, and Bills and Rosenberg wrote down some numbers on a cocktail napkin, attempting to calculate how much Redflex would make on the Chicago contract. Bills suggested two ways for Redflex to pay him: (1) Redflex could overpay a subcontractor like Johnson and then the subcontractor could pay Bills; or (2) Redflex could pay Bills through the Chicago customer service representative, a position Redflex was creating to service the Chicago contract. Rosenberg responded that he needed to speak with Higgins. According to Rosenberg, he relayed Bills' request to Higgins, who did not reject Bills' request, and Rosenberg later understood from Higgins that payments would be funneled through the customer service representative.

Drafting of Redflex's DARLEP Contract with Chicago

Following the award of the DARLEP contract to Redflex, negotiations of the terms of the contract between the City and Redflex began. Even during this phase, Redflex continued to communicate with Bills in order to ensure that Redflex did not lose the contract before negotiations were finalized. For example, in an email dated September 12, 2003, Higgins advised Rosenberg and Finley about Redflex's then-financial situation. Higgins laid out the "positive points" and then advised them to "cover this with John Bills so ACS causes no surprises." According to Finley, Redflex had been struggling financially, and ACS had used this fact against Redflex in competition for contracts in other cities, which Redflex sought to avoid in Chicago

with Bills' help.

In or around October 2003, while Bills was negotiating Redflex's DARLEP contract with Chicago, Bills advocated for a provision in the Redflex DARLEP contract limiting liquidated damages, thereby limiting Redflex's financial liabilities in potential lawsuits with the City of Chicago related to the contract. On October 10, 2003, Arthur Dolinsky, a lawyer with the City of Chicago's Law Department, sent an email to Bills, explaining that CDOT's proposed cap on liquidated damages was not in the best interest of the City. Dolinsky wrote to Bills: "[i]t is my understanding from your e-mail that your department [i.e., CDOT] has chosen to ignore the Law Department's advice and to add the 5 percent limitations to the liquidated damages provisions" in the DARLEP contract with Redflex. This provision greatly benefited Redflex and, as Bills clearly knew, was against the express advice of the City of Chicago's Law Department. Bills forwarded Dolinsky's email to Higgins, Redflex's then-CEO, thus making Redflex aware that Bills had defied advice by the City's lawyers in order to benefit Redflex.

Indeed, in the final version of the contract for the 2003 DARLEP between Redflex and the City, Redflex's liquidated damages were capped at 5 percent.

O'Malley's Job at Redflex and Contract

In May 2003, Finley had an advertisement placed in a Chicago newspaper seeking an "account manager" for Redflex's DARLEP contract. The advertisement required applications with "people management, computer and presentation skills." According to Finley's notes regarding the position, the account manager would be the

"face of Redflex" with the City, and Redflex needed a person to "handhold [] [the] City while looking out for Redflex['s] bottom line."

Martin O'Malley will testify that he met Bills in 2002 in at an Alcoholics Anonymous group and they became friends. Bills and his family lived in the neighborhood where O'Malley grew up, and O'Malley knew of Bills' father through the neighborhood and local parish. In about early 2003, according to O'Malley, Bills indicated that he may have a job for O'Malley. Based on their AA meetings, Bills knew that O'Malley had been struggling financially. Bills described the position as part-time with a photo enforcement company competing for a contract with the City.

As O'Malley will testify, within months of that initial conversation, Bills directed O'Malley to look in the Chicago Tribune for a specific job posting. Bills told O'Malley to respond to the advertisement and apply for the job. O'Malley found the advertisement and sent in his resume. He then told Bills that he had done so.

During the following weeks, according to O'Malley, Bills and O'Malley had several conversations during which Bills told O'Malley that the job opportunity was still in the works. Then, in about early July 2013, Higgins called and asked O'Malley to come to Arizona for an interview with Redflex. On about July 24, 2003, O'Malley interviewed with Finley and Higgins in Phoenix. According to O'Malley, Higgins and Finley described the position as a contract position for a customer service representative. When asked about his background, O'Malley stated that he had limited computer skills, but had experience negotiating large contracts. Higgins and Finley estimated the salary as $30,000 to $35,000. O'Malley requested a salary in

the range of $60,000 to $65,000 plus expenses. Higgins and Finley stepped out of the room for about 15 minutes, and then re-entered and agreed to O'Malley's proposed figure. O'Malley left the interview understanding that he had the job.

After the interview, O'Malley called Bills (Bills previously asked O'Malley to call him after the interview). He relayed to Bills that he had the meeting, advised Bills of the salary discussion, and advised Bills that the interview went well. Phone records confirm that O'Malley called Bills on July 24, 2003.

Finley will testify that at the time of the interview, Finley understood, from Higgins, that O'Malley was a friend of Bills and that it was important for Redflex's advantageous relationship with Bills that O'Malley be hired. Thus, according to Finley, O'Malley's hiring was a foregone conclusion, despite the fact that O'Malley did not possess the technological skills required for the position and that O'Malley would not have been hired but for the understanding that O'Malley's hiring would ensure continued official support from Bills.

After O'Malley's interview in July, Bills told O'Malley that he was working with Redflex on O'Malley's contract. Bills told O'Malley that in addition to O'Malley's $60,000 annual salary, the contract would include bonuses and commissions. Bills told O'Malley that he (Bills) would get most or all of the bonus and commission money. Bills said words to the effect of, "This is the way business is done." O'Malley knew that this arrangement, to which he agreed, was unlawful.

On August 5, 2003, approximately 10 days after she interviewed O'Malley, Finley sent an email to Higgins entitled "Martin O'Malley – Services Agreement," in

which she attached a draft of O'Malley's proposed contract. Finley noted the parts of the contract that needed Higgins's input, specifically the amount of commission per new approach that O'Malley would receive.

On Friday, October 17, 2003, O'Malley called Redflex's general number in Arizona and then called Bills. That afternoon, Finley forwarded her prior August 5, 2003, email, in which she requested Higgins's input on O'Malley's contract, to Higgins again. On Monday October 20, 2003, Finley sent an email to Bills, in which she discussed, among others things, how she is "going to try to get Marty on deck" but that she has not had a chance to follow up with him yet. Later that same day, BILLS responded: "karen thank you for everything[.] [I] spoke with [Higgins] a few minutes ago[.] [I] thanked him as well[.] [H]e said you would be contacting omalley on training[.] [I] am going to city hall now to move things along."

O'Malley will testify that he did not participate in negotiation of his contract terms with Redflex; that negotiation was handled entirely by Bills and Redflex. At one point during the negotiations, Bills gave O'Malley a piece of paper with proposed contract changes in bullet points, and directed O'Malley to send the proposed changes to Redflex. On November 10, 2003, O'Malley emailed Finley those changes, which included (1) $2,000 per approach or system,[6] (2) a 5 percent bonus for "out of scope work billed and paid" by the City for the first $1 million and 3 percent beyond that, (3) a $5,000 bonus twice per year based on "client satisfaction," and (4) a

6 One approach refers to any numbers of red light cameras per intersection in one direction of travel.

one-time signing bonus in the amount of $10,000 payable after a probationary period. On November 17, 2003, Finley responded to O'Malley's email, increasing O'Malley's commission per approach to $1,500 (from $1,000) and agreeing to the other changes except the signing bonus. Four days later on November 21, 2003, Finley sent another email to O'Malley, in which she acknowledged receipt of the signature page to O'Malley's agreement. Finley also noted that the agreement would be backdated to November 3. Finley went on to provide details of O'Malley's employment; for example, she noted the name and number of a contact person (Sandra Stevens) for Redflex consultants (like O'Malley) regarding payment matters and for obtaining a cell phone. Finley further noted: "I believe John would prefer you to have a Nextel pager and Sandra is working on that."

O'Malley's final contract with Redflex provided for a salary of $2,300 twice per month (which increased to $2,500 in 2007), a $5,000 bonus every six months, as well as commissions in the amount of $1,500 per approach. The $1,500 commission per installation went in effect only after the first 10 installations of red light camera systems. Thus, the contract was written in such a way that the bulk of its value was generated from the commissions O'Malley would receive on red light camera installations resulting not from the original contract, but from amendments or new contracts for additional installations. Likewise, the "out-of-scope" clause in O'Malley's contract, which allowed O'Malley to collect a percentage of the fees Redflex charged the City for additional services, provided the same potential for

increased revenue for O'Malley.[7]

Bills' Efforts to Expand Redflex's Contract for More Approaches

Redflex's contracts and contract amendments with the City delineated specifically the number of red light camera systems to be installed in each contract and in each amendment. O'Malley's commissions, per his employment contract, were directly linked to the number of approaches purchased and installed by the City.

The original contract, which the City officially awarded to Redflex (PO 3220) on January 26, 2004, provided for the installation, maintenance, and operation of only ten systems. That contract was amended on December 23, 2004, which changed the scope to purchase 20 additional systems. The contract was amended again on November 23, 2005, which allowed for the purchase of 14 additional systems.

Almost immediately after that second amendment to the original contract, Bills sought to expand Redflex's business with the City through a new contract. On December 28, 2005, Bills sent an email to Finley, in which he noted that the amendment process had finished, referring to the second amendment to the 2003 DARLEP contract, and how it was important to start "negotiations for the new contract asap." Bills went on to explain to Finley that he was "tentatively looking at 60 additional systems to be installed by the close of 2006."

In early February 11, 2006, Robert Warner, Redflex's Program Director, who

7 As detailed below, *see infra, at* 39-42, 49-52, Bills received a wide array of benefits from Redflex in exchange for his assistance in steering the DARLEP contracts to Redflex. These benefits included approximately $643,000 in cash funneled from Redflex to Bills through this O'Malley contract. Additionally, Bills received meals at expensive restaurants, hotel rooms, golf outings, computers, and rental cars.

the government expects to call as a witness at trial, met with Bills. Warner then recounted the meeting with Bills in a follow-up email to Finley and Rosenberg on the same day. Per Warner's email, Bills was "looking for a deal to carry them through 2009 and to cover an additional 300 approaches (100 per year)." Warner, in the email, went on to detail some options in the new contract that Bills wanted to see.

Bills' Support for a Sole Source Contract for Redflex

Beginning in early 2006, Redflex and Bills were planning to have Redflex enter into a sole source contract that would encompass maintenance for existing installations as well as additional installations. According to Finley, who became CEO in late 2005, by sole sourcing the contract, the contract would not be subjected to the RFP process, and it would be directed specifically to Redflex.

Bills sought to shepherd the sole source contract through City procurement procedures, and Redflex and Bills worked together to make sure the contract was sole sourced to Redflex. For example, on May 9, 2006, Finley sent an email to Redflex personnel explaining the process and what Bills needed:

> I need your immediate help with the Chicago Sole Source endeavor. Specifically in order for the City not to bid the renewal, John Bills has to go before a Sole Source Review Board on May 18th; he wanted to know if we ever did any sole source deals, and if so, where and a contact at the city for him to call and ask why.

In response to Finley's email, Rosenberg provided a few possible references, and then volunteered to "work with John directly and get him the information he needs, as we have done previously . . . ."

Bills continued to work with Redflex personnel in drafting a sole source letter, which Redflex would send to the City, in such a way that it would result in the awarding of the sole source contract to Redflex. On June 16, 2006, William Braden, another Redflex employee with responsibilities overseeing Chicago, sent an email to Finley, stating that he had met with Bills and Bills had one suggestion for the sole source language. In particular, and per the email, Bills recommended that Redflex highlight the fact the current red light camera equipment "would not be usable by another vendor," making less likely that the City would choose another vendor over Redflex.

In August 2006, according to Finley, Bills traveled to Arizona to Redflex's offices in order to discuss and work on the terms of the sole source contract. Email correspondence, airline records and calendar appointments confirm Bills' presence in Arizona to meet with Redflex personnel from Friday, August 4, 2006, until Saturday, August 5, 2006. Finley will testify how while working on the contract provisions, they were careful to eliminate any record of the changes because Redflex did not want anyone at the City to know that Redflex had a hand in drafting the provisions. On Monday, August 7, 2006, Finley's assistant sent an email to Bills, copying Finley, attaching the "Chicago contract with the discussed changes and no author listed."

While the sole source contract progressed through the process, Bills continued to look out for Redflex's interests. For example, in June 2007, the City of Chicago hired Joseph Chan as a contract negotiator in the Department of Procurement

Services, who was assigned to the red light camera enforcement program. On August 23, 2007, Finley sent an email to Rosenberg, in which she noted that she just spoke with "JB." Having detailed other parts of their conversation, Finley noted that "early indicators are that the new contract administrator in Chicago (Mr. Chan) will not be a problem."[8] Finley detailed Bills' continued efforts on behalf of Redflex for the sole source contract: "If John does not get the revised contract by Friday, he will chase it down early next week and if need be, use the Mayors' Office for extra pressure."

In early January 2007, Barbara Lumpkin, Chief Procurement Officer with the City of Chicago's Department of Procurement Services, cancelled the sole source contract for Redflex and required that the new contract proceed through the RFP process. On or about January 3, 2007, Finley learned from Bills that the contract would not be sole sourced to Redflex. On that day, Finley sent an email to Rosenberg, in which she recounted that conversation with Bills. In the email, Finley explained that, per Bills, "the best we are going to get at this point is an amendment" to the existing contract with additional approaches, and then a new RFP process. Rosenberg responded, asking whether the City had rights over Redflex's camera systems. Finley replied, explaining that the City does not have rights over Redflex's camera systems, and, in fact, "the more systems [the City] buy[s] the more difficult it will be for someone [i.e., a Redflex competitor] to come in . . ." and take a red light enforcement contract from Redflex. Finley went on to detail the plan forward, noting

8 The government anticipates that Chan will testify that Bills' collaboration with Redflex on the terms of the contract, without oversight from DPS or the City Law Department, was not proper.

that how, over the next 20 months, Redflex will implement "a full-on political plan (attack) so that we have gotten to everyone we need to so as not to lose it in 2008," referring to the next RFP process.

On the last day of January 2007, just as Finley predicted in the above email per her conversation with Bills, the 2003 DARLEP contract was amended for a third time. This amendment allowed for the purchase and installation of at least 100 camera systems.

BILLS and Redflex Plan for a "Full-on Political Plan (Attack)"

In the spring and early summer of 2007, Bills and Redflex prepared for the next DARLEP RFP.

On April 12, 2007, Finley took notes of a telephone conversation with Bills. Across the top of the page appears the date ("4-12-07") and the words, "John B." As indicated by the notes, Bills advised Finley on steps to take politically in order to solidify Redflex's position in Chicago going forward. For example, Bills recommended that Redflex hire Bill Filan as a lobbyist. Bills explained, and Finley wrote down, how Filan "came up w/ Madigan," referring to Illinois Speaker of the House Michael Madigan, and had a "good relat w/ Madigan" as well as Lisa Madigan, the Illinois Attorney General.

Thus, at Bills' suggestion, Redflex hired three lobbyists/consultants in or around 2007, including Filan, William Griffin, and Mark Fary, who Redflex, including Finley, collectively referred to as the "three horsemen."

In another set of notes dated April 18, 2007, Finley jotted down notes of a

conversation with Rosenberg. Per those notes, Finley indicated that Chicago Alderman Ed Burke "tried to stop installs," referring to new red light camera installations. Later down in the notes, Finley wrote that there may be a "new RFP" and it may be out by June 1. Finley wrote that, per Rosenberg, the City may hire an independent consultant to work on the RFP because it "makes it harder to steal politically w/ a consultant." Lastly, Finley wrote what appeared to be "quietly sole source for existing total of 140 syst.," referring to Redflex's intention to obtain, separate from the RFP for new systems, a contract for maintenance of the current systems through a sole source process.

On June 6, 2007, Finley again recorded notes of a conversation with Bills, as indicated at the top of the page: "John –." Finley noted that Filan, the "lobbyist in Chi," had his "ear to [the] ground." The notes also reflect that Bills and Finley discussed the RFP, specifically that the City was moving ahead with a new RFP and that the third-party consultant's recommendation was to keep the maintenance contract with "RTSI," or Redflex Traffic Systems Inc. Based on the notes, Bills suggested that Filan, Rosenberg, and he "get together" soon. Bills also reported that Griffin met with Alderman Burke and another Alderman on June 6, 2007. Finley also noted Bills' efforts on behalf of Redflex: "John is fighting everyday."

Award of 2007 DARLEP RFP Contract to Redflex

Once Chicago (through Lumpkin) required the installation, operation and maintenance of new red light cameras to proceed through an RFP process (as opposed to being sole sourced to Redflex), Redflex worked with Bills on the language

to be included in the RFP before the City issued it, which inured greatly to the benefit of Redflex.[9] In particular, O'Malley acted as the conduit between Redflex and Bills, passing along language to be included in the RFP from Redflex to Bills and sending drafts of the RFP from Bills to Redflex, all before the RFP was formally released to the public on July 25, 2007.

In the spring of 2007 and continuing through the summer, Bills, through O'Malley, solicited proposed language from Redflex to be included into the DARLEP RFP. For example, on April 4, 2007, O'Malley sent an email to Rosenberg, stating "John is looking for your paper work." "Paper work," according to O'Malley, referred to Redflex's proposed language to be included into the DARLEP RFP. Several hours later, Rosenberg responded to O'Malley, noting "some important points that need to be included" and attaching a one-page document. In the attached document, Rosenberg proposed language to appear in the RFP, broken down into three sections, entitled "Required Experience," "Required Qualifications," and "Required Technical Attributes." O'Malley responded, in an undated email, simply stating, "Package delivered." According to O'Malley, "package delivered" referred to delivering the document from Rosenberg to Bills.

On May 17, 2007, Bills sent an email to Amy Gudgeon, who worked at OEMC and at that time was responsible for overseeing all contracts with OEMC. In the email, entitled "Digital Red Light Enforcement," Bills explained that "we should

9 A representative from DPS will testify that an RFP should not be disclosed to a potential vendor before the issuance of the RFP in order to avoid giving one potential vendor a competitive advantage over another.

structure the RFP with the following precautions in expierence [sic], opaerations [sic], etc. Please see attached. Thank you. JB." In the attached document, Bills offered proposed language in the RFP, broken down into four sections: "Required Experience," "Required Qualifications," "Required Technical Attributes," and "Statistical and Analytical reports." Comparison of the document drafted by Rosenberg, and sent to O'Malley, with the document drafted by Bills, and sent to Gudgeon, reveal that the substance of the two documents is very similar.[10]

The next day, on May 18, 2007, Gudgeon sent an email to Bills, expressing her view that the City should not be meeting with Redflex about the DARLEP RFP: "The more I think about it, I don't think it would be appropriate for us to meet with Redflex on the technical portion of the DARLEP project. I know that they are our current vendor but since this is a new specification, I do not think we need to involve them." Bills agreed, stating: "That's fine. I see your point."

Notwithstanding Bills' concession that involving Redflex in drafting the RFP would not be appropriate, as the DARLEP RFP came together in the summer of 2007, O'Malley obtained drafts of the RFP from Bills and, at Bills' direction, forwarded them to Redflex personnel, including Finley and Rosenberg, for edits and

10 For example, (1) under "Required Experience," both documents required "no less than 20 operational" digital red light camera systems with video and high resolution digital still images for no less than 24 months; (2) under "Required Qualifications," both documents required the vendor to have two years' experience; and (3) under "Required Technical Attributes," both documents detailed how the City required that the vendor's photo enforcement technology includes video and still images, "integrated and then encrypted at the point of violation," and further explained how the City preferred "multi camera system which takes independent license plate images."

comment. For example, on June 4, 2007, O'Malley sent an email to Finley, asking, "Just wanted to know if there is any feedback on the package I sent last week that needs to be forwarded?" According to O'Malley, "package" referred to a draft of the RFP. Finley also forwarded the email to Rosenberg, asking him to weigh in. Rosenberg responded that he had several revisions, which he would communicate to O'Malley. Finley responded, reminding Rosenberg to call O'Malley and "not email your thoughts." Finley noted: "as I send these I am deleting them." In an undated email from O'Malley to Rosenberg, O'Malley stated, "Newly revised RFP on the way, tomorrow noon."

The City issued the DARLEP RFP on or about July 25, 2007. Chan drafted the RFP on behalf of the Department of Procurement Services; however, as was the practice, the City department requesting the services (here, OEMC, where Bills worked at the time) drafted the "Scope of Services" and specifications of the RFP, as the requesting department (OEMC) was more familiar with those aspects than DPS. Section D of Exhibit Three of the RFP (found on page 27), which addressed the installation of equipment, required the following:

> The equipment must be capable of capturing at least three (3) simultaneous images of the violation from multiple cameras and be able to produce detailed still images of the violation, showing the rear of the vehicle and close-up, clearly legible image of the license plate during day, night, and inclement weather conditions, including, but not limited to, cold, heat, rain, ice, snow, and condensation. The DARLEP system must integrate and encrypt still images, video and associated data in the field at the time of the violation.

On the same day that the City issued the RFP, Rosenberg sent an email to the Redflex team, directing their attention to page 27, Section D, noting the City's "technical nuance" and quoting the first few words of the passage beginning, "must be capable of …." Rosenberg celebrated that "[t]his little paragraph will prove to [be] our salvation" and he congratulated O'Malley for his "Great Work!!!" According to Finley, the requirement of three images in the DARLEP RFP worked to Redflex's advantage because their main opponent in the 2007 RFP DARLEP – ATS – lacked this technology. In this way, the RFP, through its express terms, and after months of drafting and comments between Redflex and Bills via O'Malley, virtually guaranteed the contract would be awarded to Redflex.

After the issuance of the RFP but before the contract was awarded, Redflex personnel and Bills continued to work together and to strategize in order to ensure Redflex was awarded the DARLEP RFP. For example, in response to the RFP issued by the City, a vendor may submit questions seeking clarification on certain items in the RFP. On August 6, 2007, Finley sent an email to Rosenberg, and copied other Redflex employees, including O'Malley. Finley advised Rosenberg that when he submitted the "list of questions for the CHI RFP" that he should request a date and time stamp on every exhibit page from DPS. Finley explained why: "I spoke with JB and this is his suggestion (and a smart one) so that if any pages mysteriously disappear from an MBE exhibit (for example) we are not disqualified. All exhibits have to be submitted to be a qualified bidder and we want to make sure no one can accidentally lose a page or 2."

Finley's concerns that forces could be at work to disrupt Redflex's path to the contract award were well-founded. On or about August 15, 2007, Chan, the DPS contract negotiator assigned to DARLEP, was made aware of a complaint that had been received by the City alleging that the terms of the RFP were clearly slanted in Redflex's favor.

Nevertheless, Redflex and Bills, facilitated by O'Malley, arranged to meet during the pendency of the RFP competition, when such meetings were not allowed. For example, on September 14, 2007, O'Malley sent an email to Rosenberg (copying Braden), asking when Rosenberg was coming in to Chicago. Per the email, "[i]f you [Rosenberg] could come in on Sunday, it would help us all prep JB." Rosenberg responded that he would arrive on Monday, and then recommended "Carmichael's for dinner with J, Marty and [Braden]?"

On or about November 15, 2007, in an internal memorandum, the "DARLEP Evaluation Committee" recommended awarding the 2007 DARLEP RFP to Redflex. In the memorandum, which was signed by each member, the committee explained that it "recommends that the Department of Procurement Services enter into negotiations with Redflex Traffic Systems, Inc. as the most highly qualified Respondent for this RFP selection." The committee noted that it considered "[i]nformation from references supplied by the respondent[s] and information from the findings presented by Parsons, an independent consultant, was given to the [committee] to review and consider." The internal memorandum also scored each

remaining vendor.[11] For example, the committee gave both Nestor Traffic Systems, Inc. and American Traffic Solutions, or ATS, a score of 714, while Redflex received a score of 1030. In another internal memorandum dated November 14, 2007, the Executive Director of OEMC advised Doug Yerkes, Acting Chief Procurement Officer, DPS, that OEMC concurred in the DARLEP evaluation committee's recommendation: "I concur with their recommendation to move forward with Redflex Traffic Systems, Inc." and "[w]e look forward to moving this project forward and beginning the contract negotiations with RedFlex in a timely manner."

On November 21, 2007, in an email entitled "Shhhhh…it is a Great Wednesday," Rosenberg advised Redflex executives that the evaluation committee intended to recommend Redflex as the winner of the 2007 DARLEP RFP. At the outset, Rosenberg warned: "THIS IS OFFICIAL, but not PUBLIC, at least until the City announces it in the press, or at least until the Doug Yerkes, Chief Procurement Officer (or Joe Chan) contacts us; PLEASE KEEP DISCREET." Quoting almost verbatim from the DARLEP Evaluation Committee internal memorandum dated November 15, 2007, Rosenberg celebrated the recommendation: "Enter into negotiations with Redflex Traffic Systems, Inc. as the most highly qualified Respondent for this RFP solicitation."[12] Rosenberg next quoted the concurrence memorandum from OEMC: "I concur with their (the "Evaluation Committee") recommendation to move forward with negotiations with Redflex … and beginning

11 Per the memorandum, one vendor – Meade Electric – was disqualified as non-compliant.
12 Rosenberg used the word "solicitation" while the DARLEP evaluation committee memorandum used the word "selection."

contract negotiations with Redflex in a timely manner." Rosenberg also relayed the various scores given to each vendor, noting that Nestor and ATS tied for second with 714 and Redflex received a score of 1030 – "the highest qualified respondent." Rosenberg also explained to his fellow Redflex employees, as the internal memorandum detailed, that Meade had been disqualified as "non-complaint [sic]." Lastly, Rosenberg noted that "our current program manager [referring to Bills] was NOT a voting member of the committee and several of our other City interfaces felt prudent to be recused from this process to ensure impartialness and total propriety."

The DARLEP contract (PO 16396), following the 2007 RFP process, was officially awarded to Redflex on or about February 22, 2008, with the contract term covering from the first of February 2008 until January 31, 2013. Under the contract, the City agreed to purchase, install, maintain and operate up to 440 systems, funded by $52,000,000.

Bills' Attempts to Expand Redflex's Presence in Chicago and Acting as Redflex's Champion

After Redflex won the 2003 RFP process and was awarded contract PO 3220, and after Redflex hired O'Malley as its account manager in Chicago, Bills sought new revenue streams for Redflex in Chicago by expanding its footprint in the City, even beyond red light cameras and into other areas of automated traffic enforcement. On October 11, 2004, Warner sent an email to Redflex management, detailing a recent meeting with Bills on Friday, October 8. According to Warner in the email, "John Bills very much wants Redflex to continue to be the exclusive

provider of camera enforcement equipment in the city and accordingly he is trying to 'encourage us' to develop the type of equipment that would do the job that they want done." Specifically, Bills advised Warner, as recounted in the email, that the City was interested in "speed, volume and stop sign enforcement." Bills anticipated these issues coming up quickly, and therefore, wanted "a Redflex proposal on his desk that he could hand to the decision makers." Warner noted that it may be possible to amend the existing contracts and "***possibly*** eliminate another bid process." Warner summarized: "John's position is a three phase approach: red light, then speed and then stop sign enforcement." According to Finley, these new proposals from Bills – speed and stop sign enforcement – would have qualified as "out-of-scope" under O'Malley's contract, and would have resulted in additional compensation for O'Malley.

Over the following years, Bills continued to push speed enforcement on behalf of Redflex, using O'Malley as a conduit. For example, in March 2008, Braden sent a Chicago Sun-Times article to Rosenberg and O'Malley regarding speed camera enforcement coming to Chicago. O'Malley forwarded the email to Bills, noting that the speed enforcement may be moving through the Illinois legislature with support. Bills responded "great." Likewise in March 2010, O'Malley sent an email to Rosenberg, detailing how "John has a 9am meeting with Mayor on plan to take over enforcement of hwy in exchange for speed. Needs to talk with you." One month later in April 2010, O'Malley sent an email to Rosenberg highlighting Bills' continued efforts for speed enforcement: "JB has talked to Speaker of the house Matigan [sic]

about Speed. Time for you to have private meeting & presentation !!!" A year later in March 2011, Andrejs Bunkse, Redflex's General Counsel, sent an email to Rosenberg and Finley, attaching the proposed Illinois school speed zone bill. Rosenberg forwarded the email the same day to O'Malley, stating, "Lets get some time with JB and discuss further."

Not only did Bills act as Redflex's champion in Chicago working to push through legislation related to speed enforcement, Bills also worked to keep Redflex's competitors at bay. According to Finley, Bills told her how another company – a Redflex competitor – came to Chicago to pitch business with the City. In July 2007, Finley sent an email to Rosenberg and Mark Etzbach, another Redflex employee, detailing a recent conversation with "J Bills." According to Finley in the email, Bills "was forced to listen to someone's pitch a few weeks ago and he was able to 'kill' them in Chicago pretty quickly."

Bonus and Commission Payments from Redflex to O'Malley and O'Malley's Funneling Cash to Bills

O'Malley's contract provided for a $1,500 commission per approach beyond the original 10 approaches in the original 2003 DARLEP contract. In order to receive the commission, O'Malley had to invoice it to Redflex. According to O'Malley, Bills determined the timing of when to submit a commission invoice; Bills would provide O'Malley with the number of installations over a certain period of time, how to calculate the commission, and the total commission amount for that time period. Based on the information provided by Bills, O'Malley prepared an invoice and sent it

to Redflex, and an invoice usually took approximately 30 to 35 days to be paid. Redflex mailed the commission checks to a post office box that O'Malley set up.

According to O'Malley, after he would send an invoice to Redflex, Bills would follow up with O'Malley to find out if/when he received a commission. When O'Malley told Bills he received a commission, he and Bills would set up a meeting. O'Malley knew that Bills expected to be paid in cash at these meetings: on some occasions, Bills would speak in code on the phone, stating words to the effect of, "I need a five-page report" or "I need a six-page report," referring to cash payments of $5,000 and $6,000, respectively.

In order for O'Malley to pay Bills, O'Malley and Bills would often meet for lunch at favorite spots, such as at Manny's or Shaller's.[13] No one else was present for these lunch meetings, besides Bills and O'Malley. O'Malley would give the cash to Bills at lunch. The cash was usually in $100 denominations. According to O'Malley, he paid Bills in $1,000 increments. For example, if O'Malley withdrew thousands of dollars in cash that was not an even thousand dollar figure, O'Malley kept the difference closest to the even thousand dollar figure. In other words, if O'Malley withdrew $4,300, he kept $300 and gave the remaining $4,000 to Bills. O'Malley avoided giving Bills $10,000 or more in cash because he was aware that deposits and withdrawals over $10,000 raised red flags. Before the meetings with Bills, O'Malley would withdraw the cash from the bank in order to give it to Bills.

13 According to O'Malley, Bills and O'Malley also met in parking lots, at Dunkin Donuts, and after self-help meetings that they both attended, at which times O'Malley gave cash to Bills.

Bills and O'Malley also sometimes set up meetings by email. For example, on June 7, 2011, Bills sent an email to O'Malley, asking "how about lunch at shallers tomorrow." In the same email, Bills noted that "8 page speed overview can be discussed at lunch if your schedule permits." According to O'Malley, "8 page speed overview" referred to Bills' request for a cash payment of $8,000. Bank records confirm that O'Malley withdrew $4,200 in cash on June 6, 2011, and $4,300 in cash on June 7, 2011.

From 2006 until 2011, O'Malley withdrew approximately $643,000 in cash, the majority of which withdrawals were made in large, even thousand figures.

As depicted below, based on bank records and emails, on at least 12 occasions when Bills and O'Malley arranged to meet through email, O'Malley made large cash withdrawals either on the same date of the proposed meeting or a few days prior to the proposed meeting:[14]

E-Mail Date	Date of O'Malley Cash Withdrawal	Amount of O'Malley Cash Withdrawal	Planned Meeting Date (According to Emails)
01/08/08	01/09/08	$6,000.00	01/10/08
05/28/08	05/28/08	$4,000.00	05/28/08
12/04/09	12/03/09	$6,700.00	12/04/09
12/14/09	12/14/09	$7,000.00	12/14/09

14 The below chart is, in no way, intended to be an exhaustive list of (1) meetings between Bills and O'Malley, and/or (2) cash withdrawals by O'Malley, during the course of the conspiracy. The chart is a draft and it is only intended to demonstrate the existence of a conspiracy as well as Bills' participation in that conspiracy. If the government introduces such a chart at trial, the government reserves the right to amend the chart.

03/25/10	03/25/10	$7,200.00	03/25/10
07/16/10	07/16/10	$6,200.00	07/19/10
02/17/11	02/16/11	$8,200.00	02/17/11
03/09/11	03/08/11 03/09/11	$4,400.00 $4,400.00	03/09/11
04/14/11	04/15/11	$6,200.00	04/15/11
05/05/11	05/05/11	$6,000.00	05/05/11
06/07/11	06/06/11 06/07/11	$4,200.00 $4,300.00	06/07/11
06/28/11	06/28/11	$6,200.00	06/28/11

As noted above, the bulk of O'Malley's potential compensation was directly tied to the number of approaches or cameras in Chicago. Bills' intention to enrich himself through kickbacks tied to an increase in approaches was clearly expressed to James Johnson. Before Network Electric stopped working for Redflex with respect to the Chicago contract in 2006, Johnson went on a golf trip to Phoenix with Bills. According to Johnson, Rosenberg may have been there too, along with another Redflex employee. After golf one day at the clubhouse and while having drinks, Johnson was talking to Bills about how Network Electric was making little to no money off the Redflex contract. Bills, in a loud voice, stated that Network Electric would start making more money once more cameras were installed. Bills then stated that, with the installation of additional cameras, Redflex would pay Network

Electric more money, and, in turn, Johnson could take care of Bills.

O'Malley's Compensation

As time wore on, Redflex employees raised questions with respect to O'Malley's unusual contract and compensation package, but, according to Finley, Redflex management demurred and refused to address these questions out of fear of upsetting Bills.

In May 2007, for example, another Redflex employee learned of O'Malley's compensation. In an email dated May 24, 2007, an invoice from O'Malley was submitted through the wrong channels at Redflex (i.e., not Finley or Rosenberg) and Bill Braden raised some questions. In an email to Rosenberg and O'Malley only, Finley reprimanded O'Malley, noting that the invoice "was sent through accounting and not me as [Finley] thought [O'Malley] and [she] agreed . . . ." Finley opined that she was not sure how "to do damage control considering the $52k invoice."

A few months later, the topic of O'Malley's compensation came up again, this time raised by another Redflex employee. On October 16, 2007, Justin Iske, Redflex's Comptroller, sent an email to Finley and Rosenberg entitled "Marty O'Malley." In the email, Iske acknowledged that Redflex was in the middle of an RFP in Chicago and that he did not "want to rock the boat there," but explained that, in the near future, Redflex should either re-negotiate O'Malley's contract or clarify it. Iske went on detail the lucrative nature of O'Malley's contract. The next day, Finley responded: "We all agree and understand; [Rosenberg] and I have discussed and it is on our screen. You are right, we are leaving it 'parked' for now." According to Finley, she

was not going to revisit O'Malley's contract because she realized that Bills had a financial interest in O'Malley's compensation.

Indeed, Finley's knowledge of Bills' interest in O'Malley's compensation was on display in an email exchange in early June 2007. On June 4, 2007, in the middle of the RFP process for the second DARLEP contract, Finley sent an email to Rosenberg entitled "M O Bonus." In the body of the email, Finley asked Rosenberg whether he "talk[ed] to JB about the bonus yet?" Finley explained that she was holding O'Malley's invoice but needed to submit it to accounting. Rosenberg responded, indicating that he spoke with O'Malley and explained a change in the timing of invoices going forward. Rosenberg also noted that he would confirm the amount that needs to be paid out. Four days later, Finley followed up, asking Rosenberg if he had "final pay out on this?" Finley further explained why she was following up: "I do not want to anger anyone in light of next week's meeting." According to Finley, she did not want to upset Bills in the middle of the RFP process, and "next week's meeting" referred to a meeting among Bills, Redflex employees, and Redflex lobbyists.

Bills' Use of Cash and Bills' Laundering of Cash Through Colleagues and Friends

During the life of the conspiracy, Bills made large cash expenditures and used cash in large amounts in his daily life, including (1) cash rental payments for an apartment for himself in the amount of approximately $33,000 (from April 2008 until April 2012); (2) the cash purchase of a Mercedes in the amount of $12,500 (on or about June 22, 2009); and (3) a cash payment for Bills' retirement party at the

Westin Hotel on Michigan Avenue in the amount of $3,000 (on June 8, 2011). Additionally, Bills' large cash expenditures were often preceded by withdrawals of cash by O'Malley. As to Bills' purchase of the Mercedes, bank records show that O'Malley withdrew cash on June 19, 2009 in the amount of $7,000, and June 22, 2009 in the amount of $3,500; Bills bought the Mercedes in cash on or about June 22, 2009. Likewise, as to Bills' retirement party, bank records show that O'Malley withdrew $4,300 in cash on June 7, 2011; Bills paid for the party in cash on June 8, 2011.

In addition, large cash withdrawals made by O'Malley also coincided with trips taken by Bills. In particular, as the below chart demonstrates, on at least nine occasions, O'Malley withdrew large sums of cash within eight days of trips taken by Bills. As to one trip taken by Bills, credit and debit card records show that Bills made one limited charge, and as to the other trips, there was no debit or credit card activity.[15]

Date of O'Malley Cash Withdrawal	Amount of O'Malley Cash Withdrawal	Date of Bills' Trip and Destination
08/07/08	$6,000.00	08/09/08 - 08/11/08 (Phoenix) 08/14/08 - 08/18/08 (Phoenix)
11/17/08	$5,000.00	11/21/08 - 11/24/08

15 The below chart is, in no way, intended to be an exhaustive list of (1) cash withdrawals by O'Malley, and/or (2) trips taken by Bills, during the course of the conspiracy. Rather, the chart is a draft and represents a sampling of the above two categories. The chart is only intended to demonstrate the existence of a conspiracy as well as Bills' participation in that conspiracy. If the government introduces such a chart at trial, the government reserves the right to amend the chart.

		(Phoenix)
01/16/09	$5,000.00	01/19/09 - 01/25/09 (Phoenix)
02/19/09	$6,000.00	02/27/09 - 03/02/09 (Phoenix)
05/06/09	$7,000.00	05/14/09 - 05/17/09 (Phoenix)
08/18/09	$7,200.00	08/20/09 - 08/23/09 (Phoenix)
06/28/11	$6,200.00	07/01/11 - 07/11/11 (Phoenix)
12/02/11	$5,100.00	12/07/11 - 12/11/11 (Phoenix)

Bills also used cash to repay large loans to a friend. For example, Bills approached Individual MN on numerous occasions and requested loans. While, according to Individual MN, Bills requested cash, Individual MN agreed to write checks to Bills on several occasions, in the amounts of $10,000 (May 4, 2007), $3,000 (July 29, 2009), and $3,080 (May 11, 2011). Bills repaid Individual MN with a combination of cash and sports memorabilia. In particular, with respect to the last check, Bills requested that Individual MN make the check out to Bills' children's school. Bills repaid Individual MN in cash, perhaps that same day, as evidenced by a deposit slip, in which Individual MN deposited $3,000 in cash into his bank account on May 11, 2011.

In addition to Bills' use of cash and large cash expenditures, Bills also laundered the large cash payments he received from O'Malley by asking colleagues and friends to incur credit card charges on their respective credit cards for large-ticket personal expenses, such as airline tickets, and then at the same time of

the request or shortly thereafter, Bills would pay them in cash for the same amount of the charge. In other words, Bills would ask a friend/colleague to incur credit card charges on that person's card for a personal expense for Bills, and Bills would pay that person in cash at or very shortly after the time of the charge.

For example, Bills asked his administrative assistant at CDOT to charge airline tickets to her personal credit card on four separate occasions, including (1) over $500 for airline tickets on May 4, 2010 and May 10, 2010; (2) approximately $560 for a resort in Arizona related to baseball spring training on November 9, 2010; and (3) approximately $2,300 for airline tickets to Orlando and other expenses at Disney World for Bills' family in February 2011. Just as Bills' trips often aligned with cash withdrawals by O'Malley, Bills' requests to incur large credit card charges on other persons' accounts likewise often aligned with O'Malley's cash withdrawals. The above charges to the credit card account of Bills' administrative assistant were each preceded by large cash withdrawals by O'Malley, specifically, (1) O'Malley withdrew $7,400 on May 3, 2010 (credit card charges incurred on May 4, 2010 and May 10, 2010); (2) O'Malley withdrew $5,200 on November 5, 2010 (credit cards charged incurred on November 9, 2010); and (3) O'Malley withdrew $8,200 on February 6, 2011 (credit card charges incurred on February 5, 2011).

Bills' Use of O'Malley Checks for Personal Expenses to Third Parties

According to O'Malley, Bills asked him to write checks to various persons for particular amounts, which are corroborated by the checks themselves and the recipients of the checks.

For example, in February 2008, Bills borrowed $10,000 from a friend, Individual MN. Several months later, Bills repaid part of the loan with a check written on an account for "M.G. O'Malley and Associates." The memo line refers to "painting of equipment." Individual MN, who owned a lighting store and was a friend of Bills, did not know O'Malley and did not engage in any business with O'Malley, let alone the "painting of equipment."

On or about August 7, 2008, Bills paid a catering bill for various parties at his home with a check from O'Malley's account. Specifically, Bills hired Individual AR to cater family functions at Bills' home, such as birthday parties and graduations.[16] As payment for two catering events, Bills gave Individual AR a check written on the account of "M.G. O'Malley & Associates." According to Individual AR, he met Bills in the parking lot of Pop's hamburger joint near 127th Street and Hamlin. Bills gave Individual AR the check there in the amount of $2,400. Individual AR did not know "M.G. O'Malley" and has never done any work for that company. Additionally, because the check was written for more than what Bills owed Individual AR, Bills asked that Individual AR give him the difference in cash, which Individual AR did either there at Pop's or on another occasion. According to Individual AR, the difference was approximately $700-$800, which Bills claimed he needed for a trip to Arizona with his girlfriend.[17]

16 Individual AR estimated that he catered approximately five events for Bills.

17 Airline records show that the trip which Bills referred to took place the day after the meeting with Individual AR, and bank records show that O'Malley withdrew cash on the same day as Individual AR's meeting with Bills. O'Malley will testify that the majority of the

Bills' Request for and Receipt of Other Financial Benefits

From early 2003 and continuing until 2011, usually at Bills' request, Redflex paid for numerous items for Bills, including car rentals, hotel rooms, meals, golf games, computers, and other personal items. With the approval of first Higgins and then Finley once she rose to the position of CEO, these items were expensed to Redflex. Most requests were made directly by Bills to Rosenberg, but occasionally, the requests came through O'Malley for Bills' benefit. The government has connected these expenses to Bills either through the Redflex expense sheets themselves, on which Rosenberg sometimes noted the expense was for Bills by name or initial, or through airline records, or both.

For example, at the beginning of the conspiracy and as detailed above, Bills asked Rosenberg to book a hotel room for him and some friends in Los Angeles in January 2003, while they were in route to the Super Bowl in San Diego. According to expense records, Rosenberg expensed $588 for the "Chicago team" at the Sofitel in Los Angeles for a stay on or about January 13, 2003. Other hotel expenses for Bills included the Marriott Hermosa Beach House (California) on or about March 18, 2007 in the amount of approximately $866, and the Biltmore (Arizona) in or around March 2010 in the amount of $910. Expense records also show that Redflex treated Bills at high-end restaurants in Chicago, including Carmichael's, Bertucci's, Gibson's, Chicago Chop House, and Trump Tower, to name a few, as well as meals outside Chicago, including Maestro's (Scottsdale, Arizona) on at least two occasions.

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cash withdrawal that day went to Bills.

Redflex also paid for Bills to play golf, including Trump National Golf Club (Los Angeles, California), Cog Hill (Lemont, Illinois), Odyssey Country Club (Tinley Park, Illinois), Wyndham Golf Course, Troon North Golf Club (Scottsdale, Arizona), and Gleneagles Country Club (Lemont, Illinois).

In addition to trips, meals and rounds of golf, Redflex often paid for Bills' rental cars when he traveled for personal pleasure. Redflex expense records show that Rosenberg paid for rental cars for Bills on approximately 12 occasions, usually for cars at the Phoenix airport. On several occasions, Rosenberg went so far as to ask another Redflex employee to drive to the Phoenix airport, rent a car, and park the rental car in the airport terminal parking lot, so that Bills did not have to take the 15-minute shuttle to the off-site rental location. In particular, Redflex employee Darren Kolack, at the request of Rosenberg, rented a car on four occasions, and parked the car at the terminal parking lot and left the keys in the car. Kolack then expensed the cars back to Redflex in the amounts of $610.89 (February 27, 2009 through March 2, 2009), $1,272.26 (March 14, 2009 through March 22, 2009), $468.07 (August 19, 2009 through August 23, 2009), and $389.50 (October 16, 2009 through October 19, 2009). The dates on which Kolack rented a car at Rosenberg's request coincided with Bills' trips to Phoenix; according to Southwest Airlines records, Bills flew from Midway to Phoenix on February 27, 2009, March 14, 2009, August 20, 2009, and October 16, 2009. Another Redflex employee – Ed Tiedje – did the same at Rosenberg's request, renting a "Premium SUV" and leaving it at the terminal parking lot on August 14, 2008, to be returned on August 18, 2008. Tiedje

expensed the car rental to Redflex in the amount of $881. Southwest Airlines records show that Bills and his family flew from Midway to Phoenix on August 14, 2008.

On one occasion, O'Malley booked and paid for a trip for Bills and Bills' father from March 17, 2005 through March 21, 2005, in the amount of $833.80. O'Malley booked the trip on March 4, and expensed the trip to Redflex on March 14, attaching the confirmation which detailed the passengers as Bills and Bills' father. Finley approved the expense. Another Redflex employee caught the inappropriate expense and reported it to Redflex management. In order to cover their tracks, Finley sent an email to O'Malley (and other Redflex employees) on March 23, 2005. In the email, Finley "memorialize[d]" their conversation, explaining that O'Malley intended to reserve the tickets for Bills as a "courtesy" and that "prior to submitting the expense John provided [O'Malley] with a letter from him stating that this was a courtesy with the understanding that he would reimburse [O'Malley] (Redflex) for the expense." Bills drafted a memorandum to O'Malley, which, according to O'Malley, Bills backdated to March 9. In the memorandum, written on City of Chicago letterhead, Bills claimed to attach a check for reimbursement and explained the story in the same way: "Please understand I realize you were merely reserving that we [Bills and Bills' father] would be on the same flights, but in no way was there any intention that you or your employer was paying my expense. I trust that this not be taken in any wrongful way, however I feel ethically responsible as a representative of the City of Chicago." O'Malley reimbursed Redflex in the amount of $883.80 in a check dated March 24. According to O'Malley, Bills never wrote a check to him as

reimbursement.

In summary, Rosenberg and others at Redflex expensed thousands of dollars of personal items for Bills in exchange for Bills using his position with the City of Chicago to ensure that Redflex kept and expanded its 2003 DARLEP contract, and obtained additional contracts, including the 2008 DARLEP contract.

O'Malley's Purchase of Arizona Condo for Bills

In the early spring of 2008, Bills and his then-wife went to Arizona to look for condominiums to purchase. By happenstance, Bills stumbled upon a complex called Val Vista Lakes in Gilbert, Arizona. Bills met with the owner, who showed the condo to Bills and his then-wife. During the tour of the condo, Bills explained that he was looking for a condo for his father-in-law, and Bills said that his father-in-law's name was Marty O'Malley.[18] At the end of the tour, Bills stated that he wanted to purchase the condo – 1633 East Lakeside Drive, Unit # 113. Either that day or shortly thereafter, Bills gave a check to the owner written on the bank account of "MG O'Malley and Associates" in the amount of $2,000, which represented earnest money for the owner to hold the property. The date of the check is March 10, 2008.

On May 12, 2008, O'Malley closed on the purchase of the condo. O'Malley put down approximately $76,000 at closing, and obtained a mortgage in the amount of approximately $102,000. On May 30, 2008, O'Malley sent a fax to the Val Vista Clubhouse, relinquishing his unit clubhouse membership to Bills. Later that

18 While meeting with Bills, the condo owner took down Bills' name and contact information, among other notes, on a sheet of paper, and then transferred those notes into a notebook. On the same page of the notebook, the owner also wrote: "Marty O'Malley."

summer, O'Malley also requested visitor privileges for Bills' family.

According to O'Malley, sometime in 2008, when Bills came back from a trip to Arizona, Bills told O'Malley that he found a place in Arizona that he liked but that he could not afford it. O'Malley agreed to buy the condo with the Redflex commission money he was receiving, and they intended to split the use of the condo. O'Malley gave Bills a check for the earnest money payment. After O'Malley purchased the condo, O'Malley's wife fell ill. O'Malley stayed at the condo only three times: once with Bills when he purchased furniture for the condo; once with his wife; and once to prepare the condo for sale in 2013. In contract, Bills used the condo very often. From 2008, when the condo was purchased, through 2012, Bills flew to Phoenix numerous times. On one occasion, Bills stayed ta the condo with his sister and father, telling them that the condo belonged to him. Bills also told several acquaintances that he had a condo in Arizona. Indeed, Bills shipped his Mercedes to the condo's address.

According to O'Malley, in the fall of 2012, after articles appeared in the Chicago Tribune about Redflex and Bills, O'Malley decided to sell the condo. Bills agreed. Bills removed all his personal items from the condo and advised O'Malley that he should put pictures of his family in the condo to make it look like the condo was used by O'Malley and not by Bills, just in case investigators visited inside the condo. In order to conceal Bills' use of the Arizona condo, O'Malley purchased picture frames and put pictures of his family in the condo in order to trick investigators into thinking that the condo was for O'Malley, and not Bills.

Bills' Retirement and New Job with Redflex-Related Company

On June 30, 2011, Bills retired from his position with the Chicago Department of Transportation. Prior to Bills' retirement, Bills made it clear to Finley, among others, that he wanted a job with Redflex. In or around May 2011, Finley and other Redflex employees discussed the possibility of hiring Bills, but ultimately decided against it in light of a Chicago ordinance that prohibited the employment of former city employees by current city contractors until one year after the employee retired. Redflex's General Counsel, Andy Bunkse, along with Finley and Rosenberg, arranged for Bills to get a job with the Traffic Safety Coalition, a non-profit company associated with Resolute Consulting, a political consulting firm associated with Redflex and run by Greg Goldner and Michael Kasper. While Resolute ran the Traffic Safety Coalition, Redflex funded it. In an email dated June 21, 2011, from Bunkse to Finley and Rosenberg, Bunkse explained how he introduced "John Bills" to "Kasper and Resolute" and "[t]hey both will be able to give him a job." Bunkse further noted that "Bills is happy." On August 30, 2011, Bunkse sent an email to Finley, Rosenberg, and James Saunders, Vice President of Account Management. In the email. Bunkse wrote: "Resolute hired John Bills today. I think he's happy."

Once Bills was hired, according to Finley, Redflex increased its monthly contribution to Resolute in order to help pay Bills' salary.

V. SUMMARY OF COCONSPIRATOR STATEMENTS

As demonstrated above, the statements between coconspirators made in furtherance of the conspiracy and the scheme to defraud that the government

intends to offer into evidence at trial fall within the following categories:[19]

- Conversations, as recounted by Rosenberg and Finley, related to the understanding and agreement reached between Bills and Redflex;
- Conversations, as recounted Rosenberg, O'Malley and Johnson, related to the payment of cash kickbacks to Bills;
- Conversations and emails, as recounted by Rosenberg, O'Malley and Finley, related to Redflex's and Bills' efforts to obtain and keep the DARLEP contracts;
- Conversations and emails, as recounted by Rosenberg, O'Malley and Finley, related to Redflex's and Bills' efforts to expand Redflex's business with the City;
- Conversations and emails, as recounted by Rosenberg, Finley, and O'Malley, related to O'Malley's compensation;
- Emails, as recounted by Rosenberg and Finley, related to Redflex's negotiations of the 2003 and 2007 DARLEP contracts;
- Conversations and emails, as recounted by Rosenberg, Finley, and other Redflex employees, related to the provision of benefits to Bills, including a job after his retirement from the City; and
- Emails, as recounted by Rosenberg and Finley, related to the concealment of the conspiracy and scheme to defraud.

19 These categories are not intended to be an exhaustive list. As outlined above, rather, the government proffers a representative sample of the types of statements and basis for their admissibility.

Many of these statements proffered in the preceding section constitute co-conspirator statements under Rule 801(d)(2)(E) because they are statements of coconspirators in furtherance of the conspiracy.

VI. CONCLUSION

Based on the foregoing, a conspiracy existed, BILLS participated in that conspiracy, and, as is evident from the above description of example statements, these statements made by coconspirators were made in furtherance of the conspiracy. Under Seventh Circuit precedent, all of these statements are properly admissible as coconspirator statements under Federal Rule of Evidence 801(d)(2)(E).

Accordingly, the government respectfully requests that this Court find, based upon this proffer, that the kinds of statements described herein are conditionally admissible as co-conspirator statements under Federal Rule of Evidence 801(d)(2)(e) and Seventh Circuit precedent.

Respectfully submitted,

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