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10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**
 12 **SAN FRANCISCO DIVISION**
 13

14 UNITED STATES OF AMERICA,
 15
 Plaintiff,

17 vs.

18 BARRY LAMAR BONDS,
 19 Defendant.

) Case No. CR 07 0732 SI
)
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT OF**
) **MOTION TO CONFORM**
) **GOVERNMENT’S EVIDENCE TO THIS**
) **COURT’S FEBRUARY 19, 2009 ORDER**
)
) Date: January 21, 2010
) Time: TBA
) Judge: The Honorable Susan Illston

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**Memorandum in Support of
 Motion to Conform Evidence**

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20
21 **INTRODUCTION**

22 On December 4, 2008, a grand jury for the Northern District of California
23 returned a Second Superseding Indictment charging Barry Lamar Bonds with ten counts of
24 making false declarations before the grand jury (18 U.S.C. § 1623(a)), and one count of
25 obstruction of justice (18 U.S.C. § 1503). Trial was set to begin on March 2, 2009.

26 Before trial, Bonds moved *in limine* to exclude evidence. On February 19, 2009, this
27 Court issued its Order excluding a significant portion of the government's evidence, primarily on
28

1 hearsay grounds. The government appealed the Order, delaying the resolution of this case for
2 over a year. In order to pursue the appeal, the government was required to certify that the
3 excluded evidence was substantial proof of a material fact. *See* 18 U.S.C. § 3731; *United States*
4 *v. W.R. Grace*, 526 F.3d 499, 505-06 (9th Cir. 2008) (en banc). In other words, in order to
5 pursue the appeal, the government was required to certify that this Court’s Order would have a
6 substantial impact on its case. On the merits, the Ninth Circuit rejected the government’s
7 argument and upheld this Court’s ruling.

8 Although it lost the appeal, the government apparently plans to proceed as if it had won.
9 The government’s recent filings make clear that it plans to introduce all of the same evidence that
10 was excluded by this Court’s Order. The government does not appear to recognize that the Order
11 — which the government itself certified would have a substantial impact on the case — does in
12 fact require the government to alter its prosecution in substantial ways. The government may not
13 simply pretend that this Court’s prior exclusionary ruling never happened.

14 Mr. Bonds therefore requests that the government be required to conform its evidence to
15 the requirements of the February 19 Order. Achieving such conformity will require several
16 actions. *First*, the excluded exhibits should not be admitted for any purpose, including the
17 government’s purported purpose of explaining its investigation and proving materiality. *Second*,
18 additional exhibits are subject to the same objections that the Court sustained in the February 19
19 Order and should be excluded for the same reasons. *Third*, several government witnesses should
20 be excluded, and those witnesses who do testify should be instructed not to refer to the excluded
21 evidence. *Fourth*, the grand jury transcript should be redacted to remove references to the
22 excluded evidence. *Fifth*, the indictment should be redacted to remove references to the
23 excluded evidence. Each of these is necessary to give effect to this Court’s February 19 Order.

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1 **STATEMENT OF THE CASE**

2 **A. The Grand Jury Testimony And the Indictment**

3 Defendant Bonds was called before a San Francisco grand jury to testify on December 4,
4 2003. Prior to beginning their questioning, prosecutors made statements to Mr. Bonds concerning
5 the purpose of the grand jury’s investigation, among them: “You [Mr. Bonds] understand that
6 this is an ongoing investigation by the grand jury into alleged illegal activities undertaken by
7 Victor Conte and Greg Anderson?” (GJT, at 3-4) After Mr. Bonds replied that he understood
8 “those two people were involved” (*id.*, at 4), the prosecutor continued that “at least some of the
9 charges being looked at as to these individuals' activities include violations of Title 21 United
10 States Code, Section 846, which is conspiracy to possess or distribute illegal substances. And
11 also 18 U.S.C., Section 1956, the money laundering statute.” (*Id.*) When asked whether he
12 understood that “those are the types of charges that this grand jury is looking at in connection
13 with Mr. Conte and Mr. Anderson,” Mr. Bonds replied: “This is the first time I've heard exactly
14 how you're stating it. I've just seen what was in the paper.” (*Id.*)

15 The second superseding indictment charges Mr. Bonds with making ten false statements
16 to the grand jury (Counts One to Ten), and one count of obstruction based on the ten alleged false
17 statements. Nine counts allege that Mr. Bonds gave a false answer to a question asking whether
18 Mr. Anderson (or “Greg”) gave Mr. Bonds an illegal substance. (Counts One, Two, and Four to
19 Ten) For example, Count One alleges that Mr. Bonds falsely answered the question of whether
20 he ever took any steroids that Mr. Anderson gave him, while Count Two alleges that Mr. Bonds
21 falsely answered the question of whether he obtained testosterone from Mr. Anderson. Count
22 Four alleged a false answer to the question of whether Mr. Anderson ever injected Mr. Bonds,
23 and the Count Five question concerns whether Mr. Anderson ever gave human growth hormone
24 to Mr. Bonds. The only count which does not include Mr. Anderson in the alleged false statement
25 by Mr. Bonds is Count Three, which alleges that Mr. Bonds falsely denied taking steroids in
26 January of 2001.

27 //

1 **B. The Government’s Previous Arguments On Relevance, Materiality,**
2 **and “Explaining the Investigation”**

3 In its original opposition to Mr. Bonds’s motion in limine, the government argued that, in
4 addition to being admissible under various hearsay exceptions, the disputed evidence was
5 admissible for the nonhearsay purpose of showing materiality. It did not make any specific
6 showing about how the disputed evidence actually proved that point — it did not describe the
7 chain of inferences in any detail. Rather, it argued in general terms that the evidence would show
8 “context” and the background of the investigation.

9 The government argued, for example, that the disputed drug tests would “explain the
10 course of the Balco investigation,” that they would help to justify “the government’s
11 investigative conduct and decisions in requiring Bonds to testify,” and that they would show “the
12 context in which the false statements were made.” (Govt. Jan. 29, 2009 Opposition at 17-18.) It
13 argued, in conclusory fashion, that the calendars would show that Bonds’s testimony was capable
14 of influencing grand jurors. (*Id.* at 22.) It argued that log sheets would demonstrate the
15 “evidentiary context in which Bonds made the false statements.” (Govt. Jan. 29, 2009
16 Opposition at 33.)

17 **C. This Court’s Previous Ruling**

18 In its February 19 Order, this Court did not conclusively rule on the government’s
19 materiality arguments. It did warn, however, that the government would not be allowed to admit
20 otherwise inadmissible hearsay simply by reciting “materiality” as a talisman.

21 As guidance for trial, the Court notes that the government cannot
22 use the broad definition of materiality in [*United States v. Gaudin*,
23 515 U.S. 506 (1995)] to bootstrap otherwise inadmissible evidence
24 into this case. Should the government seek to admit the evidence
excluded in this order to prove materiality, the Court will expect
some showing that the particular aspect of materiality cannot be
easily proven through another means.

25 (Feb. 19, 2009 Order at 20-21.)

26 **D. The Government’s Proposed Witness and Exhibit Lists**

27 On October 15, 2010, the government tendered its proposed witness list and exhibit list
28 for Mr. Bonds’s upcoming trial, scheduled to begin on March 21, 2011 (See Exhibit A to this

1 motion). There is no notable difference between those lists and the witness and exhibit lists the
2 government submitted to the Court prior to its February 19th Order. (See Exhibit B to this
3 motion). Thus the government seeks to present precisely the same witnesses and evidence that it
4 intended to present before the Court’s order and the government’s unsuccessful interlocutory
5 appeal. Nor does the government’s recent submission contain any argument or explanation as to
6 why the evidence the Court has ordered excluded as inadmissible hearsay may nonetheless be
7 introduced for a non-hearsay purpose.

8 **ARGUMENT**

9 **I. THIS COURT’S EXCLUSIONARY ORDER MUST BE HONORED**

10 This Court’s provisional ruling was indisputably correct as a matter of law. Courts have
11 long recognized that a prosecutor “cannot justify the receipt of prejudicial, inadmissible evidence
12 simply by calling it ‘background’ or ‘context’ evidence.” *United States v. Hinson*, 585 F.3d
13 1328, 1336 (10th Cir. 2010) (quoting *United States v. Benitez-Avila*, 570 F.3d 364, 369 (1st Cir.
14 2009)). Indeed, as Judge Easterbrook put it: “Allowing agents to narrate the course of their
15 investigations, and thus spread before juries damning information that is not subject to
16 cross-examination, would go far toward abrogating the defendant's rights under the sixth
17 amendment and the hearsay rule.” *United States v. Silva*, 380 F.3d 1018, 1020 (7th Cir. 2004).

18 Such evidence, even if it is relevant for some nonhearsay purpose, is unfairly prejudicial
19 because it presents an overwhelming risk that the jury will use the evidence for a forbidden
20 purpose — namely, that it will use the evidence for the truth of the matter asserted. Limiting
21 instructions in this context are insufficient, and the evidence must therefore be excluded under
22 Rule 802 and Rule 403. *United States v. Evans*, 216 F.3d 80, 86-87 (D.C. Cir. 2000); *United*
23 *States v. Reyes*, 18 F.3d 65, 70-72 (2d Cir. 1994).

24 **II. THE GOVERNMENT HAS FAILED TO CARRY ITS BURDEN**

25 The government’s proffer here must fail for the simple reason that it has not complied
26 with this Court’s prior Order. That Order stated explicitly that before the government could
27 admit any of the disputed evidence for a nonhearsay purpose, it would be required to make a
28

1 showing that such evidence was necessary. The government has made no such showing. In its
2 recent filings, it simply asserted in conclusory fashion that the excluded evidence is admissible to
3 prove materiality. (Govt. October 15, 2010 Trial Memorandum at 5)

4 The government has not even suggested how the excluded evidence, which it must
5 concede cannot be considered for the truth of what it asserts, is nonetheless relevant to show
6 materiality. For example, the government has sought to offer the result of a test of a urine sample
7 analyzed by the Quest laboratory and blood samples tested by the LabOne and Specialty
8 Laboratories. This Court excluded the test results on the ground that the government had failed
9 to offer an adequate evidentiary foundation for their admission — that is, the government had no
10 admissible proof that the test results were attributable to Mr. Bonds. The Ninth Circuit affirmed
11 that ruling. Because as a matter of law jurors could not find that the test results concerned Mr.
12 Bonds, they also could not find that those results have any probative value in proving his guilt or
13 innocence.

14 Furthermore, even if the excluded evidence had some relevance to the issue of
15 materiality, the government cannot possibly demonstrate, as required by the Court’s order, that
16 materiality cannot be established through other means, most notably the portions of the grand
17 jury transcript that do not contain or refer to evidence that the Court has ordered excluded. In
18 this case, Mr. Bonds was informed by prosecutors at the commencement of his testimony that the
19 grand jury was investigating whether Greg Anderson and Victor Conte were engaged in
20 distributing illegal substances. The questions that Mr. Bonds is accused of falsely answering
21 concern whether Mr. Anderson ever distributed to Mr. Bonds steroids, testosterone, and human
22 growth hormone. The government cannot reasonably argue that the excluded evidence adds
23 anything of probative value on the issue of materiality to those portions of the grand jury
24 transcript that remain admissible.

25 Still less has the government demonstrated that any nonhearsay relevance of the
26 excluded evidence outweighs the certain extraordinarily high risk that the jury would consider
27 the evidence for the forbidden hearsay purpose. Imagine instructing the jury:

1 “Ladies and gentlemen, you are about to hear evidence of positive
2 drug tests that the government believes are from the defendant.
3 You should consider this evidence only for the purpose of context
4 and explaining the government’s investigation. You should not in
5 any way consider whether the defendant did, in fact, test positive
6 for drugs.”

7 It is simply inconceivable that any juror could honestly follow such a limiting instruction.
8 Indeed, the very absurdity of such a limiting instruction demonstrates that the government’s
9 purported nonhearsay purpose is nothing more than a ruse designed to put inadmissible hearsay
10 before the jury.

11 This Court should not allow such a subterfuge to succeed.

12 **III. THE EVIDENCE MUST BE CONFORMED TO THE COURT’S ORDER**

13 For the foregoing reasons, the following materials should be excluded under this Court’s
14 February 19 Order, as well as under Rules 402, 403, and 802.

15 **A. Exhibits**

16 **1. Exhibits Covered by the Court’s Order**

17 The following exhibits are covered, either directly or implicitly, by this Court’s February
18 19 Order:

19 Ex. #	20 Description	21 Objection
22 1	Balco Log Sheets	23 Excluded by the February 19 Order
24 3	BLB Quest Documents	25 Excluded by the February 19 Order
26 6	Specialty Lab & Fedex Documents	27 Excluded by the February 19 Order
28 7	B, B Specialty Lab Results	Excluded by the February 19 Order
13 13	LabOne Tests (1) & BLB Calendars	Excluded by the February 19 Order
17 17	R. Estalella Documents	Calendars excluded by the February 19 Order; Other documents irrelevant; Other players should be excluded on relevance grounds

1	18	L. Izzo Documents	Calendars excluded by the February 19
2			Order; other documents irrelevant; other
3			players should be excluded on relevance
4			grounds
5	19	Jason Giambi Documents	Calendars excluded by the February 19
6			Order of the February 19 Order; Other
7			documents irrelevant; Other players should
8			be excluded on relevance grounds
9	20	Jeremy Giambi Documents	Calendars excluded by the February 19
10			Order of the February 19 Order; Other
11			documents irrelevant; Other players should
12			be excluded on relevance grounds
13	29	Handwritten Note	Excluded by the February 19 Order
14	32	BLB Handwritten Notes	Excluded by the February 19 Order
15	33	Calendars, BLB Tests, Quest, &	BB/Bonds tests and calendars excluded by
16		LabOne in folder labeled "B"	the February 19 Order; Evidence pertaining
17			to other athletes is irrelevant
18	34	A. Rios File	Calendars excluded by the February 19
19			Order Irrelevant; Other players should be
20			excluded on relevance grounds
21	37	R. Velarde File	Calendars excluded by the February 19
22			Order, Irrelevant; Other players should be
23			excluded on relevance grounds
24	38	"Greg Anderson 25" File - LabOne &	Excluded by the February 19 Order
25		Quest Docs w/ BLB DOB	

39	B. Estalella File	Calendars excluded by the February 19 Order; Irrelevant; Other players should be excluded on relevance grounds; Lack of foundation
40	B. Santiago File	Calendars excluded by the February 19 Order; Irrelevant; Other players should be excluded on relevance grounds; Lack of foundation
45	Quest Documents 100121	Excluded by the February 19 Order
46	Quest Documents 100145	Excluded by the February 19 Order
47	Quest Documents 100155	Excluded by the February 19 Order
48	Quest Documents 100321	Excluded by the February 19 Order
49	Quest Documents 100404	Excluded by the February 19 Order
50	Quest Documents 100424	Excluded by the February 19 Order
51	Quest Documents 100545	Excluded by the February 19 Order
52	Quest Documents 100552	Excluded by the February 19 Order
53	Quest Documents 100572	Excluded by the February 19 Order
54	Quest Documents 100573	Excluded by the February 19 Order
59	LabOne Blood Tests Barry Bonds	Excluded by the February 19 Order
60	Specialty Lab Tests	Excluded by the February 19 Order
62	Photo Log Sheets - Balco (Photos of documents at Balco, including the handwritten logs at Exhibit 1)	Photograph of exhibit excluded under the February 19 Order
65	Photos-drawer w/Barry notes & drugs- Anderson Residence (Photos of Exhibits 29 and 31)	Photograph of exhibit excluded under the February 19 Order
70	Photo - Brown Portfolio-Anderson Vehicle	Photograph of exhibit excluded by the February 19 Order

1 To summarize:

- 2 • Exhibits 1, 3, 6, 7, 13, 29, 32, 33, 34, 37 and 38 consist of alleged internal BALCO
3 documents or documents that were allegedly seized from Greg Anderson that were
4 excluded by the February 19 Order. To the extent these exhibits include test results or
5 other documents allegedly referring to other athletes, they lack foundation, are irrelevant
6 and prejudicial, and should be excluded under Rules 402 and 403.
- 7 • Exhibits 45 through 54, 59 and 60 consist of alleged urine or blood test results obtained
8 from laboratories that were also excluded by the February 19 Order. Exhibits 17, 18, 19,
9 20, 39 and 40 consist of documents allegedly seized from Greg Anderson that pertain to
10 other athletes. To the extent these documents include calendars, they were excluded by
11 the February 19 Order. To the extent these exhibits include other documents and notes
12 allegedly pertaining to other athletes, they lack foundation, are irrelevant and prejudicial,
13 and should be excluded under Rules 402 and 403.
- 14 • Exhibits 62, 65 and 70 include photographs of documents that are actually Exhibits that
15 were excluded by the February 19 Order. The government should not be permitted to
16 present documentary evidence that the Court has excluded through photographs of the
17 same.

18 **2. Exhibits Covered by the Logic of the Court's Order**

19 The government's Exhibit List includes numerous other items that were not expressly
20 subject to the previous motion in limine and therefore not subject to the Court's February 19
21 Order. However, the Court's analysis applies with equal force to these items. For example, in
22 the February 19 Order, the Court determined that calendars allegedly referring to athletes other
23 than Mr. Bonds should be excluded because they lacked foundation and were irrelevant.
24 February 19 Order at 13-14. We now move to exclude additional items on the government's
25 Exhibit List that are subject to the same objections previously sustained by the Court.

26

Ex. #	Description	Objection
27 2	2 Balco Letters	Excluded by the February 19 Order

28

1	4	Balco Letter, 7/3/03 (2 p.) (Transmittal letter to Quest for Larry Izzo)	Irrelevant; Other players should be excluded on relevance grounds
2			
3			
4	5	Other Athlete Quest Documents (14 reports, 30 p.)	Irrelevant; Other players should be excluded on relevance grounds
5			
6	8	Balco Blood Test Log Books, 2001-2003	Hearsay under logic of the February 19 Order
7			
8	9	Balco BLB Blood Tests	Hearsay under logic of the February 19 Order
9			
10	10	LabOne Blood Test Fedex Documents (Two Fedex Airbills for alleged BB blood test)	Hearsay under logic of the February 19 Order
11			
12			
13	11	BLB Nutritional Program (2 p.)	Hearsay under logic of the February 19 Order
14			
15	12	Other Athlete Balco & Specialty Blood Tests	Irrelevant; Other players should be excluded on relevance grounds
16			
17	14	Brown portfolio	Irrelevant
18			
19	15	B. Santiago Invoice	Irrelevant; Other players should be excluded on relevance grounds
20			
21	16	A. Rios Fedex Receipts	Irrelevant; Other players should be excluded on relevance grounds
22			
23	21	Misc. Notes re Other Athletes	Irrelevant; Other players should be excluded on relevance grounds; Lack of foundation and/or hearsay by logic of the February 19 Order
24			
25	28	Envelopes located with cash	Lack of Foundation; Hearsay under logic of the February 19 order; Irrelevant
26			
27	31	Handwritten Notes & Fedex Rec't- Other Athletes	Irrelevant; Other players should be excluded on relevance grounds; Lack of foundation
28			

41	Jason Giambi Document & Fedex Rect.	Irrelevant; Other players should be excluded on relevance grounds; Lack of foundation
64	Photo Athlete Folders From Closet-Anderson Residence	Excluded under logic of the February 19 Order; Irrelevant evidence pertaining to other athletes
67	Photo - Safe w/ \$ & note-Anderson Residence	Excluded under logic of the February 19 Order; Irrelevant; Lack of Foundation

To summarize:

- Exhibits 2, 4, 5, 8, 9, 10, 11 and 12 consist of alleged internal BALCO documents that should be excluded under the logic of the February 19 Order either because (1) they allegedly refer to Barry Bonds but lack foundation and are inadmissible hearsay or (2) refer to other athletes and therefore irrelevant.
- Exhibits 14, 15, 16, 21, 31, and 41 consist of documents allegedly seized from Anderson that include information regarding other athletes. Without Mr. Anderson's testimony, these documents lack foundation and are rendered irrelevant by the February 19 Order. See Order, at 13-14.
- Exhibits 28 consists of documents allegedly seized from Anderson that purportedly refer to Mr. Bonds. Under the logic of the February 19 Order, these documents lack foundation and are irrelevant.
- Exhibit 64 consists of a photograph of files for other athletes allegedly seized from Anderson. The photograph should be excluded for the same reasons as the files – lack of foundation, irrelevant and prejudicial.
- Exhibits 67 consists of a photograph of documents included in Exhibits 28. The photograph should be excluded for the same reasons.

B. Witnesses

The following witnesses' testimony should be excluded by this Court's February 19

Order:

Witness	Govt. Proffer	Objection
Wendy Bergland	She will testify that she is a Special Agent with IRS-CID and that she transported the box of folders located by Mike Wilson to Special Agent Jeff Novitzky.	Irrelevant to the extent the box contained documents excluded under the February 19 Order.
Amjad Qaqish	Special Agent Qaqish, an agent with Internal Revenue Service- Criminal Investigation, will testify regarding his identification, seizure, and disposition of documents taken from Anderson's residence during the September 3, 2003 search, including calendars and handwritten notes.	Irrelevant to the extent he will testify about calendars, handwritten notes, and other documents excluded under the February 19 Order.
Dr. Barry Sample	Dr. Sample will testify regarding the records of Quest Diagnostics as well as to the methodology utilized to test urine specimens and to certain lab test results.	Irrelevant to the extent his testimony concerns documents (i.e. urine test results) already excluded under the February 19 Order.
Mike Wilson	He will testify that he is a Special Agent with IRS-CID and that he located a box of folders during the execution of a search warrant at a storage locker belonging to Balco Laboratories. He will also testify regarding the transport and handling of the defendant's urine specimen from its seizure pursuant to search warrant at Quest Laboratories to the UCLA Analytical Lab.	Irrelevant to the extent the box contained documents excluded under the February 19 Order.
Marvin Benard	Mr. Benard, a former professional baseball player, will testify that he met Greg Anderson during Benard's tenure with the San Francisco Giants. He will also testify that he began working with Anderson in approximately 1999 and that Anderson assisted him in having his blood tested. Mr. Benard will testify about receiving performance enhancing substances from Anderson, about instructions from Anderson about how to administer the substances, about the schedule Anderson gave to him for administering the substances, and about what Mr. Anderson told him about the efficacy of those substances.	Irrelevant as a consequence of the February 19 Order.

<p>1 2 3 4 5 6 7 8</p> <p>Jason Giambi</p>	<p>Mr. Giambi will testify that he is a professional baseball player and that he met Greg Anderson through the defendant. He will also testify that he began working with Anderson in approximately November 2002 and that Anderson assisted him in having his blood and urine tested through Balco. Mr. Giambi will testify about receiving performance enhancing substances from Anderson, about instructions from Anderson about how to administer the substances, about the schedule Anderson gave to him for administering the substances, and about what Mr. Anderson told him about the efficacy of those substances.</p>	<p>Irrelevant as a consequence of the February 19 Order.</p>
<p>9 10 11 12 13 14 15 16</p> <p>Jeremy Giambi</p>	<p>Mr. Giambi will testify that he was a professional baseball player and that his brother, Jason Giambi, introduced him to Greg Anderson shortly after Jason began working with Anderson in approximately November 2002. He will also testify that he provided blood and urine specimens to Anderson to be tested through Balco. Mr. Giambi will also testify about receiving performance enhancing substances from Anderson, about instructions from Anderson about how to administer the substances, about the schedule Anderson gave to him for administering the substances, and about what Mr. Anderson told him about the efficacy of those substances.</p>	<p>Irrelevant as a consequence of the February 19 Order.</p>
<p>17 18 19 20 21 22 23 24 25 26 27 28</p> <p>Larry Izzo</p>	<p>Mr. Izzo will testify that he was a professional football player and that he first contacted Greg Anderson by phone in approximately January 2003. Mr. Izzo will also testify that he first met Anderson in person in approximately May 2003 at Balco and submitted a urine specimen at Balco at Anderson's request. Mr. Izzo will also testify that he submitted additional urine specimens to Anderson at later times as well. Mr. Izzo will also testify about receiving performance enhancing substances from Anderson, about instructions from Anderson about how to administer the substances, about the schedule Anderson gave to him for administering the substances, and about what Mr. Anderson told him about the efficacy of those substances.</p>	<p>Irrelevant as a consequence of the February 19 Order.</p>

<p>1 2 3 4 5 6 7 8</p> <p>Armando Rios</p>	<p>Mr. Rios will testify that he was a professional baseball player and that he met Greg Anderson during Rios's tenure with the San Francisco Giants. He will also testify that he began working with Anderson in 2001 and that Anderson assisted him in having his urine tested after Rios left the Giants for another team in 2002. Mr. Rios will testify about receiving performance enhancing substances from Anderson, about instructions from Anderson about how to administer the substances, about the schedule Anderson gave to him for administering the substances, and about what Mr. Anderson told him about the efficacy of those substances.</p>	<p>Irrelevant as a consequence of the February 19 Order.</p>
<p>9 10 11 12 13 14 15 16</p> <p>Benito Santiago</p>	<p>Mr. Santiago will testify that he was formerly a professional baseball player for several teams, including the San Francisco Giants in 2001, 2002, and 2003. While playing for the Giants, Mr. Santiago met Greg Anderson and ultimately received performance enhancing substances from Anderson. Mr. Santiago will also testify about the process of providing urine samples to Greg Anderson for testing for the presence of steroids. Mr. Santiago will also testify about schedules or calendars Greg Anderson made for him in connection with the performance enhancing substances regimen Anderson designed for Mr. Santiago.</p>	<p>Irrelevant as a consequence of the February 19 Order.</p>
<p>17 18 19 20 21 22 23 24 25 26 27</p> <p>Jim Valente</p>	<p>Mr. Valente, the former vice-president of Balco Laboratories, will testify to his observations as an employee at Balco responsible for maintaining certain business records, including log sheets reflecting the receipt of urine specimens from athletes, the assignment of codes to those specimens, the referral of those specimens to outside labs, and the receipt of test results for those specimens. Valente will testify that Greg Anderson provided him with blood and urine specimens for a number of athletes, including the defendant, and Valente would record the names of those athletes on a log sheet and assign each specimen a number in order to keep track of the specimen's testing referral date and results. Valente will specifically testify that the entries "Barry B" on Balco internal documents reference the urine samples and results he entered for the urine samples Greg Anderson submitted to Balco on behalf of the defendant.</p>	<p>Irrelevant as a consequence of the February 19 Order.</p>

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Randy Velarde	Mr. Velarde will testify that he was a professional baseball player and that he met Greg Anderson during his tenure with the Oakland Athletics. Mr. Rios [<i>sic</i>] will testify about receiving performance enhancing substances from Anderson, including anabolic steroids.	Irrelevant as a consequence of the February 19 Order.
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In addition, the Court should order the government to instruct all of its witnesses not to refer to any of the exhibits or other evidence excluded by the February 19 Order.

C. Indictment

The Second Superseding Indictment should be redacted to exclude references to excluded materials. The following items should be redacted:

- Page 4, lines 4-10:

on this page, again, there's BB here, which obviously are consistent with your initials; correct?

A: He could know other BBs.

Q: Correct. But BB would also be your initials; is that correct?

A: That's correct.

- Page 9, lines 21-23;

Because this first calendar is dated December 2001 with "BB" on it and its got a number of entries that I'd like to ask you about.

D. Grand Jury Transcript of Mr. Bonds' Testimony

The grand jury transcript should likewise be redacted to exclude reference to excluded materials. For the convenience of the Court, we are submitting a copy of the transcript in which we have highlighted those portions of the transcript that should be deleted. (See Exhibit C to this motion.) The redactions are summarized as follows:

- Page 44, line 23, to Page 46, line 9.
- Page 47, lines 19-23.
- Page 50, lines 1-5.

- 1 • Page 52, lines 4-11 and 19-20.
- 2 • Page 53, lines 7-9.
- 3 • Page 56, lines 12-17.
- 4 • Page 57, line 28 to Page 58, line 16.
- 5 • Page 58, line 22, to Page 59, line 21.
- 6 • Page 65, lines 2-18.
- 7 • Page 66, line 22, to Page 68, line 1.
- 8 • Page 68, line 15 to Page 71, line 5
- 9 • Page 72, line 23, to Page 73, line 14.
- 10 • Page 74, line 5, to Page 80, line 17
- 11 • Page 80, line 25, to Page 81, line 24., beginning with “I’ve never seen” and ending
- 12 with “Definitely yes.”
- 13 • Page 89, line 21, to Page 93, line 1.
- 14 • Page 96, lines 6-21
- 15 • Page 97, lines 7-10.
- 16 • Page 97, line 17 to Page 98, line 12, ending with the word “Okay”. Also add
- 17 reference to date so that question at Page 98, line 12-13 makes sense.
- 18 • Page 99, lines 1-12.
- 19 • Page 100, lines 11-14.
- 20 • Page 101, lines 8-24.
- 21 • Page 102, line 9 to Page 103, line 8.
- 22 • Page 104, line 5, to Page 106, line 18
- 23 • Page 106, line 24, to Page 108, line 4.
- 24 • Page 108, line 20, to Page 111, line 1.
- 25 • Page 111, line 7 to Page 115, line 17
- 26 • Page 116, line 19, to Page 118, line 11.
- 27 • Page 120, line 8 to Page 121, line 3.
- 28

- Page 121, line 10, to Page 123, line 23.

CONCLUSION

For the reasons and in the manner stated above, the government must be ordered to conform its proof at trial to the Court's previous order of February 19, 2010

Dated: December 17, 2010

Respectfully submitted,

LAW OFFICES OF ALLEN RUBY

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