Eastern District of Kentucky
FILED
AUG 25 2026
AT LEXINGTON
Robert R. Carr
CLERK U.S. DISTRICT COURT

Motion to Vacate, Set Aside, or Correct a Sentence By a Person in Federal Custody

(Motion Under 28 U.S.C. § 2255)

Instructions

1. To use this form, you must be a person who is serving a sentence under a judgment against you in a federal court. You are asking for relief from the conviction or the sentence. This form is your motion for relief.
2. You must file the form in the United States district court that entered the judgment that you are challenging. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file the motion in the federal court that entered that judgment.
3. Make sure the form is typed or neatly written.
4. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
5. Answer all the questions. You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit any legal arguments, you must submit them in a separate memorandum. Be aware that any such memorandum may be subject to page limits set forth in the local rules of the court where you file this motion.
6. If you cannot pay for the costs of this motion (such as costs for an attorney or transcripts), you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out the last page of this form. Also, you must submit a certificate signed by an officer at the institution where you are confined showing the amount of money that the institution is holding for you.
7. In this motion, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different judge or division (either in the same district or in a different district), you must file a separate motion.
8. When you have completed the form, send the original and ____ copies to the Clerk of the United States District Court at this address:

   Clerk, United States District Court for
   Address
   City, State Zip Code

   If you want a file-stamped copy of the petition, you must enclose an additional copy of the petition and ask the court to file-stamp it and return it to you.
9. **CAUTION: You must include in this motion all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this motion, you may be barred from presenting additional grounds at a later date.**
10. **CAPITAL CASES: If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.**

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court	District: Eastern District of Kentucky (Lexington)
Name *(under which you were convicted)*: Molly Irene McKinnon	Docket or Case No.: 5:20-cr-00063
Place of Confinement: SPC Estill	Prisoner No.: Reg. No. 23265-032
UNITED STATES OF AMERICA V. Molly Irene McKinnon	Movant *(include name under which convicted)*

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:

   United States District Court
   Eastern District of Kentucky
   Central Division - Lexington

   (b) Criminal docket or case number (if you know): 5:20-cr-00063

2. (a) Date of the judgment of conviction (if you know): 8/24/2023

   (b) Date of sentencing: 8/21/2023

3. Length of sentence: 156 Months

4. Nature of crime (all counts):

   Ct 1: Conspiracy to Commit Wire Fraud, in violation to 18 U.S.C. § 1349;
   Cts 2, 3, 4, and 6: Wire Fraud, in violation to 18 U.S.C. § 1343;
   Ct 7: Conspiracy to Commit Money Laundering, in violation to 18 U.S.C. § 1956(h).

5. (a) What was your plea? (Check one)

   (1) Not guilty ☑ (2) Guilty ☐ (3) Nolo contendere (no contest) ☐

6. (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

   Guilty on Counts 1-4, 6, and 7 of the Indictment.

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☑ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☑ No ☐

8. Did you appeal from the judgment of conviction? Yes ☑ No ☐

9. If you did appeal, answer the following:

(a) Name of court: United States Court of Appeals for the Sixth Circuit

(b) Docket or case number (if you know): USCA Nos. 23-5766 and 23-5773

(c) Result: Affirmed

(d) Date of result (if you know): 11/22/2024

(e) Citation to the case (if you know):

(f) Grounds raised:

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☑

If "Yes," answer the following:

(1) Docket or case number (if you know):

(2) Result:

(3) Date of result (if you know):

(4) Citation to the case (if you know):

(5) Grounds raised:

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐ No ☑

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding: _____

(5) Grounds raised:

_____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket of case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

_____

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: The Government committed prosecutorial misconduct violating McKinnon's due process rights.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See Memorandum of Law in Support

(b) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☑

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND TWO: Ineffective Assistance of Pretrial Counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Pretrial counsel's failure to:
(1) Communicate with McKinnon and inform her of the relevant circumstances and likely consequences of pleading guilty as opposed to proceeding to trial;
(2) Conduct an adequate and independent pretrial investigation;
(3) Attempt to negotiate a favorable Plea Agreement;
(4) Adequately prepare for trial; and
(5) Educate herself on the legal principles of intent and duress/coercion deprived McKinnon of effective assistance of pretrial counsel under the Sixth Amendment of the Constitution of the United States.

See Memorandum of Law in Support.

(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☑

(2) If you did not raise this issue in your direct appeal, explain why:

Court appointed counsel advised claims of ineffective assistance of counsel are not generally raised on direct appeal.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☑

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND THREE: Ineffective Assistance of Trial Counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Trial Counsel's Failure To:

(1) Inform McKinnon of her strategy, any affirmative defenses and her theory of her defense;
(2) Subpoena and call defense witnesses on McKinnon's behalf to help prove her case;
(3) Impeach government's witnesses; and
(4) Anticipate and adequately prepare for the proffer, object to it and to the court's related rulings, properly interpret the judge's ruling regarding the proffer, object to the severely limited time granted to prepare for McKinnon's restricted testimony, and inform McKinnon that she might be prohibited from testifying about duress.

See Memorandum of Law in Support.

(b) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☑

(2) If you did not raise this issue in your direct appeal, explain why:

Court appointed counsel advised claims of ineffective assistance of counsel are not generally raised on direct appeal.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☑

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed:

_____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

_____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND FOUR: Ineffective Assistance of Sentencing; and Ground Five: Appellate counsels

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Sentencing and Appellate counsels' failure to:
(1) Correctly discuss and explain the PSR with McKinnon prior to the sentencing hearing;
(2) File substantive objections to the PSR;
(3) Argue for mitigation of punishment and object to her sentence being substantively unreasonable;
(4) Establish and maintain communication with McKinnon; and
(5) Provide court with correct financial information to offset loss and restitution deprived McKinnon of effective assistance of sentencing counsel under the Sixth Amendment, a fair and just sentence.
Appellate Counsel rendered constitutionally deficient performance by: (1) Failing to raise prosecutorial misconduct deprived McKinnon of effective assistance of appellate counsel, and a fair and meaningful appellate review.
Appellate counsel's deficient performance deprived McKinnon of effective representation on direct appeal and undermined the fairness and integrity of the appellate proceedings.
See Memorandum of Law in Support

(b) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☑

(2) If you did not raise this issue in your direct appeal, explain why:

Court appointed counsel advised claims of ineffective assistance of counsel are not generally raised on direct appeal.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☑

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

N/A

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☑

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing:

Brandi N. Lewis,Baldani Law Group,300 W. Short Street,Lexington, KY 40507

(b) At the arraignment and plea:

Brandi N. Lewis,Baldani Law Group,300 W. Short Street,Lexington, KY 40507

(c) At the trial:

Brandi N. Lewis,Baldani Law Group,300 W. Short Street,Lexington, KY 40507

(d) At sentencing:

George Scott Hayworth,G. Scott Hayworth,155 East Main Street,Suite 101,Lexington, KY 40507

(e) On appeal:

Gregory A. Napolitano,Laufman & Napolitano, LLC,4310 Hunt Road,Cincinnati, OH 45245

(f) In any post-conviction proceeding:

N/A

(g) On appeal from any ruling against you in a post-conviction proceeding:

N/A

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☑

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☑

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☑

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

Movant's original timely § 2255 motion was received by the Court on February 20, 2026, and docketed as Doc. 278, with supporting exhibits filed as numbered attachments. Because Movant's access to institutional printers and copiers was severely limited and unreliable — equipment was regularly inoperative or out of toner — she was unable to include all supporting exhibits with the original filing and required outside assistance to print documents and locate exhibits. Within days of that filing, and without yet having received notice that the Court had denied leave to exceed the page limit, Movant filed a Rule 7 motion to expand the record with additional exhibits, docketed as Doc. 285. Supporting exhibit materials filed at Docs. 278 and 285 remain accessible on the Court's docket; this condensed memorandum relies on those previously filed materials and respectfully requests the Court consider them with this filing.

The Court denied leave to exceed the page limit on procedural grounds only; no constitutional claim was adjudicated on the merits. Movant did not receive notice of both procedural denials until April 2026. Shortly thereafter, the Bureau of Prisons transferred Movant to a new facility, where she was required to relinquish all legal materials for several weeks and did not regain access to those materials until May 2026. At the new facility, access to legal materials was further restricted to daytime weekday hours, and the same printer and copier limitations persisted. Persistent mailing delays compounded each stage of preparation.

This case was designated as a complex financial case; condensing five constitutional grounds — supported by six days of trial transcripts, dozens of exhibits, BATES-referenced documents, and declarations — into a coherent filing of twenty-five pages or fewer required extraordinary effort, and far more so under the institutional obstacles described above.

Movant now submits this revised and condensed motion in compliance with the Court's page limitation. The motion is not second or successive because no prior § 2255 motion has been adjudicated on the merits. The February 20 motion was timely, and this filing is the corrected and condensed version of that motion submitted in compliance with the Court's page limitation. See Fed. R. Civ. P. 15(c); Mayle v. Felix, 545 U.S. 644, 659 (2005). Alternatively, equitable tolling is warranted because Movant diligently pursued her rights and extraordinary circumstances outside her control prevented earlier compliant refiling. See Holland v. Florida, 560 U.S. 631, 649 (2010); Solomon v. United States (6th Cir. 2006) (holding that a federal prisoner's BOP transfer and restricted access to legal materials constituted 'rare and exceptional circumstances' warranting equitable tolling of the § 2255 limitations period). The government suffers no prejudice from this refiling, as Movant's grounds, supporting facts, and exhibits have been on the Court's docket since February and March 2026.

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* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

(1) the date on which the judgment of conviction became final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

Vacate her conviction and sentence to start anew; alternatively, grant an Evidentiary hearing to further prove her grounds set forth above, resolve facts in dispute, expand an incomplete record,

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on _____.
(month, date, year)

Executed (signed) on 8/16/2026 (date)

Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION, LEXINGTON

MOLLY IRENE MCKINNON,	)
Movant,	) **Crim. No. 5:20-cr-00063**
vs.	) **MEMORANDUM OF LAW IN SUPPORT**
UNITED STATES OF AMERICA,	) **OF MOTION UNDER 28 U.S.C. § 2255 TO**
	) **VACATE, SET**
Respondent.	) **ASIDE, OR CORRECT SENTENCE**

I. INTRODUCTION, JURISDICTION, AND RELIEF REQUESTED

Movant Molly Irene McKinnon respectfully moves under 28 U.S.C. § 2255 to vacate, set aside, or correct the judgment imposed in United States v. Vance / United States v. McKinnon, Criminal No. 5:20-cr-00063. This Court has jurisdiction because it imposed the challenged judgment. See 28 U.S.C. § 2255(a). Movant seeks vacatur, a new trial, or resentencing. At minimum, Movant requests an evidentiary hearing because the motion, files, and records do not conclusively show that she is entitled to no relief. See 28 U.S.C. § 2255(b).

II. PROCEDURAL BACKGROUND, TIMELINESS, AND REFILING POSTURE

On June 18, 2020, a grand jury charged Movant and Douglas William Vance in a multi-count indictment alleging conspiracy to commit wire fraud, substantive wire fraud, and conspiracy to commit money laundering. See Doc. 1. After trial, Movant was convicted on Counts 1, 2, 3, 4, 6, and 7. See Docs. 120–122, 125, 127, 128, 130, 133. On August 21, 2023, the Court sentenced Movant to 156 months' imprisonment, three years of supervised release, restitution of $2,247,424.39, and a $600 special assessment. See Docs. 196, 201. The Sixth Circuit affirmed on

November 22, 2024. See Docs. 265, 267. "Doc." refers to the docket in United States v. Vance / United States v. McKinnon, Criminal No. 5:20-cr-00063.

Movant did not file a petition for certiorari. Her judgment became final when the 90-day period to seek certiorari expired, and this § 2255 proceeding was initiated within the one-year limitations period under 28 U.S.C. § 2255(f)(1). Movant's original timely § 2255 motion was received by the Court on February 20, 2026, and docketed as Doc. 278, with supporting exhibits filed as numbered attachments. Because Movant's access to institutional printers and copiers was severely limited and unreliable — equipment was regularly inoperative or out of toner — she was unable to include all supporting exhibits with the original filing and required outside assistance to print documents and locate exhibits. Within days of that filing, and without yet having received notice that the Court had denied leave to exceed the page limit, Movant filed a Rule 7 motion to expand the record with additional exhibits, docketed as Doc. 285. Supporting exhibit materials filed at Docs. 278 and 285 remain accessible on the Court's docket; this condensed memorandum relies on those previously filed materials and respectfully requests the Court consider them with this filing.

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This case was designated as a complex financial case; condensing five constitutional grounds — supported by six days of trial transcripts, dozens of exhibits, BATES-referenced documents, and

declarations — into a coherent filing of twenty-five pages or fewer required extraordinary effort, and far more so under the institutional obstacles described above.

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III. CLAIMS PRESENTED AND GOVERNING STANDARDS

Movant presents five grounds for relief. Ground One alleges that the conviction was obtained through the Government's use and maintenance of false and misleading evidence in violation of due process. Grounds Two through Five allege ineffective assistance by: pretrial counsel, who failed to investigate, prepare, develop the state-of-mind defense, and provide informed advice; trial counsel, who failed to present the state-of-mind defense, correct entity conflation, impeach key Government witnesses, and preserve the trial record; sentencing counsel, who failed to prepare, object, correct material sentencing errors, and present mitigation; and appellate counsel, who failed to raise the stronger prosecutorial-misconduct/Napue claim on direct appeal.

Section 2255 authorizes relief where a federal sentence was imposed in violation of the Constitution or laws of the United States or is otherwise subject to collateral attack. Unless the motion and the files and records conclusively show that the prisoner is entitled to no relief, the Court must grant a hearing, determine the issues, and make findings of fact and conclusions of

law. 28 U.S.C. § 2255(b). Ground One arises under due-process principles prohibiting the Government from obtaining or maintaining a conviction through false testimony, materially misleading evidence, selective presentation of favorable context, or failure to correct false impressions. See Napue v. Illinois, 360 U.S. 264, 269, 271 (1959); Giglio v. United States, 405 U.S. 150, 153–54 (1972); Brady v. Maryland, 373 U.S. 83, 87 (1963); United States v. Bagley, 473 U.S. 667, 682 (1985); Kyles v. Whitley, 514 U.S. 419, 436–37 (1995). Grounds Two through Five arise under the Sixth Amendment. To establish ineffective assistance, Movant must show deficient performance and prejudice. Strickland v. Washington, 466 U.S. 668, 687–88, 694 (1984). Where counsel's failure is complete, prejudice is presumed. United States v. Cronic, 466 U.S. 648, 659 (1984). Due to page limitations, the full record-proof analysis, source citations, and prejudice showing for each ground are set forth in Appendices B through F, incorporated herein by reference.

IV. RECORD SUPPORT AND MASTER PRESERVATION OF ISSUES

Movant's factual allegations are supported by the Declaration of Molly Irene McKinnon, submitted as Movant Ex. F, the Declaration of Barbara Alice Culberson, submitted as Movant Ex. E, the supporting appendices, cited transcripts, docket materials, and exhibits. Because the page limit prevents full presentation of every supporting fact in the body of this memorandum, Movant preserves the detailed factual, transcript, exhibit, BATES, declaration, impeachment, sentencing, and record-and-hearing support in the accompanying appendices. Movant does not abandon any issue, citation, exhibit, BATES reference, declaration paragraph, or verification item preserved in those materials as support for the grounds pleaded herein.

GROUND ONE: Conviction Obtained Through Government's False and Misleading Evidence in Violation of Due Process

The Government violated due process by presenting and maintaining a materially misleading evidentiary framework concerning Movant's role, knowledge, intent, financial access, account control, transaction attribution, and the reliability of the Government's investigation. The evidence showed distinctions among entities, accounts, signatories, sources of information, and levels of access and control that were central to whether Movant knowingly joined a fraudulent scheme or instead relied on information supplied by others while lacking ownership, account access, or an independent ability to verify the financial representations at issue. The procedural default of Ground One is excused by appellate counsel's ineffective assistance — the cause-and-prejudice showing is set forth in Ground Five below under *Murray v. Carrier*, 477 U.S. 478, 488 (1986). Those business entities—NexGen Energy Partners, NexGen Industries, NexGen LLC, and related companies—were legally distinct, with separate formation records, accounts, signatories, and business roles; yet the Government's presentation and Agent Hubbuch's testimony permitted the jury to treat them as a single unified business, enabling the transfer of knowledge, access, and intent inferences across entities without entity-specific proof – the conflation framework for each representative example that follows. See App. B, G1-RA-001.

Representative examples show the false and misleading attribution problem. Agent Hubbuch identified Gov't Ex. 201—the Government's own Bank of America NGEP account records—and confirmed that Gary G. Chamblee and Mendie Brown Hogan were the listed signers on those pages; Movant was not identified as a signer. See Trial Tr., ECF No. 176, PageID # 1186–1187; App. B, G1-RA-002. That mattered because Movant testified that Chamblee supplied sales information for QuickBooks — corroborated by Movant's pre-indictment contemporaneous journals (Movant Ex. 45 / Defense Ex. 82), written before any investigation and produced to the Government in discovery — and that financial information sent to Dell Jaggers reflected those

same Chamblee-reported sales. See Trial Tr., ECF No. 179, PageID # 1792, 1796; App. B, G1-RA-003. Because Chamblee controlled access to the underlying NGEP account information, Movant lacked an account-access-based ability to independently authenticate his reported sales figures. The constitutional problem was not merely that the jury heard disputed evidence; it was that the Government obtained and maintained a conviction through a simplified attribution framework that omitted or minimized the very facts necessary to evaluate Movant's knowledge, intent, access, control, and good faith.

The Count 2 source-of-funds evidence created the same problem. The Government's presentation allowed the jury to view the relevant $5,600 as personally supplied by Chamblee and directly attributable to fraudulent conduct by Movant. But Chamblee later reviewed bank records and agreed that the $5,600 appeared to be a transfer from the NexGen Energy Partners Bank of America account to the Whitaker Bank account and therefore was not from him personally. See Trial Tr., ECF No. 175, PageID # 1055–1056; Trial Tr., ECF No. 176, PageID # 1168–1169, 1172; App. B, G1-RA-004.

Other representative evidence showed that the Government's simplified narrative required correction. Chamblee characterized his contributions using loan and investment terminology while conceding he would need to review his ownership stake. Although an original $150,000 line of credit predated FBI involvement, that instrument was unsecured and unsigned by Vance or McKinnon. After FBI involvement began, it was converted to a secured instrument with the stated balance inflated to $684,845.05. Two additional secured notes totaling $260,593.42 were created entirely post-investigation — all signed solely by Chamblee, delivered to Vance by email only after execution, and unauthorized under the NGEP Operating Agreement. See Trial Tr., ECF No. 175, PageID # 1034–1036, 1055–1056; App. B, G1-RA-006. The Government's

opening representation that Vance and McKinnon "did not set up the company they promised to create" and Deware's corroborating trial testimony that he was "not aware" of the LLC ever being formed were proven false by the Government's own Gov't Ex. 507 and 508 — bank account applications establishing both V4 Carbon and Carbon Holdings were formed and that Movant and Deware opened both accounts together. Those records showed Deware held authorized signatory authority on both. David Smith's pre-trial FBI statement (BATES USA-00049465) further confirmed that Deware "had control and was signatory on the nexgen account for the Kentucky business." (App. B, G1-RA-007.) Agent Hubbuch's financial-summary testimony likewise required qualification: Gov't Ex. 501 excluded all three NGEP accounts — the records underlying three charged counts — despite two witnesses certifying the spreadsheet as comprehensive. (App. B, G1-RA-005.)

The McKinnon Letter and Government Exhibit 401 provide the clearest example of selective presentation and failure to correct. The McKinnon Letter was a contemporaneous, pre-indictment statement documenting Movant's limited role, lack of ownership or financial control, reliance on Chamblee-supplied information, and the timing of when Chamblee disclosed that his reported sales figures were false. See Movant Ex. C; McKinnon Decl. ¶¶11–15; App. B, G1-RA-008. The Government selectively presented Gov't Ex. 401, omitting four independently significant passages from the DOJ/FBI transcript — including Hubbuch's December 2018 characterization of the letter as potentially exculpatory, his personal commitment to involve the prosecuting AUSA in obtaining it, and the letter's specific location with Vance's attorney. See Trial Tr., ECF No. 177, PageID # 1521–1522; App. B, G1-RA-009; G1-RA-010. The later trial restriction magnified the prejudice: the Court allowed the letter only as a Court exhibit and prohibited the defense from sending it to the jury or discussing its contents in closing, leaving the Government

free to exploit the absence of jury-visible documentary proof while the defense was barred from using the very letter that supplied corrective context. See Trial Tr., ECF No. 179, PageID # 1776–1779; App. B, G1-RA-012.

The Government then reinforced the misleading attribution narrative in rebuttal by arguing that there was no "shred of proof" and not "a single item of proof" in the records, emails, or documents showing that Chamblee provided McKinnon information for the financial documents, and later repeating that the jury would not see "a single email or document" supporting Chamblee's involvement — while the Government possessed Movant's pre-indictment contemporaneous journals (Movant Ex. 45 / Defense Ex. 82) in its discovery file, directly contradicting each formulation. Trial Tr., ECF No. 179, PageID # 1894, 1898; App. B, G1-RA-013. Those arguments were material because the omitted and restricted evidence went to knowledge, intent, account access, transaction attribution, witness credibility, and investigative completeness.

These representative examples are not exhaustive. The complete record-proof analysis for Ground One is set forth in Appendix B, incorporated herein by reference: G1-RA-001 (entity-conflation framework); G1-RA-002 (NGEP account/signer evidence); G1-RA-003 (Chamblee-supplied sales/Dell Jaggers); G1-RA-004 (Count 2 source-of-funds qualification); G1-RA-005 (Hubbuch financial-summary/Gov't Ex. 501 — three NGEP accounts excluded); G1-RA-006 (Chamblee loan-investment qualification/no predating docs/Operating Agreement violation); G1-RA-007 (false "company never created" — disproved by Gov't Ex. 507, 508 and Smith 302/BATES USA-00049465); G1-RA-008 (McKinnon Letter/state-of-mind evidence); G1-RA-009 (Gov't Ex. 401 selected presentation); G1-RA-010 (omitted interview-transcript context); G1-RA-011 (source distinction: recording/transcript/letter); G1-RA-012 (trial restriction on

McKinnon Letter); G1-RA-013 (rebuttal exploitation); G1-RA-014 (prejudice from excluded/omitted evidence); G1-RA-015 (cumulative materiality and prejudice). Movant does not abandon any issue, citation, exhibit, BATES reference, declaration paragraph, or verification item preserved therein. There is at least a reasonable likelihood that the false or materially misleading impressions affected the jury's judgment under Napue and Giglio, and a reasonable probability that fair disclosure of the omitted or selectively presented evidence would have produced a different result under Brady, Bagley, and Kyles. Relief vacating the conviction, or at minimum an evidentiary hearing, is warranted.

GROUND TWO: Pretrial Ineffective Assistance of Counsel

Pretrial counsel rendered ineffective assistance by failing to conduct the investigation and preparation necessary to defend Movant against the Government's attribution theory. The Government's case linked Movant's administrative work, bookkeeping, document transmission, and association with Vance and "Nex-Gen" entities to knowledge, intent, ownership, control, and fraudulent participation. Competent counsel was therefore required to investigate the entity structure, accounts, signatory records, and contemporaneous evidence bearing on Movant's role, knowledge, and reliance on information supplied by others — and to develop that investigation into an organized defense framework before the case reached the jury. See McKinnon Decl. ¶¶4–10, 18–25, 28–39, 51–59; App. C, G2-RA-001.

Counsel failed to develop that framework. Counsel affirmatively advised Movant that her "only viable defenses were duress and jury nullification" (McKinnon Decl. ¶20) and spent approximately one half-day preparing her for testimony focused almost entirely on duress (McKinnon Decl. ¶25), without advising Movant that she was entitled to present lack of fraudulent intent, lack of knowledge, lack of ownership or account control, and reliance on

information supplied by others, independently of satisfying every element of a complete affirmative duress defense. (App. C, G2-RA-005.) That deficient advice left no alternative framework when the Court restricted duress testimony on Day 6. Counsel further failed to develop the Chamblee-source timing evidence for Count 6: the email to Dell Jaggers was transmitted on the morning of June 26, 2017 — hours before Chamblee disclosed that same afternoon that his reported sales figures were fabricated — directly negating the knowing element for that count (McKinnon Decl. ¶8; Movant Ex. 29); counsel failed to independently subpoena Jaggers despite Movant's specific request, assuming incorrectly that the Government would call him. (App. C, G2-RA-003.) Lewis also submitted the NGI account subpoena with an incorrect account number, causing records to arrive after trial began. She also failed to request additional court-authorized funding under 18 U.S.C. § 3006A after the accountant she had retained advised that the $2,500 budget was insufficient. The significance of that failure is reinforced by Government discovery itself, which confirmed Chamblee and Hogan – not Movant – were the NGEP Bank of America signatories (Trial Tr., ECF No. 176, PageID # 1186–1187), establishing Movant's lack of account-access-based ability to independently verify Chamblee-reported sales. (App. C, G2-RA-002.)

Counsel further failed before trial to investigate, prepare, and integrate the McKinnon Letter and related Government Exhibit 401 evidence into the defense. The letter bore directly on Movant's limited role, lack of ownership or financial control, reliance on Chamblee-supplied information, the timing of when she learned certain reported sales information was false, and her lack of knowledge during the charged conduct. (App. C, G2-RA-004.) Competent preparation required counsel to verify the letter's circumstances, prepare an evidentiary theory for its use independent of duress, anticipate the Sixth Circuit proffer requirement, and preserve the distinction between

duress and independently admissible state-of-mind evidence. Counsel failed to do so, resulting in the letter being filed only as a Court exhibit, not sent to the jury, and barred from closing argument — while the Government exploited the letter's effective absence by arguing there was no "shred of proof" supporting Movant's defense. (App. C, G2-RA-004; G2-RA-005.)

Counsel's failure to retain a qualified forensic accountant — despite her retained accountant advising that the $2,500 budget was insufficient and despite the availability of additional court-authorized funding under 18 U.S.C. § 3006A — left four independently significant financial frameworks undeveloped before trial. A forensic analysis of the available Government exhibits would have established: (1) the $5,600 underlying Count 2 was not a payment from Gary Chamblee to anyone — it was an ACH transfer of NGEP business funds between two NGEP operating accounts for legitimate weekly payroll, making the Government's Count 2 characterization factually false as to the bank records; (2) the NGEP Capital Contributions Schedule (Movant Ex. 20 / Gov't Ex. 703) — the Government's own admitted exhibit — lists six capital contributors with documented percentage interests and does not include McKinnon's name, capital contribution, or membership stake anywhere, directly refuting the Government's foundational attribution premise from its own documentation; (3) the Chamblee/Shumard group's manufactured loan documents (Movant Ex. 43 / Defense Ex. 4), executed post-FBI without notice to Vance and without any member vote, simultaneously violated NGEP Operating Agreement §§14.6 and 6.4(b) and were legally void on the face of the Government's own trial exhibit; and (4) the KCC Holdings loan (Gov't Ex. 301) was between Nex-Gen, LLC and KCC Holdings, LLC only, with Movant not named and signing solely as attorney-in-fact in a ministerial capacity, and Chamblee's own claimed Koch contacts (Gov't Ex. 177) undermining his asserted ignorance. (App. C, G2-RA-008.)

Counsel also failed to interview KRP representatives before trial — KRP's own President and CEO confirmed KRP "did not rely on these financials in making the decision to proceed," characterizing the arrangement as a speculative investment and directly challenging Count 6's materiality element - a deficiency the sentencing court recognized as insufficiently developed on the trial record. Neder v. United States, 527 U.S. 1, 16 (1999); Sent'g Tr., ECF No. 235, PageID # 2394; App. C, G2-RA-010.

Those pre-trial failures accumulated and were cumulatively prejudicial and impaired the defense presented at trial. Without a completed investigation and organized evidentiary theory, counsel could not identify which witnesses required impeachment, which entity and account distinctions had to be preserved, or how the available evidence fit into a non-duress state-of-mind defense — leaving no prepared defense framework capable of testing the Government's proof.

Additional pretrial failures developed fully in Appendix C include: failure to investigate Deware's account access and signatory authority — Smith told the FBI that Deware "had control and was signatory on the NexGen account for the Kentucky business" (BATES USA-00049465; Gov't Exs. 507, 508), yet Lewis failed to subpoena Smith (App. C, G2-RA-007); failure to distinguish entity structures pretrial (G2-RA-006); failure to provide competent cooperation and count-specific strategy advice (G2-RA-009); and failure to develop the KRP financial structure defense and challenge Hubbuch's false "only lien interest in unit" characterization, directly refuted by Gov't Exs. 807, 502, and 801 in Lewis's possession before trial (G2-RA-011). Each failure is independently sufficient and cumulatively reinforcing under Strickland. Movant does not abandon any claim, citation, exhibit, BATES reference, declaration paragraph, or verification item preserved in Appendix C.

The pretrial-counsel failures identified in this ground are representative, not exhaustive. Full record-proof analysis, citations, exact quotes, deficient-performance showings, and Strickland prejudice analysis for Ground Two are set forth in Appendix C, incorporated herein by reference: G2-RA-001 (pretrial investigation framework / failure to investigate entity, account structure, and defense theory); G2-RA-002 (failure to investigate NGEP account / signer records — Chamblee and Hogan as signatories; NGI subpoena error; § 3006A funding failure); G2-RA-003 (failure to develop Chamblee-source state-of-mind defense — Count 6 timing evidence; Jaggers subpoena failure); G2-RA-004 (failure to investigate / prepare McKinnon Letter and Gov't Ex. 401 theory); G2-RA-005 (failure to develop independent state-of-mind defense — "duress and jury nullification only" advice; half-day testimony preparation); G2-RA-006 (failure to distinguish entity structures pretrial); G2-RA-007 (failure to investigate Deware access / signatory evidence — BATES USA-00049465 / Smith 302; Gov't Exs. 507, 508); G2-RA-008 (failure to retain forensic accountant and develop: Count 2 intercompany payroll transfer; Movant's non-member status from NGEP Capital Contributions Schedule; Chamblee/Shumard manufactured loan recharacterization and dual Operating Agreement violations; KCC Holdings/Nex-Gen LLC loan framework establishing Movant's ministerial-only role); G2-RA-009 (failure to provide competent advice re: trial, plea, and cooperation strategy — failure to conduct count-specific analysis of the Government's knowledge and intent proof); G2-RA-010 (failure to interview KRP representatives pretrial and develop Count 6 non-reliance defense — Movant Ex. A / Barker Letter; KRP non-reliance position; Neder, 527 U.S. 1, 16); G2-RA-011 (failure to develop KRP financial structure defense and counter Hubbuch's false "only lien interest in unit" characterization — Gov't Exs. 807, 502, 801); G2-RA-012 (prejudice anchor: sentencing court's recognition that Movant's testimony, if believed, "would have affected the

outcome of the case" — Sent'g Tr., ECF No. 235, PageID # 2352). Movant does not abandon any issue, citation, exhibit, BATES reference, declaration paragraph, or verification item preserved therein. Counsel's pretrial deficiencies prejudiced Movant by causing the undeveloped trial record described in Ground Three. Competent preparation would have supplied evidence supporting the same good-faith, account-access, and state-of-mind defense the sentencing court recognized as material when it stated that Movant's testimony, if believed, "would have affected the outcome of the case." Sent'g Tr., ECF No. 235, PageID # 2352; App. C, G2-RA-012. There is at least a reasonable probability that competent pretrial investigation, preparation, and advice would have changed the defense presentation and the outcome under Strickland v. Washington, 466 U.S. 668, 694 (1984). At minimum, Ground Two requires an evidentiary hearing.

GROUND THREE: Trial Ineffective Assistance of Counsel

Ground Three presents two independent and parallel theories of constitutional error. Under the primary Strickland theory, counsel's performance on eleven specific, documentable dimensions was objectively unreasonable, and cumulative prejudice from those failures undermines confidence in the verdict. *See* G3-RA-001 through G3-RA-011. Under the alternative *Cronic* theory, *United States v. Cronic*, 466 U.S. 648, 659 (1984), the structural character of those same failures constituted a constructive denial of counsel, in which case prejudice is presumed without independent showing. *See* G3-RA-012. These theories are parallel and independent — denial of either does not affect the sufficiency of the other.

Trial counsel rendered ineffective assistance by failing to present the available defense case at trial. Competent counsel needed to meet the Government's attribution theory with Movant's limited role, lack of ownership and control, lack of account access, and reliance on information supplied by others. Counsel did not do so. See McKinnon Decl. ¶¶4–10, 20, 25, 28–39, 51–59;

App. D, G3-RA-001. Counsel built the defense entirely on a single duress track, leaving no adequate mens rea framework when the Court restricted that theory on Day 6, and failed to preserve the distinction between the restricted complete duress defense and independently admissible state-of-mind evidence bearing on knowledge and intent — including the McKinnon Letter (Movant Ex. C) and Government Exhibit 401. App. D, G3-RA-001; G3-RA-007.

Counsel failed to correct the Government's entity, ownership, role, and account-control conflation. Generalized references to "Nex-Gen," "Vance and McKinnon," and related shorthand blurred legally distinct entities — NexGen Energy Partners, NexGen Industries, V4 Carbon, Carbon Holdings — each with separate formation records, accounts, and signatories. The Bank of America NGEP account was associated with Chamblee and Hogan signature authority — not Movant's — leaving Movant with no account-access-based ability to independently verify Chamblee-reported sales data. Counsel also failed to use available evidence that Deware exercised signatory or account-control authority on the Kentucky business accounts, including Smith's pre-trial FBI statement (BATES USA-00049465), directly contradicting the broad impression Deware's trial testimony created. App. D, G3-RA-002; G3-RA-004.

Counsel also failed to impeach key Government witnesses with available records and prior statements. Counsel failed to build the record demonstrating that Chamblee supplied the sales and financial information upon which Movant relied — permitting the Government to argue in rebuttal that no proof existed supporting the defense theory. Trial Tr., ECF No. 179, PageID # 1894, 1898; App. D, G3-RA-003. Counsel further failed to develop evidence that Agent Hubbuch had been informed of the McKinnon Letter and its potential significance before trial, leaving unchallenged his claim that he never obtained it. App. D, G3-RA-005.

Counsel's trial-execution and preservation failures compounded the prejudice. Counsel failed to use available exhibits in a disciplined way, relied heavily on Movant to identify and organize evidence while failing to use many key materials she identified, and failed to request curative relief where entity language blurred control distinctions. After the Day 6 ruling restricting duress testimony, counsel failed to request a continuance or mistrial, and failed to object that the limited preparation time was constitutionally inadequate. App. D, G3-RA-009; G3-RA-010.

Additional trial failures developed fully in Appendix D include: failure to impeach April Francis using available evidence of bias, her limited financial-role knowledge, and the "locked up" email's exclusive focus on Vance rather than both defendants (G3-RA-006); failure to offer Movant's contemporaneous journal entries (Movant Ex. 45 / Defense Ex. 82) into evidence or use them during Chamblee's cross-examination or Movant's direct examination (G3-RA-008); and failure to subpoena David Smith, Joan Faybik, Dell Jaggers, and other identified witnesses with specific relevance to the charged conduct (G3-RA-009). Each failure is independently sufficient and cumulatively reinforcing under Strickland. Movant does not abandon any claim, citation, exhibit, BATES reference, declaration paragraph, or verification item preserved in Appendix D.

The trial-counsel failures identified in this ground are representative, not exhaustive. Full record-proof analysis, citations, exact quotes, deficient-performance showings, and Strickland prejudice analysis for Ground Three are set forth in Appendix D, incorporated herein by reference: G3-RA-001 (framework: trial IAC / failure to present state-of-mind defense at trial); G3-RA-002 (failure to correct entity / ownership / role / account-control conflation at trial); G3-RA-003 (failure to impeach Chamblee — loan/investment qualifications, Count 2 source-of-funds, and sales-information testimony); G3-RA-004 (failure to impeach Deware — account access /

signatory contradictions); G3-RA-005 (failure to impeach Hubbuch — financial-summary and investigation-completeness testimony); G3-RA-006 (failure to impeach Francis — financial-role, business-distress, payroll, and red-flag testimony); G3-RA-007 (failure to use McKinnon Letter and Gov't Ex. 401 at trial / failure to preserve restricted-testimony issue); G3-RA-008 (failure to develop and use journal and recorded-conversation / transcription evidence at trial); G3-RA-009 (failure to organize and use defense exhibits / failure to subpoena available witnesses); G3-RA-010 (Day 6 collapse / absence of alternative framework / failure to preserve proffer issues); G3-RA-011 (cumulative trial prejudice anchor); G3-RA-012 (near-total absence of trial objections across all six trial days / *Cronic*-level failure to subject the prosecution's case to meaningful adversarial testing). Movant does not abandon any issue, citation, exhibit, BATES reference, declaration paragraph, or verification item preserved therein. Counsel's errors prevented the jury from hearing a coherent defense on intent, knowledge, role, ownership, control, account access, attribution, and witness credibility — prejudice reinforced by the sentencing court's recognition that Movant's testimony, if believed, "would have affected the outcome of the case." Sent'g Tr., ECF No. 235, PageID # 2352; App. D, G3-RA-011. There is at least a reasonable probability that competent trial counsel's presentation of the available defense would have produced a different result under Strickland, 466 U.S. at 694, and at minimum, Ground Three presents material factual disputes requiring an evidentiary hearing.

GROUND FOUR: Sentencing Ineffective Assistance of Counsel

Even if the Court does not grant conviction relief, Movant is independently entitled to sentencing relief because sentencing counsel failed to prepare, object, correct material factual errors, protect Movant's sentencing presentation, and present mitigation at a critical stage. Hayworth was appointed the day of the original February 2023 sentencing hearing, met Movant for

approximately five minutes, and met with her only three times in the six subsequent months — all immediately before the August 21, 2023 hearing. McKinnon Decl. ¶¶61–62. Movant provided Hayworth with a comprehensive list of more than 25 specific PSR objections on August 8, 2023 — thirteen days before sentencing; Hayworth filed only three perfunctory objections and misrepresented to Movant that the obstruction-of-justice enhancement was "automatically" applied to all defendants who proceeded to trial. McKinnon Decl. ¶¶63, 71. See also Culberson Decl. ¶¶3–22; McKinnon Decl. ¶¶60–63; App. E, G4-RA-001 (framework: sentencing IAC / Hayworth's critical-stage failure); G4-RA-002 (counsel transition and last-minute appointment); G4-RA-003 (failure to investigate, prepare, and communicate).

Hayworth failed to raise critical objections to the PSR and sentencing enhancements. The PSR attributed a total loss amount of $2,479,240.90 and applied a 16-level increase because the loss exceeded $1,500,000; the Court applied that guideline calculation at sentencing without any pending objection. Sent'g Tr., ECF No. 235, PageID # 2350–2351. Movant provided documentation supporting a loss-calculation objection, including Rotary Drum Dryer quotes (Movant Ex. 71; Culberson Decl. ¶18 ($1.5M to $4–5M comparable valuation)) reflecting the value of equipment to be liquidated under the NGEP Operating Agreement liquidation obligation (BATES USA-00011430/11431; §§ 15.3(a), (b)(i)). Properly raised, that offset could have reduced the loss below the $1,500,000 threshold and eliminated the 16-level enhancement. See PSR ¶¶33, 41; McKinnon Decl. ¶69; App. E, G4-RA-004 (failure to challenge loss calculation and 16-level enhancement); G4-RA-005 (failure to develop loss-offset theory).

Hayworth also failed to object to the obstruction-of-justice enhancement. On Day 6 of trial, the Court ruled that Movant was prohibited from presenting duress testimony to the jury — a legal ruling on the Singleton elements, not a factual finding that her account was false. Trial Tr., ECF

No. 179, PageID # 1774. Yet at sentencing the Court imposed the obstruction enhancement by finding Movant committed perjury by "testifying essentially that she was under duress" — Hayworth, present in the courtroom, raised no objection, having told Movant the enhancement was "automatic" for all trial defendants. Sent'g Tr., ECF No. 235, PageID # 2352; McKinnon Decl. ¶71; PSR ¶36. (App. E, G4-RA-006.)

Hayworth further failed to object when the Government introduced and relied on a sentencing exhibit labeling documented transactions as "Ponzi-style returns." No Ponzi scheme was charged and no trial witness established one; when the Court asked about objection to Gov't Ex. 1 at the evidentiary hearing, Hayworth expressly stated "No, Your Honor" — though Chamblee had characterized those same transactions in loan and investment terms at trial. Evid. Hr'g., ECF No. 219, PageID # 2128; Trial Tr., ECF No. 175, PageID # 1034–1036. Hayworth also requested Movant author a sentencing letter (Movant Ex. 32; McKinnon Decl. ¶68) for submission to the sentencing court, then refused to submit it, stating it would "undermine his credibility." The Court's direct inquiry at sentencing — seeking the evidentiary basis for background and abuse claims Hayworth had not developed — supports the asserted prejudice from the mitigation failure. Sent'g Tr., ECF No. 235, PageID # 2355–2357. (App. E, G4-RA-007; G4-RA-009.)

Additional sentencing failures developed fully in Appendix E include: G4-RA-008, failure to correct ownership and role mischaracterization — the Government's Pre Sentence Report attributed a 49% Nex-Gen ownership interest to Movant (PSR ¶9), a premise directly contradicted by Movant Ex. 19 (Gov't Ex. 617 — Deware Operating Agreement, signed September 26, 2016; Movant not a party), Movant Ex. 20 (Gov't Ex. 703 — NGEP Operating Agreement; Movant not identified as owner, partner, or member), and Movant Ex. 36 (Gov't Ex. 618 — Non-Compete Agreement; Movant not a party), all Government exhibit materials in the

trial record; McKinnon Decl. ¶¶4, 36; and G4-RA-010, failure to obtain informed consent before recommending a psychological evaluation that resulted in a six-month sentencing delay and unauthorized transport — the sentencing court confirmed on the record that the evaluation was counsel-initiated, not court-ordered (Sent'g Tr., ECF No. 235, PageID # 2397; McKinnon Decl. ¶¶64–66; Culberson Decl. ¶¶8, 11). Each failure is independently sufficient and cumulatively reinforcing under Strickland. Movant does not abandon any claim, citation, exhibit, BATES reference, declaration paragraph, or verification item preserved in Appendix E.

The cumulative prejudice from the failures in G4-RA-001 through G4-RA-010, considered together, requires sentencing relief because a competent, prepared sentencing defense would have produced a materially different guideline range, § 3553(a) analysis, and sentence under Strickland v. Washington, 466 U.S. 668, 694 (1984), and Glover v. United States, 531 U.S. 198, 203–04 (2001). See App. E, G4-RA-011 (cumulative sentencing prejudice anchor). The sentencing-counsel failures identified in this ground are representative, not exhaustive. Full record-proof analysis, citations, exact quotes, deficient-performance showings, and Strickland/Glover prejudice analysis for Ground Four are set forth in Appendix E, incorporated herein by reference: G4-RA-001 (framework: sentencing IAC / Hayworth's critical-stage failure at sentencing); G4-RA-002 (critical-stage failure: counsel transition and last-minute appointment — Lewis → Carman → Hayworth); G4-RA-003 (failure to investigate, prepare, and communicate: Hayworth's sentencing preparation deficiency); G4-RA-004 (failure to challenge loss calculation and 16-level enhancement — $2,479,240.90 / $1,500,000 threshold); G4-RA-005 (failure to develop loss-offset theory: rotary drum dryer valuation evidence and NGEP Operating Agreement liquidation obligation); G4-RA-006 (failure to object to obstruction enhancement: Court-prohibited duress testimony treated as perjury at sentencing (primary

basis)); G4-RA-007 (failure to object to "Ponzi-style returns" sentencing exhibit and substantial-financial-hardship framing); G4-RA-008 (failure to correct ownership and role mischaracterization: 49% Nex-Gen ownership premise and entity attribution errors at sentencing); G4-RA-009 (failure to present meaningful mitigation, protect allocution, and submit sentencing letter); G4-RA-010 (failure to obtain informed consent: psychological evaluation, autonomy, and critical-stage communication failure); G4-RA-011 (cumulative sentencing prejudice anchor). Movant does not abandon any issue, citation, exhibit, BATES reference, declaration paragraph, or verification item preserved therein. These failures prejudiced Movant under Strickland and Glover v. United States, 531 U.S. 198, 203–04 (2001), because even an increase in actual imprisonment caused by counsel's errors satisfies prejudice. Had counsel performed competently, there is a reasonable probability that the advisory guideline range, § 3553(a) analysis, or ultimate sentence would have been materially different. If the Court does not vacate the conviction, Movant requests resentencing.

GROUND FIVE: Appellate Ineffective Assistance of Counsel

Appellate counsel Gregory Napolitano rendered ineffective assistance by failing to raise a substantial, record-based prosecutorial-misconduct/Napue claim on direct appeal, despite Movant's request that he do so. Movant specifically urged appellate counsel to raise prosecutorial misconduct based on the Government's use of false or materially misleading testimony, failure to correct known falsehoods, and materially misleading presentation of the trial record. See McKinnon Decl. ¶73. Appellate counsel performs deficiently when counsel omits a significant and obvious issue that was clearly stronger than the issues presented on appeal. See Strickland; Smith v. Robbins, 528 U.S. 259 (2000); Jones v. Barnes, 463 U.S. 745 (1983); Appendix F, G5-RA-001 (framework: appellate IAC / Napolitano's omission); G5-RA-002 (request-and-omission

anchor). Ground Five serves the additional and independent function of establishing cause under *Murray v. Carrier*, 477 U.S. 478, 488 (1986), to excuse the procedural default of Ground One — appellate counsel's failure to raise the stronger Napue claim despite Movant's specific request constitutes both an independent Sixth Amendment violation and the showing that permits this Court to reach Ground One's merits on collateral review. The omitted issue was significant, obvious, and stronger because it attacked verdict integrity directly: the trial record supported a due-process claim that the Government presented and maintained materially misleading impressions concerning Movant's role, knowledge, intent, account access, and transaction attribution, culminating in rebuttal arguments that no "shred of proof" and not "a single email or document" supported Chamblee's involvement. Trial Tr., ECF No. 179, PageID # 1894; App. F, G5-RA-003 through G5-RA-007.

Appellate counsel instead raised issues challenging the limitation of Movant's testimony, sufficiency of the evidence, and procedural and substantive reasonableness of the sentence. The omitted Napue/due-process issue was stronger because it focused on whether the Government elicited, relied on, or failed to correct materially false or misleading testimony and argument in a manner that affected the jury's judgment — offering a broader path to conviction relief by challenging the fairness of the Government's trial presentation as a whole, rather than only the sufficiency of the evidence, the limitation of particular testimony, or the reasonableness of the sentence. Unlike a narrower evidentiary or sufficiency challenge, the omitted issue tied together the Government's trial presentation, witness testimony, exhibits, financial-summary proof, rebuttal argument, and the McKinnon Letter / Government Exhibit 401. (App. F, G5-RA-007; G5-RA-009.)

The appellate-counsel errors identified in this ground are representative, not exhaustive. Full record-proof analysis, citations, exact quotes, deficient-performance showings, and Strickland/Smith v. Robbins prejudice analysis for Ground Five are set forth in Appendix F, incorporated herein by reference, which also incorporates the full trial-record foundation preserved in Appendix B: G5-RA-001 (framework: appellate IAC / Napolitano's omission of the stronger Napue/prosecutorial-misconduct claim on direct appeal); G5-RA-002 (Movant's specific request to appellate counsel and Napolitano's declination — request-and-omission anchor); G5-RA-003 through G5-RA-005 (appellate-record foundation and representative Napue examples — financial-summary / Bank of America records / McCracken-to-Hubbuch chain; Count 2 source-of-funds / intercompany transfer); G5-RA-006 (representative Napue example — Deware bank-access / signatory contradiction / BATES USA-00049465); G5-RA-007 (representative-not-exhaustive incorporation — McKinnon Letter / Gov't Ex. 401 pattern / rebuttal exploitation); G5-RA-008 (materiality / verdict-integrity prejudice anchor — five-category cumulative analysis); G5-RA-009 (clearly-stronger issue comparison — four-dimensional analysis); G5-RA-010 (appellate prejudice and relief theory — capstone / five-ground reasonable-probability showing). Movant does not abandon any issue, citation, exhibit, BATES reference, declaration paragraph, or verification item preserved therein. Had counsel raised the prosecutorial-misconduct/Napue claim Movant requested, there is a reasonable probability that the Sixth Circuit would have granted relief, including reversal, remand, or a new trial (App. F, G5-RA-008; G5-RA-010). Counsel's omission undermines confidence in the appellate proceedings and satisfies Strickland prejudice. Smith v. Robbins, 528 U.S. at 285–86; Strickland, 466 U.S. at 694.

CONSOLIDATED CUMULATIVE PREJUDICE AND CONCLUSION

The prejudice from Movant's constitutional claims must be considered both individually and cumulatively. Ground One shows that the Government's materially misleading evidentiary framework distorted the jury's evaluation of knowledge, intent, and attribution. Grounds Two and Three show that counsel's pretrial and trial failures prevented presentation of the available state-of-mind, account-access, and impeachment defense. Ground Five shows that appellate counsel failed to raise the stronger record-based Napue claim attacking verdict integrity.

These errors interacted. The Government's misleading attribution narrative was prejudicial because counsel failed to investigate, present, impeach, correct, and preserve the evidence needed to counter it. Counsel's failures were prejudicial because the Government was permitted to argue intent, control, and attribution from an incomplete and misleading record. Appellate counsel's omission was prejudicial because the unraised due-process issue tied those same record defects to the fairness and reliability of the verdict. Considered together, Grounds One, Two, Three, and Five undermine confidence in the conviction and show at least a reasonable likelihood or reasonable probability that the result would have been different.

Ground Four independently establishes sentencing prejudice. If the Court does not vacate the conviction and grant a new trial, Movant is entitled to resentencing because sentencing counsel failed to challenge material guideline and factual errors, correct ownership and role mischaracterizations, oppose the "Ponzi-style returns" framing, present mitigation, protect allocution, and communicate about critical sentencing decisions.

An evidentiary hearing is required unless the motion, files, and records conclusively show that Movant is entitled to no relief. 28 U.S.C. § 2255(b). They do not. The motion presents material factual disputes concerning the Government's knowledge, presentation, and correction of evidence; counsel's investigation, preparation, strategy, and failure to develop and present state-

of-mind and impeachment evidence from available records; the handling of the McKinnon Letter and Government Exhibit 401; sentencing counsel's preparation and communication failures; appellate counsel's omission of the Napue/due-process issue; and the resulting prejudice. These issues cannot be resolved on the present paper record without factfinding. Nor can the prejudice analysis be fairly compartmentalized. The same record defects that shaped the Government's trial presentation, counsel's investigation and trial failures, sentencing counsel's preparation failures, and appellate counsel's omission of the stronger due-process claim are interlocking — not independent. The Court should therefore evaluate prejudice cumulatively and permit factual development rather than resolving these interlocking constitutional claims on an incomplete paper record.

Movant therefore respectfully requests that the Court vacate her conviction and grant a new trial. Alternatively, Movant requests sentencing relief and resentencing after full and fair consideration of the objections, factual corrections, mitigation, and allocution competent counsel would have presented. At minimum, Movant requests an evidentiary hearing under 28 U.S.C. § 2255(b), appointment of counsel if appropriate, expansion of the record as necessary, and any further relief the Court deems just and proper.

Respectfully submitted,

Molly Irene McKinnon

MOLLY IRENE MCKINNON Register No. 23265-032

Pro Se Movant

FCI Estill – Satellite Prison Camp

P.O. Box 699

Estill, SC 29918

Date: 8/16, 2026

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF KENTUCKY

CENTRAL DIVISION, LEXINGTON

MOLLY IRENE McKINNON,	
Movant,	**) Crim. No. 5:20-cr-00063**
vs.	**)**
UNITED STATES OF AMERICA,	**)**
Respondent.	**)**

DECLARATION OF MOLLY IRENE McKINNON

IN SUPPORT OF MOTION UNDER 28 U.S.C. § 2255

TO VACATE, SET ASIDE, OR CORRECT SENTENCE

I. PERSONAL BACKGROUND AND IDENTITY

1. I am the Movant in the above-captioned proceeding. I am currently incarcerated at SPC Estill, P.O. Box 699, Estill, SC 29918, with Register Number 23265-032.

2. I was convicted on October 13, 2022, following a seven-day jury trial in the United States District Court for the Eastern District of Kentucky, Central Division at Lexington, of Counts 1, 2, 3, 4, 6, and 7 of the Indictment. On August 21, 2023, I was sentenced to a total term of 156 months' imprisonment, 3 years of Supervised Release, $2,247,424.39 in Restitution, and a Mandatory Special Assessment Fee of $600.

3. I make this Declaration in support of my Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255. The facts stated herein are based on my own personal knowledge and experience. I am competent to testify to these matters.

II. MY ROLE IN THE BUSINESS — I WAS AN EMPLOYEE, NOT AN OWNER OR PARTNER

4. At no time was I an actual owner, partner, member, or control person of NGI, NGEP, or any operating entity or account the Government attributed to me. Although there were discussions about a future business structure involving Deware, Vance, Smith, and me if Deware proceeded with the Shumard buyout and related TJ facility transaction, any contemplated future ownership interest never matured into actual ownership, membership, account control, or authority over company funds. I was initially engaged by Vance to assist in locating lenders for him. I was subsequently hired by Gary Chamblee ("Chamblee") to serve in a CEO capacity as part of the Shumard Group's investment in NGEP, and from that point forward worked under his direct supervision and direction. The CEO title did not confer ownership, account authority, or independent control. Accounting and administrative functions were added to my responsibilities later, at Chamblee's direction, and were never part of my original engagement.

Under the original agreement between Vance and Chamblee, the Shumard/Chamblee group was to handle all accounting and administrative functions for the NGEP partnership. Chamblee later changed that arrangement unilaterally, directing that all accounting — including NGEP partnership transactions and bills — be run through Vance's NGI company instead. Mendie Hogan, acting on behalf of the Shumard/Chamblee group, specifically communicated that the group wanted bills run through NGI. April Francis was hired by Vance in the last quarter of 2016 as a direct result of Chamblee's unilateral change to the original accounting arrangement — to handle NGI's financial, administrative and clerical functions that the Shumard/Chamblee group had agreed to perform but then redirected to NGI.

I was to be compensated from the NGEP account controlled by the Shumard Group; however, those payments were never made. I was not permitted to open the Whitaker Bank account until March 2017, and I was not permitted to use it until June 2017. I did not begin paying myself until after I was permitted to use the Whitaker Bank account.

5. I was not a signatory, authorized user, or account holder on any of Douglas William Vance's ("Vance") personal or business bank accounts. I had no authority to initiate, approve, or direct any financial transactions through those accounts.

6. I had no access to the NGEP Bank of America account, the Brand Bank account controlled by Chamblee and his Shumard partners, or any other account controlled solely by Chamblee and his partners. Because I had no access to those accounts, I had no independent means of verifying whether Chamblee's reported sales were genuine or fabricated.

7. Chamblee routinely provided me with balance information and sales figures for the business. I relied on those representations in preparing financial reports and in communicating information to investors and lenders. I had no reason at the time to believe that Chamblee's reported sales were false, because Chamblee represented to me that all sales proceeds were being deposited into accounts controlled solely by him and his partners.

8. I did not learn that Chamblee's initial reported sales were false until the afternoon of June 26, 2017, when Chamblee informed me of that fact. The email underlying Count 6 — sent to Dell Jaggers of KRP — was sent by me on the morning of June 26, 2017, several hours before Chamblee disclosed to me that his sales were fabricated. Similarly, the information I provided to Allan Deware on or about May 28, 2017, was sent nearly one month before I was told that Chamblee's sales were false.

9. I did not prepare invoices for Chamblee's sales. I was advised that Mendie Hogan would prepare invoices for all of Chamblee's sales. I prepared and sent invoices only for Vance's sales, which were real and documented.

10. I received no large financial transfers, distributions, or personal financial benefits from any of the businesses during my tenure. When I was terminated, I was still owed money for wages.

III. THE McKINNON LETTER

11. In or about November 2018, I authored a letter addressed to the attorney representing my co-defendant, Douglas Vance. In that letter, I documented my fear of Gary Chamblee, the threats and coercive circumstances under which I acted, my limited role in the businesses, and my lack of knowledge that Chamblee's reported sales were fabricated. The letter was intended to exonerate Vance with respect to matters that fell within my personal knowledge.

12. I provided the letter to Vance and expressly authorized him to provide it to his attorney and to release it to the Federal Bureau of Investigation ("FBI") after I was able to retain an attorney. It is my understanding that Vance's attorney, Andy Stevens, provided the letter to Agent Christopher Hubbuch of the FBI.

13. In December 2018, Vance disclosed the letter's existence to Agent Hubbuch in a recorded interview — Government Exhibit 401 — and informed Hubbuch that the letter was in his attorney's possession.

14. At trial, Agent Hubbuch testified that he never received the McKinnon Letter. The prosecution similarly stated that it had never received it. I do not know what communications occurred between Andy Stevens and Agent Christopher Hubbuch after Douglas William Vance disclosed the letter's existence. I do know that I authorized its release and that Douglas William Vance stated during the recorded interview that the letter was in his attorney's possession. I find it highly unlikely that a seasoned FBI agent, having been told in a recorded interview that exculpatory evidence existed and was in an attorney's possession, failed to follow up and obtain that document. I also find it highly unlikely that Vance's attorney would not provide the letter to Hubbuch, particularly because the letter exonerated his client and I had authorized its release.

15. The McKinnon Letter was directly relevant to the knowing and voluntary elements the Government was required to prove. The letter described what I knew at the time, my fear of Gary Chamblee, the circumstances under which I acted, and my lack of knowledge that the reported sales were false. Had the jury been permitted to consider the letter, it would have provided direct, contemporaneous evidence of my state of mind, my fear of Chamblee, and the coercive circumstances under which I acted.

IV. PRETRIAL REPRESENTATION — BRANDI N. LEWIS

The following facts demonstrate counsel's failure to provide constitutionally effective representation during the pretrial phase.

16. Brandi N. Lewis ("Lewis") was appointed to represent me during the pretrial phase of this case. After Lewis was appointed and obtained a continuance, she was largely unavailable to me and did not engage in meaningful communication with me during the early stages of her representation.

17. In an effort to facilitate communication and ensure I was available for meetings, I relocated to Kentucky for approximately two months prior to trial at my own expense. Despite my availability, Lewis did not use that time to prepare an adequate defense or to meet with me substantively about trial strategy.

18. Throughout the pretrial period, I made numerous specific requests of Lewis, including: (a) retaining an investigator to examine Gary Chamblee's background and prior FBI involvement; (b) retaining a forensic accountant to reconstruct the flow of funds and challenge the Government's financial narrative; (c) subpoenaing specific witnesses including Alan Rolfes, Joan Faybik, Shannon Wells, Richard Phillips, David Smith, Dell

Jaggers, Ken McCoy, and Jeff Dimick; and (d) subpoenaing the Brand Bank records for the NGEP account. Lewis either declined or failed to follow through on each of these requests.

19. Lewis advised me that Judge Reeves does not accept binding plea agreements and, without conducting any inquiry, assumed that the Government would offer nothing in exchange for cooperation or immunity concerning Gary Chamblee's conduct. Based on Lewis's assurance that the prosecution would offer nothing, I declined to authorize further outreach. Lewis later informed me that the Government had in fact indicated a willingness to speak with her; however, Lewis again reiterated that the Government would not entertain any form of immunity, and based on that representation, I declined to authorize any further outreach.

20. Lewis advised me that my only viable defenses were duress and jury nullification. She did not advise me that I was entitled to testify about my intent, state of mind, lack of knowledge of falsity, reliance on information supplied by others, and lack of ownership or control independently of establishing every element of a complete affirmative defense of duress. Had I been properly advised of my right to testify about these matters without first satisfying all elements of a duress defense, I would have testified more fully and completely at trial.

V. TRIAL REPRESENTATION — BRANDI N. LEWIS

21. Despite being employed by a prominent law firm in Lexington, Kentucky, Lewis had virtually no support staff assigned to assist with my case. Lewis admitted to me that she did not have time to review all of the approximately 50,000 documents in the Government's discovery file and asked me to identify key evidence.

22. Lewis required me to perform the following trial preparation tasks that, in my understanding, are the responsibility of defense counsel: (a) organizing copies of the Government's exhibits; (b) creating exhibit binders for the defense, prosecution, and the Court; (c) preparing a master list identifying and explaining each exhibit; (d) drafting lines of direct examination questioning for each witness; and (e) identifying which exhibits to use at trial. Lewis admitted to me that she had never worked with exhibits before and did not know how to apply exhibit numbers.

23. Lewis discarded dozens of exhibits I had identified as important before trial, without explanation, even though I believed those exhibits would have provided the jury with a more complete and accurate picture of the facts.

24. During witness examinations at trial, Lewis required me — rather than an assistant or staff member — to physically locate exhibits during testimony, causing me to miss critical portions of witness testimony.

25. Lewis spent approximately one half-day preparing me for my own testimony. That preparation focused almost entirely on establishing a duress defense based on Chamblee's threats. Lewis did not adequately prepare me to explain my state of mind, my limited role in the businesses, my lack of financial benefit, or my good-faith reliance on Chamblee's representations.

26. I explicitly instructed Lewis not to reference Gary Chamblee's threats during her opening statement, as I wished to control the manner and timing in which that narrative was introduced to the jury. Lewis disregarded that instruction and referenced the threats in her opening statement.

27. I also requested that Lewis delay delivering her opening statement until after the Government rested, as a tactical approach that would allow the defense to adapt to the prosecution's presentation. Lewis disregarded that request as well.

28. Throughout trial, I provided Lewis with written notes and proposed questions tied to testimony already given by Government witnesses. I also requested that Lewis's final question on my direct examination ask whether I had anything else I wished the jury to know. Due to the Court's ruling restricting my testimony on Day 6, Lewis became visibly shaken and failed to use or incorporate my notes, questions, or requests during my examination.

29. On the final day of trial, after the Court ruled that I had not satisfied the prima facie burden required to present a duress defense, Lewis had no alternative defense theory prepared. I was given approximately ten minutes to consult with Lewis before being called to testify. Those ten minutes were entirely inadequate to prepare me to testify about any aspect of my defense other than the duress narrative that had just been eliminated by the Court's ruling.

30. Lewis did not request a continuance after the Court eliminated the duress defense. Lewis did not object on the record to the ten-minute limitation as constitutionally inadequate preparation time. Lewis did not request a mistrial. I was required to take the oath and testify with no alternative framework and no guidance from counsel on how to present my testimony effectively.

31. Lewis did not make an adequate offer of proof after the Court excluded the McKinnon Letter from the jury's consideration, did not seek admission of the letter on any alternative evidentiary basis, and did not preserve the distinction between a complete duress defense

and independently relevant state-of-mind evidence. Lewis also did not object on the record to the exclusion's prejudicial effect on my ability to present my defense.

VI. ADDITIONAL FACTS REGARDING TRIAL COUNSEL'S FAILURE TO PRESENT MY STATE-OF-MIND DEFENSE

32. My defense at trial was not limited to a complete affirmative defense of duress. I also needed the jury to understand my state of mind, my lack of fraudulent intent, my lack of knowledge that certain information supplied to me was false, my lack of ownership or control over the relevant entities, and the fact that I relied on information supplied to me by others, including Gary Chamblee.

33. Before and during trial, I understood that my testimony was important because I was the only person who could fully explain what I knew, when I knew it, why I acted as I did, what I was told by Chamblee and others, and why my conduct did not reflect knowing participation in fraud. I wanted the jury to hear that I did not knowingly send false information, that I relied on information provided to me, and that I did not have ownership-level control over the companies or bank accounts the Government associated with me.

34. Trial counsel did not adequately prepare me to present that state-of-mind defense independently of a complete duress defense. Counsel focused on duress and jury nullification and did not prepare an alternative framework for me to testify about my intent, lack of knowledge, reliance, lack of ownership, lack of control, and lack of financial authority if the Court restricted or rejected the duress defense.

35. Had I been properly prepared, I would have testified more fully that I relied on sales and balance information supplied to me by Gary Chamblee; that I did not have access to the accounts Chamblee and his partners controlled; that I had no independent ability to verify sales proceeds that Chamblee represented were being deposited into those accounts; and that I did not learn that Chamblee's initial reported sales were false until after I had already sent certain communications the Government later relied upon at trial.

36. I also would have testified more fully about the difference between my work role and ownership or control. I was not an owner, partner, or member of NGI, NGEP, V4 Carbon, Carbon Holdings, or any other relevant entity. I did not control the entities or accounts in the manner the Government's presentation suggested. My work was administrative, bookkeeping, and operational in nature, and I acted based on information provided to me by others.

37. When the Court restricted the duress-related testimony, counsel did not request adequate time to reorganize my testimony around my independent state-of-mind and lack-of-knowledge defense. I was not meaningfully prepared to explain to the jury the facts necessary to understand my intent, what I knew, what I did not know, and why I acted as I did.

38. As a result, the jury heard only fragments of my account. The jury did not hear a complete explanation of the information Chamblee supplied to me, my reliance on that information, the timing of when I learned Chamblee's reported sales were false, my lack of control over the relevant accounts, and the contemporaneous records that would have corroborated my understanding at the time.

39. I believe this failure prejudiced my defense because the Government's case depended heavily on asking the jury to infer fraudulent intent from emails, bookkeeping work, financial reports, and administrative conduct. Without a complete explanation of my state of mind and lack of knowledge, the jury was not given the context necessary to evaluate whether I knowingly joined a fraudulent scheme.

VII. RECORDED CONVERSATIONS WITH GARY CHAMBLEE

40. During the relevant period, I recorded conversations with Gary Chamblee and began transcribing at least some of those recordings. These recordings were important because they related to Chamblee's directions, the information he provided to me, and my understanding of what was occurring at the time.

41. The contemporaneous transcriptions were relevant to my state of mind because they could have corroborated that I relied on information supplied by Chamblee and that I did not know certain information was false when I transmitted it. They also would have helped explain the circumstances under which I was acting and why I believed the information I was using was accurate at the time.

42. I provided Trial Counsel with copies of the transcriptions. These recorded conversations were also referenced in my contemporaneous journals as well as an email I sent to Vance. I testified at trial that I had recorded conversations with Chamblee and had begun transcribing them. Counsel did not adequately follow up with me regarding the content of those recordings, whether they were documented in my journals, whether transcripts existed and whether those transcripts could be used to corroborate my

testimony, or whether they could be used to impeach Chamblee or rebut the Government's argument that there was no documentary support for my account.

43. The recordings themselves are not being filed as exhibits with this § 2255 motion. However, counsel's failure to investigate, develop, or use the recorded-conversation evidence remains important because the recordings were part of the available corroborating information that could have supported my state-of-mind, reliance, and lack-of-knowledge defense.

44. The recordings were made on my cellular telephone. I also kept a copy of those transcription materials on my laptop. Lewis told me she could not use the transcripts because the prosecution would simply argue that the transcripts were "made up." I asked Lewis to obtain my cellular telephone records so that the dates and times of my calls with Chamblee could be compared against the transcribed calls, but, to my knowledge, she did not do so. The original recordings are no longer available to me because the phone on which they were recorded was later damaged. I sent the phone to two different vendors in an effort to retrieve the data, but both vendors informed me that the data could not be recovered. I may still have receipts or records from those recovery attempts, and I will attempt to locate them. I will also attempt to locate any transcribed notes or transcription materials from the recorded calls.

VIII. JOURNALS, DAYTIMER INFORMATION, AND CONTEMPORANEOUS RECORDS

45. During the relevant period, I kept contemporaneous notes and journal materials. For the year 2016, I used my DayTimer planner to record meeting notes, business activities, and communications. Beginning in January 2017, I began keeping a separate dedicated journal to document events related to the NGI/NGEP business, because I also operated my own separate business and needed to keep records distinct.

46. The separate journal spans from January 2017 through approximately August 2018, which was approximately when the FBI became involved. Throughout the DayTimer and journal materials, I recorded, among other things, communications and directives I received from Gary Chamblee, threats he made to me, and events related to the operation of the Kentucky business.

47. Defense Exhibit 82 --- my contemporaneous daytimer and journal entries --- was marked for identification at trial but was never offered into evidence, never admitted, and

never used by counsel at any point during the trial proceedings. The journal materials are identified in this § 2255 proceeding as Movant Exhibit 45.

48. My journals were important because they contained contemporaneous information bearing on what I was told, what I understood, what I was working on, and how I perceived events as they occurred. They were not created for litigation after the fact. They were records made during the relevant period and would have helped corroborate my state of mind.

49. Trial counsel Lewis called me to testify but asked me no questions about the journals during my examination. Counsel failed to use my journals and related contemporaneous records effectively to explain my state of mind, lack of fraudulent intent, reliance on information supplied by others, and lack of knowledge that certain information was false at the time I acted.

50. If counsel had used these records properly, the jury would have had contemporaneous support for my testimony rather than being left with the Government's suggestion that my account was unsupported or self-serving.

IX. RECORDS AND EVIDENCE I IDENTIFIED TO TRIAL COUNSEL

51. Before and during trial, I identified evidence and records that I believed were important to my defense. Counsel asked me to help identify key evidence because she had not reviewed all of the discovery materials and did not have sufficient support staff assigned to the case.

52. The materials I identified included records bearing on my role in the business, my lack of ownership or control, bank-account access, Chamblee's role, Chamblee's sales information, contemporaneous journal materials, and other documents that would have helped explain the difference between my administrative work and the Government's theory that I knowingly participated in fraud.

53. Counsel did not use many of the records I identified. Counsel also discarded or failed to use exhibits I believed were important to presenting a complete and accurate picture of the facts. As a result, the jury did not hear the defense in the way I believed the records supported.

54. Counsel's failure to use these records affected my ability to present my defense because the Government was able to portray my testimony as unsupported while the jury

did not see or hear the available corroborating evidence that would have explained my state of mind, lack of knowledge, lack of control, and reliance on information provided by others.

55. Had counsel properly reviewed, organized, and used the records I identified, the defense could have shown that the Government's broad references to "Nex-Gen," "Vance and McKinnon," ownership, control, bank access, and intent were misleading. The records would have helped separate my actual role from the conduct and accounts controlled by others.

X. PREJUDICE FROM COUNSEL'S FAILURE TO PRESENT THE AVAILABLE STATE-OF-MIND EVIDENCE

56. The missing state-of-mind evidence was important because intent and knowledge were central issues at trial. I did not dispute that certain emails or records existed. The issue was whether I knowingly and intentionally participated in fraud. The jury needed to understand what I knew, what I did not know, what information I relied on, and what role I actually played.

57. Counsel's failure to prepare and present this evidence left the jury without the full context necessary to evaluate my intent. The jury heard the Government's interpretation of emails, accounting entries, financial records, and business activity, but did not hear the full defense explanation supported by my firsthand knowledge and contemporaneous records.

58. If counsel had properly prepared me, preserved the state-of-mind issue, used the McKinnon Letter, developed the recorded-conversation evidence, used the journals, and presented the entity/control distinctions, there is a reasonable probability that at least one juror would have viewed the Government's intent theory differently.

59. I make these statements based on my own personal knowledge, my communications with trial counsel, my understanding of my role in the businesses, the information supplied to me by others, the records I maintained, and my experience preparing for and testifying at trial.

XI. SENTENCING REPRESENTATION — GEORGE SCOTT HAYWORTH

60. Following trial, I requested that Lewis withdraw due to a complete breakdown in communication and trust. I then retained Attorney Dan Carman ("Carman"), who, despite being paid, failed to prepare for sentencing. The day before the sentencing hearing, I moved for the appointment of new counsel.

61. The Court appointed George Scott Hayworth ('Hayworth') on the day before my original sentencing hearing in February 2023. On that date, Hayworth and I met for the first time and spoke briefly for approximately five minutes. My original sentencing hearing was continued and rescheduled to August 21, 2023.

62. During the approximately six months between his appointment and the sentencing hearing, Hayworth met with me on only three occasions: August 3, 2023, August 8, 2023, and August 16, 2023 — all immediately before the hearing. These meetings are documented in a notarized letter I authored on August 14, 2023, and had notarized on August 16, 2023, while incarcerated at the Grayson County Detention Center. That letter also contains my meeting notes and recaps for each of the three meetings.

63. On August 8, 2023, I provided Hayworth with a comprehensive list of more than 25 specific objections to the Presentence Investigation Report ("PSR"). Hayworth disregarded substantially all of those objections. Hayworth filed only three perfunctory objections to the PSR and implied in filings that objections had already been raised by prior counsel Carman, even though, to my knowledge, many of the objections I identified had not been raised.

64. Without my knowledge or consent, Hayworth requested a psychological evaluation that resulted in a six-month delay in sentencing. Hayworth led me to believe that Judge Reeves had ordered the evaluation unilaterally. I opposed any such evaluation and was never informed by Hayworth that he had recommended it. I did not learn until later that Hayworth had initiated the request.

65. As a result of the psychological evaluation, I was transported by U.S. Marshals from the Grayson County Detention Center to a federal facility in Houston, Texas. During transport, the Marshals applied handcuffs in a manner that caused severe injury to my wrist. The injury ultimately required surgical correction, which was delayed for more than one and a half years, resulting in continued pain and a subsequent thumb injury from the corrective surgery itself.

66. The psychological evaluation ultimately found no diagnosable mental-health issues. The six-month delay in sentencing, the transport, and the resulting physical injuries were therefore entirely unnecessary and caused by Hayworth's unauthorized action.

67. I requested that Hayworth file a motion for release due to my inability to prepare adequately for sentencing while incarcerated. Hayworth refused, stating his belief that Judge Reeves would deny it.

68. At Hayworth's own request, I authored a personal letter intended for submission to the sentencing judge, explaining my background, history, and perspective. Hayworth subsequently refused to submit the letter to the Court, stating that it would "undermine his credibility." I was present at the sentencing hearing and had the right to address the Court directly; however, because Hayworth had refused to submit my letter and had provided me no guidance on how to effectively present my background and personal history without it, I was effectively denied a meaningful opportunity to be heard through my own voice — even though Judge Reeves stated on the record at the hearing that he wanted to understand my background and perspective.

69. I provided Hayworth with documentation supporting a loss-calculation objection — specifically, several quotes for comparable rotary drum dryers reflecting the value of equipment that was to be liquidated pursuant to the Operating Agreement. Hayworth failed to raise this argument at sentencing, even though it could have reduced the loss calculation below the $1,500,000 threshold and avoided or reduced the 16-level enhancement.

70. Hayworth told me he would not request downward departures and refused to argue for mitigation related to diminished intent, coercion, or my personal history. Hayworth stated that he did not believe Judge Reeves would grant such requests. His refusal was based not on legal merit but on his personal assessment of the judge's likely reaction.

71. Hayworth told me that Judge Reeves "automatically" applies the obstruction-of-justice enhancement to all defendants who proceed to trial. That representation was incorrect. Hayworth made no objection to the enhancement at sentencing.

72. I repeatedly requested that Hayworth obtain the transcript of the hearing regarding Carman's unpreparedness and withdrawal. Hayworth refused, stating that it was "illegal" for him to obtain or provide the transcript. That statement was incorrect, and Hayworth's refusal deprived me of access to a record that could have supported my post-conviction claims.

XII. APPELLATE REPRESENTATION — GREGORY NAPOLITANO

73. I urged my appellate counsel, Gregory Napolitano ("Napolitano"), to include prosecutorial misconduct as a ground for relief on direct appeal. I specifically identified the Government's use of false or materially misleading testimony, its failure to correct known falsehoods, and the pattern of misconduct documented in the trial transcript and the Government's own admitted exhibits. Napolitano declined to include prosecutorial misconduct as an appellate ground despite my requests.

XIII. ADDITIONAL FACTS SUPPORTING RELIEF

74. Gary Chamblee subjected me to physical threats, coercion, and assaults during the period of the alleged offenses. I have photographs documenting injuries I sustained, including photographs showing my bruised and bloodied face following incidents I reasonably believe were caused by Chamblee, as well as photographs of a house fire I reasonably believed was caused by Chamblee. Those photographs were identified as Defense Exhibits 73, 74, and 75 at trial. Lewis failed to introduce them.

75. The Government's discovery provided to me differed in size and content from the discovery provided to my co-defendant, Vance, despite representations that the productions would be "exactly duplicitous." Additionally, the Government retrieved my flash drive containing discovery materials under the pretext of redacting confidential information, but returned the materials without redactions and with what I believe was missing exculpatory content. The flash drive was personally retrieved by the lead prosecutor.

76. Joan Faybik never met me in person, never spoke with me by telephone, email, text, social media, or any electronic means, and did not rely on any documents provided by me before deciding to invest funds with Vance. *See* Declaration of Joan Faybik ¶¶ 13–15, executed February 11, 2026 ("Faybik Declaration"), submitted herewith as Movant's Exhibit D. In her own sworn declaration, Faybik stated: *"It was my desire to testify in the trial proceeding or the evidentiary hearing at sentencing to set the record straight regarding my voluntary investments with Doug Vance. However, I was never called as a witness."* Faybik Declaration ¶ 12. Faybik further declared that she does not consider herself a victim and that she was never tricked or defrauded by Vance. *Id.* ¶¶ 9, 18–19.

77. I reviewed the Government's complete discovery production in this case. That production consisted of approximately 50,000 pages of documents, many of which were duplicates bearing different BATES numbers for the same underlying documents. My review of the complete production revealed no FBI 302 report, interview memorandum, or other documented statement attributed to or derived from an interview of Richard Phillips. I have

no knowledge of Agent Hubbuch or any other Government agent ever having conducted an interview with Richard Phillips.

78. I had no knowledge of and was not a party to any business agreement, transaction or communication between Doug Vance and Keith Sphakoff. I had no knowledge of any promissory note or financial arrangement between Vance and Shpakoff until the course of this litigation. It is my understanding that Shpakoff was a personal friend of Vance, and that any funds he provided to Vance were provided pursuant to a personal arrangement between the two of them in which I played no role.

Francis Deposit-Reporting Errors and Bounced Checks

79. April Francis served as a bookkeeper/office manager and performed financial tracking functions for NGI. As part of her regular duties, Francis and Douglas Vance reconciled the NGI bank account every Monday. Because Chamblee had directed all NGEP partnership transactions and bills through the NGI account — as described in Paragraph 4 above — the bank statements Francis reconciled weekly included all business transactions: deposits from Shumard, deposits from Deware, and income from the NGI logging operation. Francis therefore had complete weekly visibility into all financial transactions flowing through the NGI account. There was no effort to conceal one investor from another, and no reason for me to be concerned about Francis having access to bank statements that she already reviewed every Monday as a regular part of her job. Additionally, because I was not permitted to open the Whitaker Bank account until March 2017 and was not permitted to use it until June 2017, all transactions ran through the NGI account that Francis reconciled weekly.

In addition to the weekly reconciliation, Francis sent Vance a text message each week identifying the total amount of money needed to cover all checks written and invoices due in the following week, so that Vance could ensure that a sufficient amount was deposited into the account before those checks cleared. On at least two occasions, and possibly more, Francis provided inaccurate figures in those weekly text messages, which caused a cascading number of bounced checks. I am uncertain whether Francis provided inaccurate information intentionally — particularly after the incident involving Vance's comment in April 2017, which is described in Paragraph 80 below — but there were multiple instances in which she sent Vance incorrect financial information, and those errors directly resulted in checks bouncing.

Francis's Personal Animus Toward Vance

80. To my knowledge, Douglas Vance was not aware of April Francis's personal feelings toward him until I informed him of them following the incident described below. I was not present when Vance made the comment that was later raised during Francis's trial testimony. Vance told me that he had made a remark he described as a compliment — "She's my favorite and I haven't even slept with her" — to a small group that included Francis. He characterized the comment as a compliment and said he did not intend it as a statement of romantic or personal interest.

The day after the incident, Francis came to my office wearing make-up — which I had never seen her wear before — and was dressed differently than usual. She told me that Vance "liked" her. When I responded that of course he liked her, she clarified that she believed Vance had a personal romantic interest in her, and told me about the comment he had made. In Francis's account, Vance had said that she was his favorite and that he had not slept with her "yet," and she interpreted the word "yet" as expressing personal interest in her. I handled the situation poorly at first and laughed, but quickly recognized that Francis was serious. I told Francis that Vance was happily married and that I had personally met his wife. After speaking with her for a few more minutes, I could tell she was upset. I told her I would discuss the matter with Vance, which I did later that day.

When I spoke with Vance that afternoon, he said he was embarrassed about the comment. He subsequently told me that he had spoken with Francis personally to apologize and to confirm that she was still comfortable working there. After that, Francis became noticeably hostile toward Vance. I recall one instance in which she sent Vance a text message stating that one of our male employees — Elvis — was about to visit him and that Vance should be prepared for a sexual encounter with him. It is my understanding that Vance retained that text message.

I had already been experiencing concerns about Francis's work performance before the April 2017 incident. Her work-related issues, including the inaccurate deposit reporting described in Paragraph 79, appeared to worsen after the incident.

McKinnon's Transitional Role and Francis's Intended Replacement

81. When I began working with Vance to assist with the NGEP partnership business, my intention was to be involved for approximately six to nine months to help get the business up and running. I had my own separate business at the time and planned to return to it once the NGEP partnership operations were established. The plan was for April Francis to take over my responsibilities when I left. During that transition period, I progressively gave

Francis more responsibility in preparation for her eventually assuming the full scope of the role. However, I concluded over time that Francis did not have the skill set necessary to handle a larger administrative role. I called attention to many of her mistakes during this period, including the inaccurate deposit-reporting errors described in Paragraph 79. My concerns about Francis's work performance predated the April 2017 incident described in Paragraph 80 and continued thereafter.

The $200 Cash Theft and the Bank Statement Incident

82. The only time I was close to "irate" with April Francis was when I discovered that she had stolen $200 in cash that had been specifically set aside to replace a bounced check. This incident occurred shortly before she left the company. The cash was designated for a specific purpose — to cover a check that had previously bounced — and Francis took it. That was a legitimate basis for an employer's strong frustration and had nothing to do with any concern about financial records being seen by others.

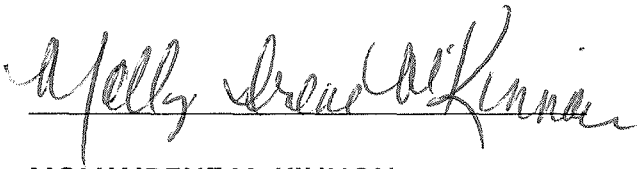
The bank statement incident that the Government relied on at trial was an entirely different matter. As described in Paragraph 79, Francis reconciled the NGI bank statements with Vance every Monday. Those bank statements included all business transactions. I knew that Francis had routine, weekly access to bank statements as part of her regularly assigned duties. Whatever reaction I may have had when I learned Francis was helping Vance print the Wells Fargo bank statement was not rooted in any concern about Francis seeing something she should not have seen — because she already reviewed comparable financial information every single week as a regular part of her job.

Francis's "Locked Up" Email — Limited to Vance Only

83. I have reviewed the email that April Francis sent to Allan Deware on or about June 29, 2017, in which she stated she would do "anything and everything" to have Vance "locked up." That email expressed Francis's stated mission exclusively with respect to Vance. Francis did not express any similar intention regarding me in that email, despite having implied at trial that she believed both Vance and I were engaged in a fraud on investors. If Francis had genuinely believed, as her trial testimony suggested, that both Vance and I were defrauding investors, there is no principled explanation for why her stated mission to have people imprisoned was directed at Vance alone and made no mention of me. The exclusive focus on Vance in that email is consistent with a personal vendetta against Vance specifically — not a principled concern about fraud that would logically have implicated both of us equally.

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

Executed on: 8/16/, 2026



MOLLY IRENE McKINNON

Register No. 23265-032

Declarant, Pro Se

SPC Estill – Satellite Prison Camp

P.O. Box 699

Estill, SC 29918

Barbara A. Culberson
325 Japonica Drive
Midway, GA 31320
404-372-3415 / barbculberson@comcast.net

August 19, 2026

Clerk of Court
United States District Court
Eastern District of Kentucky, Lexington Division
101 Barr Street
Lexington, Kentucky 40507

Re: *United States v. Molly Irene McKinnon*, Criminal No. 5:20-cr-00063 (E.D. Ky.)
Movant Reg. No. 23265-032
Pro Se Filing — Condensed Motion Under 28 U.S.C. § 2255,
Memorandum of Law, Movant's Declaration, and Appendices

Dear Clerk of Court:

I write on behalf of Movant Molly Irene McKinnon, Reg. No. 23265-032, currently in the custody of the Federal Bureau of Prisons, to transmit the enclosed pro se documents for filing in the above-captioned matter. I am a family member of the Movant and am submitting this package on her behalf due to the practical unreliability of the institutional mail system, which has resulted in documented delays and delivery failures that would place time-sensitive filings at serious risk. All enclosed documents bear the original signature of Movant McKinnon and are submitted here in their original form. This package constitutes a condensed refiling submitted in compliance with the Court's earlier ruling denying the motion to exceed the 25-page limit. It is not a new or amended motion. The original AO 243 and supporting exhibits were previously filed and docketed at ECF No. 278. A revised AO 243 is enclosed herein; the Timeliness of Motion section (page 12) has been completed to address the circumstances of this condensed refiling. Movant respectfully submits the enclosed revised AO 243 as the operative motion. Additional exhibits were filed and docketed at ECF No. 285. The Court's ruling addressed only the memorandum's compliance with the page limit; accordingly, this condensed refiling replaces the memorandum only. Movant respectfully requests that the Court continue to rely on all exhibits previously docketed at ECF Nos. 278 and 285 in connection with this submission. The enclosed memorandum has been revised and condensed to comply with the Court's 25-page limit, with supporting factual and record detail relocated to the enclosed tabbed appendices. All exhibits are incorporated by

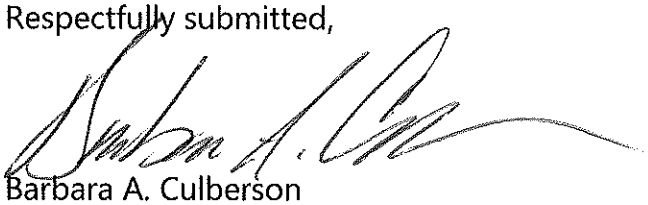
reference by docket number throughout and are not reprinted, to avoid burdening the Court with materials already in the record.

The following documents are enclosed in this package:

1. Revised AO 243 — Motion Under 28 U.S.C. § 2255 (bearing Movant's original signature; with the completion of the Timeliness of Motion section, page 12);
2. Condensed Memorandum of Law in Support of Pending § 2255 Motion (25 pages, compliant with the Court's page limit; bearing Movant's original signature);
3. Movant's Declaration (bearing Movant's original signature);
4. Tabbed Appendices and
5. Tab Index identifying all exhibits and documents referenced by tab number.

Should the Clerk have any questions or require any additional information, I may be reached at the address above. I respectfully request that these documents be accepted for filing at the Court's earliest opportunity. Thank you for your time and assistance.

Respectfully submitted,



Barbara A. Culberson
Family Member and Authorized Submitter on Behalf of
Movant Molly Irene McKinnon, Reg. No. 23265-032

TAB INDEX

McKinnon v. United States
No. 5:20-cr-00063
28 U.S.C. § 2255 Motion to Vacate
Movant: Molly Irene McKinnon, Reg. No. 23265-032

This index identifies all exhibits and documents referenced by tab number throughout Appendices B–F of Movant's Memorandum of Law in Support of Motion Under 28 U.S.C. § 2255. The exhibits listed herein were previously filed as attachments to ECF No. 278 (filed February 20, 2026) and ECF No. 285 (filed March 10, 2026) and remain accessible on the Court's docket. No physical binder is submitted with this filing. Tab numbers correspond to exhibit references appearing throughout the appendices.

Total tabbed exhibits: 78

TABBED EXHIBITS

Tab 1 Movant Ex. A – KRP Barker Letter (Jan. 11, 2023)

Tab 2 Movant Ex. B – Francis 302

Tab 3 Movant Ex. C – McKinnon Letter (~Nov. 2018)

Tab 4 Movant Ex. D – Joan Faybik Notarized Declaration

Tab 5 Movant Ex. E – Barbara Culberson Declaration

Tab 6 Movant Ex. F – FBI/DOJ Transcript of Vance/Hubbuch Interview (Dec. 2018)

Tab 7 Movant Ex. 1 – Smith 302 (BATES USA-00049465)

Tab 8 Movant Ex. 2 – Severson 302 (BATES USA-00011674)

Tab 9 Movant Ex. 3 – Search Warrant Affidavit (BATES USA-00011830)

Tab 10 Movant Ex. 4 – A. Rolfes 302 (BATES USA-00012293)

Tab 11 Movant Ex. 5 – D. Smith 302 (BATES USA-00049463)

Tab 12 Movant Ex. 6 – CH Search Warrant Affidavit (BATES USA-00011832)

Tab 13 Movant Ex. 7 – Deware Attorney's Memo to FBI (BATES USA-00011122 through USA-00011181)

Tab 14 Movant Ex. 8 – Hubbuch Handwritten Notes for Deware Interview (BATES USA-00011554)

Tab 15 Movant Ex. 9 / Gov't Ex. 501 – Government Financial Summary Spreadsheet

Tab 16 Movant Ex. 10 / Gov't Ex. 807 – KRP Executed Letter of Intent (drum dryer fabrication/leaseback)

Tab 17 Movant Ex. 11 / Gov't Ex. 502 – NGI Bank Records and Signatory Cards; KRP payment records

Tab 18 Movant Ex. 12 / Gov't Ex. 801 – KRP Loan Documents (post-payment conversion)

Tab 19 Movant Ex. 13 / Gov't Ex. 177 – Chamblee Email re McCoy Plant Visit / Koch Contacts

Tab 20 Movant Ex. 14 / Gov't Ex. 507 – V4 Carbon Bank Account Applications and Authorized Signatory Cards

Tab 21 Movant Ex. 15 / Gov't Ex. 508 – Carbon Holdings Bank Account Applications and Authorized Signatory Cards

Tab 22 Movant Ex. 16 / Gov't Ex. 608 – Shumard Draw Communication (MM email to Deware)

Tab 23 Movant Ex. 17 / Gov't Ex. 717 – Bank of America NGEP Account Records (Hubbuch/Chamblee/Hogan records)

Tab 24 Movant Ex. 18 / Gov't Ex. 301 – KCC Holdings/Nex-Gen LLC Loan Agreement and Amendments (Mar. 7, 2018)

Tab 25 Movant Ex. 19 / Gov't Ex. 617 – NGI/Entity Formation Records / Deware Operating Agreement

Tab 26 Movant Ex. 20 / Gov't Ex. 703 – NGEP Operating Agreement (Capital Contributions Schedule; Sections 6.4(b), 9.3, 14.6)

Tab 27 Movant Ex. 21 / Gov't Ex. 106 – Chamblee Email to Vance Describing Movant's Role

Tab 28 Movant Ex. 22 / Gov't Ex. 403 – April Francis Statements

Tab 29 Movant Ex. 23 / Gov't Ex. 202B – Whitaker Bank Record (Count 2 ACH deposit; Gary G. Chamblee, $5,600)

Tab 30 Movant Ex. 24 – McKinnon Notarized Letter (authored Aug. 14, 2023; notarized Aug. 16, 2023)

Tab 31 Movant Ex. 25 / Gov't Ex. 402 – Personal Promissory Note from KS

Tab 32 Movant Ex. 26 / Gov't Ex. 609 – Personal Promissory Note from Deware

Tab 33 Movant Ex. 27 / Gov't Ex. 503 – Vance Personal Bank Records

Tab 34 Movant Ex. 28 / Gov't Ex. 105 – Vance Letter of Intent (requested Shumard handle all accounting and admin)

Tab 35 Movant Ex. 29 / Gov't Ex. 120 – MM Email to Jaggers (KRP) re Count 6

Tab 36 Movant Ex. 30 / Gov't Ex. 627 – MM Email to Deware with V4 Carbon Check Register

Tab 37 Movant Ex. 31 / Gov't Ex. 602 – MM Email to Deware with Investor Summary

Tab 38 Movant Ex. 32 – McKinnon Sentencing Letter

Tab 39 Movant Ex. 33 / Gov't Ex. 612 – MM Email to Deware with Simple Agreement for Vance and Deware

Tab 40 Movant Ex. 34 / Gov't Ex. 629 – NGI Formation Documents

Tab 41 Movant Ex. 35 / Gov't Ex. 619 – Bill of Sale (Deware)

Tab 42 Movant Ex. 36 / Gov't Ex. 618 – Non-Compete Agreement (Sept. 26, 2016)

Tab 43 Movant Ex. 37 / Gov't Ex. 620 – MM Email to Deware re Shumard and TrustJoist Operations

Tab 44 Movant Ex. 38 / Gov't Ex. 504 – NexGen, LLC Wells Fargo Account Records

Tab 45 Movant Ex. 39 / Gov't Ex. 505 – Dendron Wells Fargo Account Records

Tab 46 Movant Ex. 40 / Gov't Ex. 506 – Dendron Wells Fargo Account Records (second account)

Tab 47 Movant Ex. 41 / Defense Ex. 76 – NGEP Bank of America Records (Sept. 2018 statement; Hogan cross-examination)

Tab 48 Movant Ex. 42 / Defense Ex. 89 – Letter of Intent: Carbon Partners to Sell NGI Char Products

Tab 49 Movant Ex. 43 / Defense Ex. 4 – Hogan-to-Vance Email with Post-FBI Loan Documents (Nov. 24, 2018)

Tab 50 Movant Ex. 44 / Defense Ex. 78 – Consent Form Allowing Shumard to Open Brand Bank Account for NGEP

Tab 51 Movant Ex. 45 / Defense Ex. 82 – McKinnon Contemporaneous Journals (2016-2018); *Voluminous; not separately submitted.* This exhibit was marked as Defense Ex. 82 at trial. If an evidentiary hearing is granted, Movant will arrange production.

Tab 52 Movant Ex. 46 / Defense Ex. 42 – Deware Email (May 13, 2017) re TrustJoist Commitment

Tab 53 Movant Ex. 47 / Defense Ex. 49 – MM Email to Deware re Sales Proforma (showing a loss)

Tab 54 Movant Ex. 48 / Defense Ex. 106 – Deware Handwritten Agreement (listing Movant as Treasurer)

Tab 55 Movant Ex. 49 / Defense Ex. 66 – Hogan Email to Movant re TrustJoist Purchase ($2.9M)

Tab 56 Movant Ex. 50 / Defense Ex. 92 – Chamblee Adjustments to QuickBooks Records

Tab 57 Movant Ex. 51 / Defense Ex. 87 – MM Email to Chamblee with Logging-Equipment Quote

Tab 58 Movant Ex. 52 / Defense Ex. 29 – MM Email to Deware with V4 Carbon Registration/Formation Documents

Tab 59 Movant Ex. 53 / Defense Ex. 30 – Deware Email to Movant re Monies to Buy Out Shumard

Tab 60 Movant Ex. 54 / Defense Ex. 31 – Deware Email to Movant re Atlanta Group (Shumard) Status

Tab 61 Movant Ex. 55 / Defense Ex. 32 – MM Email to Deware re First Draw to Shumard

Tab 62 Movant Ex. 56 / Defense Ex. 35 – MM Email to Deware: No Meeting with Atlanta Group

Tab 63 Movant Ex. 57 / Defense Ex. 39 – MM Email to Deware re Sales/Tasks Not Completed by Smith and Deware's Marketing Person

Tab 64 Movant Ex. 58 / Defense Ex. 40 – MM Email to Deware re Sales/Tasks Still Not Completed by Smith and Deware's Marketing Person

Tab 65 Movant Ex. 59 / Defense Ex. 43 – Email re Non-Productive Sales Efforts by Deware/Smith/Marketing Person (1 of 6)

Tab 66 Movant Ex. 60 / Defense Ex. 44 – Email re Non-Productive Sales Efforts by Deware/Smith/Marketing Person (2 of 6)

Tab 67 Movant Ex. 61 / Defense Ex. 45 – Email re Non-Productive Sales Efforts by Deware/Smith/Marketing Person (3 of 6)

Tab 68 Movant Ex. 62 / Defense Ex. 46 – Email re Non-Productive Sales Efforts by Deware/Smith/Marketing Person (4 of 6)

Tab 69 Movant Ex. 63 / Defense Ex. 47 – Email re Non-Productive Sales Efforts by Deware/Smith/Marketing Person (5 of 6)

Tab 70 Movant Ex. 64 / Defense Ex. 48 – Email re Non-Productive Sales Efforts by Deware/Smith/Marketing Person (6 of 6)

Tab 71 Movant Ex. 65 – D. Smith 302 (BATES USA-00049464)

Tab 72 Movant Ex. 66 – Wells 302 (BATES USA-00018125)

Tab 73 Movant Ex. 67 – J. Webb (Wells' Attorney) 302 (BATES USA-00012811)

Tab 74 Movant Ex. 68 / Defense Ex. 73 – Photograph of Injuries (Mugging)

Tab 75 Movant Ex. 69 / Defense Ex. 74 – Photograph of Injuries (Hotel Assault)

Tab 76 Movant Ex. 70 / Defense Ex. 75 – Photograph of Injuries (Home Fire)

Tab 77 Movant Ex. 71 – Rotary Drum Dryer Quotes (Vulcan Drying Systems and others; provided to Hayworth Aug. 8-9, 2023)

Tab 78 Movant Ex. 72 / Gov't Ex. 201 – Bank of America NGEP Account Records and Authorized Signatory Cards

EXHIBITS CITED BY DESIGNATION ONLY

The following exhibits are cited in the appendices by their original designation but could not be physically included for the reason stated.

Gov't Ex. 1 (Evid. Hrg. Ex. 1) – Movant does not have a copy of this evidentiary hearing exhibit.

Gov't Ex. 401 – Audio recording; cannot be submitted with a written motion. Cited as trial-admitted recording reference only.

Gov't Ex. 604 / Defense Ex. 85 – Carbonox PO and related email. No physical copy available to Movant at this time. Cited by original designation.

Chamblee 302 (BATES USA-00011563) – No physical copy available to movant at this time. Cited by original designation.

NGEP Whitaker Bank Account Records – No formal exhibit number assigned. Referenced by description only.

NGEP Formation Documents – No formal exhibit number assigned. Referenced generally by description only.

Brand Bank Records for NGEP Account – Never subpoenaed; not in trial record. Cited to establish failure to obtain.

McKinnon Appeal Brief (Doc. 28, Case No. 23-5773) – Public federal court record on PACER. Cited by case number only.

Sixth Circuit Opinion (Case Nos. 23-5766/5773) – Public federal court record on PACER. Cited by case citation only.

McKinnon v. United States, Crim. No. 5:20-cr-00063

Movant: Molly Irene McKinnon, Register No. 23265-032

APPENDIX B - Ground One Record-Proof Appendix

Government's Use of False and Misleading Evidence — Due Process / Napue

SCOPE AND SELECTION OF RECORD EVIDENCE

Ground One and this Appendix fully plead the Napue violation and the factual theories on which relief is sought. The selected entries do not represent the full extent of the false and materially misleading presentation reflected in the record. Agent Hubbuch made numerous additional false or materially misleading statements concerning the same central subjects across the investigation, search-warrant affidavit, grand-jury testimony, trial testimony, and post-trial evidentiary-hearing testimony. Other key government witnesses likewise made additional false or materially misleading statements concerning these subjects. Space and practical limitations prevent the Appendix from reproducing and analyzing every occurrence. It therefore presents the clearest, most consequential, and independently verifiable instances establishing the recurring pattern, government knowledge, materiality, and cumulative effect. The additional occurrences are not unpleaded claims or separate grounds for relief; they are further evidence supporting the Ground One claim and factual theories pleaded here. If an evidentiary hearing is granted, Movant may present additional evidence of those occurrences within the scope authorized by the Court.

G1-RA-001 — Generalized entity attribution / "Nex-Gen" framework

RECORD CITATION / SOURCE:

"Nex-Gen"

EXACT QUOTE OR RECORD LANGUAGE:

"Nex-Gen"

RECORD-PROOF POINT:

The record involved several different entities that used similar "Nex-Gen" names, including NexGen Energy Partners, NexGen Industries, NexGen LLC, and related entities. Ground One challenges the Government's use of generalized "Nex-Gen" references that blurred those separate entities together.

This matters because ownership, signer authority, bank-account access, information sources, transactions, knowledge, intent, and control often depended on which specific entity was involved. Evidence relating to one entity could not automatically be attributed to another.

This entry serves as the umbrella framework for the rest of Appendix B. The later entries separate evidence by entity, account, signer, information source, transaction, and role because accurate attribution requires keeping the entities distinct rather than treating every "Nex-Gen" reference as referring to the same company.

FALSE TESTIMONY / MISLEADING IMPRESSION:

The misleading impression was that generalized references to "Nex-Gen" could be treated as proof of Movant's knowledge, intent, access, control, or involvement without identifying which specific NexGen entity was actually being discussed.

The problem was not the use of the term "Nex-Gen" itself. The problem was that multiple similarly named entities existed, yet evidence relating to one entity could be mistaken for evidence relating to another.

That distinction mattered because the Government's theory depended on questions such as who controlled a particular account, who supplied information, who signed particular documents, who participated in specific transactions, and what Movant actually knew. If

those entity distinctions were blurred, the jury could improperly transfer evidence from one company, account, transaction, or individual to another.

The later Appendix B entries demonstrate why entity-specific analysis was necessary for account-access evidence, Chamblee-source evidence, Count 2 transaction evidence, Hubbuch's financial investigation, Deware signatory evidence, and letter/interview evidence.

GOVERNMENT KNOWLEDGE / FAILURE TO CORRECT:

The Government possessed and used the records, exhibits, testimony, and discovery materials identifying the various NexGen-related entities, accounts, signers, information sources, and transactions. It therefore knew that generalized "Nex-Gen" references did not accurately describe all of the evidence.

Once the record contained entity-specific and account-specific evidence, the Government was on notice that the different entities could not fairly be treated as interchangeable. Evidence relating to one company did not automatically establish knowledge, access, control, or intent regarding another company.

Ground One alleges that the Government's presentation and Agent Hubbuch's testimony allowed the jury to treat multiple entities as though they were a single unified business. The resulting risk was that the jury could draw broader knowledge-and-intent inferences than the complete record actually supported.

MATERIALITY / PREJUDICE:

This issue was material because it affected how the jury evaluated knowledge, intent, attribution, access, control, and credibility.

If the jury treated NexGen Energy Partners, NexGen Industries, NexGen LLC, and other similarly named entities as interchangeable, it could have evaluated account records, financial summaries, Chamblee-source evidence, Deware signatory evidence, Count 2 transaction evidence, and state-of-mind evidence through an inaccurate attribution framework.

There is a reasonable likelihood that the jury would have viewed the evidence differently had each exhibit, account, transaction, signer, and information source been clearly linked to the correct entity.

The prejudice is cumulative because this entry explains the broader attribution problem underlying the rest of Appendix B. The later entries are not isolated impeachment points; they show why accurate entity separation was necessary to fairly evaluate Movant's role, knowledge, intent, access, and control.

CROSS-GROUND NOTATION:

Ground Two (App. C, G2-RA-001; G2-RA-006): Both entries cross-reference this entry as the foundational entity-attribution and "Nex-Gen" framework anchor — G2-RA-001 as the trial-IAC context establishing counsel's failure to use entity-separation evidence, and G2-RA-006 as the financial-investigation and Hubbuch-testimony entry documenting how the Napue investigative-completeness pattern intersects with the attribution framework. See App. C, G2-RA-001; G2-RA-006.

Ground Three (App. D, G3-RA-002): The pretrial-IAC entry documenting the CFO-title, entity formation, and attribution-record failures cross-references this entry as the entity-attribution framework anchor for the pretrial and trial-stage mischaracterizations that Ground Three's IAC theory addresses. See App. D, G3-RA-002.

Ground Four (App. E, G4-RA-001; G4-RA-005; G4-RA-006; G4-RA-008; G4-RA-011): Five Ground Four entries cross-reference this entry — the sentencing-IAC framework anchor (G4-RA-001), the loss-offset theory (G4-RA-005), the obstruction enhancement (G4-RA-006), the ownership mischaracterization (G4-RA-008), and the cumulative sentencing prejudice anchor (G4-RA-011) — each establishing that the entity attribution and formation record documented here is the evidentiary foundation for the sentencing-stage corrections Hayworth failed to present. See App. E, G4-RA-001; G4-RA-005; G4-RA-006; G4-RA-008; G4-RA-011.

Ground Five (App. F, G5-RA-001; G5-RA-007): The Ground Five appellate-IAC framework anchor (G5-RA-001) and the representative-not-exhaustive McKinnon Letter/Gov't Ex. 401 incorporation entry (G5-RA-007) each specifically cross-reference this entry; all ten Ground Five entries (G5-RA-001 through G5-RA-010) incorporate the complete Ground One record of which this entry is the framework anchor. See App. F, G5-RA-001; G5-RA-007.

G1-RA-002 — Bank of America NGEP account / signer evidence

RECORD CITATION / SOURCE:

Trial Tr., ECF No. 176, PageID ##1186–1187

EXACT QUOTE OR RECORD LANGUAGE:

Hubbuch identified Gov't Ex. 201 [Tab 78] as Bank of America NGEP account records; Chamblee and Hogan were identified as listed signers; Movant was not identified as a signer on those pages.

RECORD-PROOF POINT:

At Trial Tr., ECF No. 176, PageID ##1186–1187, Agent Hubbuch identified Gov't Ex. 201 as Bank of America NGEP account records and confirmed that Chamblee and Hogan were the listed signers on those pages. Movant was not identified as a signer on those pages.

This establishes a direct account-access limitation: the Bank of America NGEP account was associated with Chamblee and Hogan as the identified signatories — not Movant. That distinction matters because it undermines any inference that Movant had independent, account-based access to verify or authenticate the sales figures Chamblee reported to her. It corroborates her position that she relied on information Chamblee supplied rather than independently controlling or verifying the underlying financial activity.

FALSE TESTIMONY / MISLEADING IMPRESSION:

The Government's presentation allowed the jury to attribute knowledge of NGEP account activity to Movant without accounting for the fact that the Government's own account records — Gov't Ex. 201, identified at Trial Tr., ECF No. 176, PageID ##1186–1187 — listed Chamblee and Hogan as signers, not Movant.

The misleading impression was specific: that Movant had direct, independent access to the banking information underlying the financial documents at issue. The Government's own exhibit showed otherwise. Chamblee and Hogan held formal signatory authority over that account. Without the corrective account-access context, the jury could have drawn the stronger inference that Movant independently verified, authenticated, or controlled NGEP account information — when the Government's own evidence showed she was not a signer on the pages at issue and had no account-access-based way to independently authenticate Chamblee's reported sales figures.

GOVERNMENT KNOWLEDGE / FAILURE TO CORRECT:

The Government's knowledge is established by its own trial exhibit. Gov't Ex. 201 — the Bank of America NGEP account records — was a Government exhibit. Agent Hubbuch testified about those records at Trial Tr., ECF No. 176, PageID ##1186–1187. The Government therefore knew, from its own exhibit and its own witness, that Chamblee and Hogan were the identified signers and that Movant was not identified as a signer on those pages.

Under Napue v. Illinois, 360 U.S. 264, 269 (1959), the Government violates due process when it allows false evidence to go uncorrected before the jury. Here, the Government went further than mere silence: it affirmatively argued in rebuttal at Trial Tr., ECF No. 179,

PageID #1894 that no documentary proof existed for the Chamblee-source defense — while holding Movant Ex. 45 [Tab 51] / Defense Ex. 82 in its discovery file. That is not a failure to concede the defendant's testimony. That is an affirmative misrepresentation of the state of the record to the jury, made with actual knowledge of the documentary evidence that refuted it. The Government had a choice when it decided to make the PageID #1894 rebuttal argument: it could have declined to make the argument, acknowledged the journals and challenged their sufficiency, or surfaced the journals earlier and contested them on the record. What it could not do was remain silent about the journals throughout trial and then affirmatively represent to the jury that no documentary proof existed. Under Giglio v. United States, 405 U.S. 150, 153–54 (1972), that obligation extended to the Government's own rebuttal arguments, not merely to witness testimony. The Government's affirmative mischaracterization of the record in rebuttal — while possessing Movant Ex. 45 / Defense Ex. 82 — violated both standards.

MATERIALITY / PREJUDICE:

Under Napue v. Illinois, the standard is whether the misleading presentation "could in any reasonable likelihood have affected the judgment of the jury." 360 U.S. at 271. That standard is satisfied here.

To obtain a conviction, the Government was required to prove that Movant acted with knowledge and intent — that she knew the financial information was false and deliberately participated in a scheme to defraud. The account-access evidence at Trial Tr., ECF No. 176, PageID ##1186–1187 struck directly at both elements. Gov't Ex. 201 identified Chamblee and Hogan as the signers on the Bank of America NGEP account; Movant was not identified as a signer on those pages. That distinction mattered because it went to the heart of what Movant could actually know: without signer authority or direct account access, Movant had

no independent, account-based ability to verify, authenticate, or challenge the sales figures Chamblee reported to her. Attribution of knowledge of NGEP account activity to Movant — without accounting for the account-access structure the Government's own exhibit documented — permitted the jury to draw intent inferences broader than the complete record supported.

Had the jury received the full account-access context from Gov't Ex. 201, it could have evaluated differently whether Movant possessed any independent basis to verify the financial information associated with NGEP. A juror who understood that Chamblee and Hogan — not Movant — held signatory control over the account would have been required to assess knowledge and intent through that lens: that Movant was dependent on what Chamblee reported, not in a position to independently confirm it.

The prejudice is amplified because the signer evidence does not stand alone. It forms part of the broader Ground One sequence connecting account control to Chamblee-supplied information, to the Dell Jaggers financial-information transmission, and to the Government's later rebuttal arguments. Specifically: Movant's testimony at Trial Tr., ECF No. 179, PageID #1792 established that Chamblee told her he had made sales and supplied the information she entered into QuickBooks (G1-RA-003); that Chamblee-supplied information was then reflected in financial information transmitted to Dell Jaggers at Trial Tr., ECF No. 179, PageID #1796 (G1-RA-003); and the Government argued in rebuttal at Trial Tr., ECF No. 179, PageID #1894 that there was not "a shred of proof" or "a single item of proof" that Chamblee had ever supplied Movant with financial information (G1-RA-013). The account-access limitation documented in Gov't Ex. 201 provided essential context for that entire sequence: it corroborated why Movant relied on Chamblee-supplied figures rather than

independently verifying them, and it directly undermined the Government's rebuttal theme that no record support existed for her defense.

The pattern — account-access evidence permitted to stand without corrective context, Chamblee-source corroboration excluded or underdeveloped, absence of that context then exploited affirmatively in rebuttal — is precisely the kind of prosecutorial misconduct Napue and Giglio prohibit. There is a reasonable likelihood that the jury would have evaluated knowledge, intent, attribution, and Movant's ability to independently verify NGEP financial information differently had it received the complete account-access picture. Because those issues were central to the Government's fraud theory and not collateral matters, the resulting prejudice undermines confidence in the verdict.

CROSS-GROUND NOTATION:

Ground Five (App. F, G5-RA-004): The Ground Five representative Napue example documenting the financial-summary/Bank of America/McCracken-to-Hubbuch chain specifically cross-references this entry — the Bank of America NGEP account signer records establishing Chamblee and Hogan as signers and Movant's exclusion are one of three independently documented record components grounding the financial-summary Napue example, including Movant's lack of account-access-based ability to independently authenticate Chamblee's reported sales figures. See App. F, G5-RA-004.

G1-RA-003 — Chamblee Supplied Sales Information for QuickBooks

RECORD CITATION / SOURCE:

Trial Tr., ECF No. 179, PageID #1792; McKinnon Decl. ¶¶6–9, 32–39, 51–59

EXACT QUOTE OR RECORD LANGUAGE:

"told me that he had made some sales and gave me information to input into the QuickBooks."

RECORD-PROOF POINT:

At Trial Tr., ECF No. 179, PageID #1792, Movant testified that Chamblee told her he had made sales and supplied the information she entered into QuickBooks: "told me that he had made some sales and gave me information to input into the QuickBooks." McKinnon Decl. ¶¶6–9, 32–39, 51–59 independently preserves the same reliance-on-supplied-information premise across the declaration record.

That testimony is independently corroborated by documentary evidence. Movant Ex. 45 (Defense Ex. 82) consists of Movant's contemporaneous journals, which contain multiple entries documenting Chamblee's transmission of fake sales information and banking information to Movant. These journals were written at the time the events occurred — before any indictment, before any trial — and they were produced to the Government during discovery. They are therefore not after-the-fact recollection; they are contemporaneous business records created in the ordinary course of Movant's work that independently document the same Chamblee-source account Movant testified to at PageID #1792.

Together, PageID #1792, McKinnon Decl. ¶¶6–9, 32–39, 51–59, and Movant Ex. 45 / Defense Ex. 82 establish that the Chamblee-source defense was not merely Movant's word at trial — it was a documented, corroborated account supported by contemporaneous written evidence the Government possessed before trial. This entry directly contradicts the Government's rebuttal theme at Trial Tr., ECF No. 179, PageID #1894 that no record proof existed for the Chamblee-source defense.

FALSE TESTIMONY / MISLEADING IMPRESSION:

The misleading impression the Government created was not simply that Movant's testimony was disputed. The Government went further: in rebuttal at Trial Tr., ECF No. 179, PageID

#1894, it affirmatively represented to the jury that the record contained no proof — not "a shred of proof," not "a single item of proof," not "a single email or document" — that Chamblee supplied Movant with financial information. That representation was false, and the Government knew it was false when it made it.

The Government's rebuttal argument mischaracterized the state of the record in two independently material ways. First, Movant had testified in open court at Trial Tr., ECF No. 179, PageID #1792 that Chamblee told her he had made sales and gave her the information to enter into QuickBooks. That testimony was in the record before the Government made its rebuttal argument. Second — and more significantly for the Napue analysis — the Government had received Movant Ex. 45 / Defense Ex. 82 in discovery: contemporaneous journals containing multiple entries documenting Chamblee's transmission of fake sales information and banking information to Movant. The Government therefore possessed documentary evidence, produced to it before trial, that directly refuted the very characterization it placed before the jury in rebuttal.

The Napue violation does not rest on the proposition that the Government was required to concede Movant's trial testimony simply because she testified to it. Defendants routinely dispute the Government's theory, and the Government is not required to correct every factual dispute a defendant raises. The Napue violation rests on something categorically different: the Government made an affirmative factual representation to the jury — that no documentary proof existed for the Chamblee-source defense — while holding discovery materials that directly contradicted that representation. Allowing the jury to accept that mischaracterization, without correction, while possessing Movant Ex. 45 / Defense Ex. 82, is precisely the conduct Napue prohibits.

The prejudice was further compounded by trial counsel's failure to introduce Movant Ex. 45 / Defense Ex. 82 at trial, despite Movant's request that counsel do so. Had those journals been admitted, the Government could not have made the PageID #1894 rebuttal argument at all. The documentary void the Government exploited in rebuttal was created — at least in part — by trial counsel's failure to present evidence Movant had specifically asked her to use. That failure carries independent significance under Ground Three. See Cross-Ground Notation below.

GOVERNMENT KNOWLEDGE / FAILURE TO CORRECT:

The Government's knowledge is established at two independent levels, each sufficient to trigger the Napue and Giglio correction obligation.

First, the Government had actual, contemporaneous trial-record notice. Movant testified at Trial Tr., ECF No. 179, PageID #1792 — in open court, in the presence of Government counsel — that Chamblee told her he had made sales and gave her the information to input into QuickBooks. McKinnon Decl. ¶¶6–9, 32–39, 51–59 further preserved the same account in the declaration record. From the moment that testimony was given, the Government was on notice that the record contained Movant's sworn, direct account of the Chamblee-source chain.

Second — and independently sufficient — the Government received Movant Ex. 45 / Defense Ex. 82 in discovery before trial. Those contemporaneous journals contained multiple entries documenting Chamblee's transmission of fake sales information and banking information to Movant. The Government therefore did not merely hear contradictory testimony at trial; it possessed pre-trial documentary evidence corroborating Movant's account.

Under Napue v. Illinois, 360 U.S. 264, 269 (1959), the Government violates due process when it allows false evidence to go uncorrected before the jury. Here, the Government went further than mere silence: it affirmatively argued in rebuttal at Trial Tr., ECF No. 179, PageID #1894 that no documentary proof existed for the Chamblee-source defense — while holding Movant Ex. 45 / Defense Ex. 82 in its discovery file. That is not a failure to concede the defendant's testimony. That is an affirmative misrepresentation of the state of the record to the jury, made with actual knowledge of the documentary evidence that refuted it. Under Giglio v. United States, 405 U.S. 150, 153–54 (1972), that obligation extended to the Government's own closing and rebuttal arguments, not merely to witness testimony. The Government's affirmative mischaracterization of the record in rebuttal — while possessing Movant Ex. 45 / Defense Ex. 82 — violated both standards.

MATERIALITY / PREJUDICE:

Under Napue v. Illinois, the standard is whether the misleading presentation "could in any reasonable likelihood have affected the judgment of the jury." 360 U.S. at 271. That standard is satisfied here on three independently sufficient and mutually reinforcing bases.

First — the central role of the Chamblee-source theory in the knowledge-and-intent analysis. The Government was required to prove that Movant acted with knowledge and intent — that she knew the financial information was false and deliberately participated in a scheme to defraud. Movant's defense was that she did not originate or fabricate financial information; she entered into QuickBooks what Chamblee supplied to her, in her administrative role, and had no independent basis to verify whether it was accurate. Trial Tr., ECF No. 179, PageID #1792. That defense went directly to both elements the Government was required to prove. If the jury believed Movant was a pass-through for Chamblee-supplied information rather than

an originator of false data, the Government's knowledge-and-intent case was materially undermined. The Chamblee-source theory was not a peripheral credibility dispute — it was the linchpin of Movant's entire defense. The Government's affirmative misrepresentation at Trial Tr., ECF No. 179, PageID #1894 that no documentary proof of that theory existed was therefore not an argument about a collateral matter. It was a direct attack on the defense's central theory, delivered in the final argument before deliberation, and it was false. There is a reasonable likelihood that the jury would have evaluated knowledge and intent materially differently had it understood that the Chamblee-source defense was not a bare, uncorroborated claim by Movant at trial — but a documented, corroborated account supported by contemporaneous written evidence the Government possessed before trial.

Second — the independent probative weight of Movant Ex. 45 / Defense Ex. 82. The materiality of this entry does not rest solely on Movant's trial testimony at Trial Tr., ECF No. 179, PageID #1792. It rests equally on the character of the documentary corroboration the Government concealed. Movant Ex. 45 / Defense Ex. 82 — Movant's contemporaneous journals — were not created for litigation. They were not prepared at counsel's direction. They were not written after charges were filed or after a defense strategy was formed. They were written by Movant in the ordinary course of her work, before any investigation, in her own hand, as the events they document were occurring. That temporal character is what distinguishes them from trial testimony as a category of evidence. A jury evaluating knowledge and intent that receives contemporaneous documentary evidence — a first-person written account created before any litigation motive existed — is not being asked to decide whether a defendant's trial testimony is credible. It is being shown what the defendant wrote and thought at the time. The probative weight of that category of evidence on the knowledge-

and-intent question is fundamentally different from, and more powerful than, testimony alone. The Government's rebuttal argument told the jury that category of evidence did not exist — while it sat in the Government's discovery file. There is a reasonable likelihood that a jury presented with Movant Ex. 45 / Defense Ex. 82 would have assessed Movant's knowledge and intent at the time the events occurred — not at trial — through the lens of her own contemporaneous account, and would have reached a materially different conclusion on both elements.

Third — the direct connection to the rebuttal misrepresentation and its amplifying effect. The prejudice of this entry cannot be evaluated in isolation from the rebuttal argument at Trial Tr., ECF No. 179, PageID #1894. The rebuttal's three successive "no proof" formulations — "not a shred of proof," "not a single item of proof," "not a single email or document" — were the mechanism by which the Government converted the absence of Movant Ex. 45 / Defense Ex. 82 from the trial record into an affirmative claim of evidentiary emptiness. Had the journals been introduced at trial — as Movant specifically requested — the Government could not have made those three formulations without directly confronting documentary evidence that refuted each one. The Government's rebuttal argument was only credible to the jury because the journals were not in the trial record. The prejudice of this entry therefore flows forward: the failure to ensure the journals reached the jury did not merely leave the Chamblee-source defense without documentary corroboration — it left the rebuttal argument unchecked and unopposable. There is a reasonable likelihood that the jury would have evaluated the Government's rebuttal credibility, and its overall assessment of the knowledge-and-intent question, materially differently had it received the full picture: that Movant's contemporaneous journals existed, were written before any investigation, documented the

Chamblee-source account in her own hand, were in the Government's possession, and directly contradicted every formulation the rebuttal placed before the jury in its final argument. The prejudice is amplified because the rebuttal was delivered last — with no corrective opportunity remaining before deliberation began.

CROSS-GROUND NOTATION:

Ground Two (App. C, G2-RA-003): The Ground Two Chamblee/Count 2 source-of-funds entry cross-references this entry — the same Chamblee-source reliance, QuickBooks information chain, and Movant Ex. 45 / Defense Ex. 82 contemporaneous journal evidence documented here is the trial-IAC record foundation for the Ground Two theory that trial counsel failed to challenge the Government's false Chamblee-source suppression. See App. C, G2-RA-003.

Ground Three (App. D, G3-RA-003; G3-RA-008): Two Ground Three entries cross-reference this entry — G3-RA-003 (the trial-IAC Chamblee/Count 2 source-of-funds and impeachment failure) and G3-RA-008 (the cross-examination and attribution evidence failure) — each establishing that the Chamblee-source reliance documented here is the trial-record basis for Ground Three. See App. D, G3-RA-003; G3-RA-008.

G1-RA-003(A) — Dell Jaggers Linkage / Financial Information Reflected Chamblee-reported sales

CROSS-GROUND NOTATION:

RECORD CITATION / SOURCE:

Trial Tr., ECF No. 179, PageID #1796; related PageID #1792; McKinnon Decl. ¶¶6–9, 32–39, 51–59

EXACT QUOTE OR RECORD LANGUAGE:

Financial information sent to Dell Jaggers reflected Chamblee-reported sales.

RECORD-PROOF POINT:

At Trial Tr., ECF No. 179, PageID #1796, the record established that the financial information sent to Dell Jaggers reflected Chamblee-reported sales. That testimony must be read together with Movant's testimony at Trial Tr., ECF No. 179, PageID #1792 — that Chamblee told her he had made sales and gave her the information to enter into QuickBooks — with McKinnon Decl. ¶¶6–9, 32–39, 51–59, and with Movant Ex. 45 / Defense Ex. 82, Movant's contemporaneous journals containing multiple entries documenting Chamblee's transmission of fake sales information and banking information to Movant.

This entry preserves the complete source chain: Chamblee reported sales figures to Movant (PageID #1792; Movant Ex. 45 / Defense Ex. 82) → Movant entered those figures into QuickBooks → that financial information was then transmitted to Dell Jaggers (PageID #1796). The Dell Jaggers transmission cannot be evaluated in isolation as evidence of Movant's knowing falsity. It was the downstream result of Chamblee-supplied information that Movant entered and transmitted in her administrative role. The contemporaneous journals in Movant Ex. 45 / Defense Ex. 82 independently corroborate that source chain, making this more than defendant testimony — it is a documented, corroborated sequence of events.

FALSE TESTIMONY / MISLEADING IMPRESSION:

The misleading impression addressed by this companion entry is that the Dell Jaggers financial-information transmission at Trial Tr., ECF No. 179, PageID #1796 could be treated as independent evidence of Movant's knowing falsity — as though Movant originated or independently authenticated the figures she transmitted — without preserving the Chamblee-source chain established at PageID #1792 and corroborated by Movant Ex. 45 / Defense Ex. 82.

The Government's presentation permitted the jury to view the Dell Jaggers transmission as proof that Movant was an active, knowing participant in the creation and dissemination of false financial information. The corrective context — that the figures transmitted to Dell Jaggers reflected Chamblee-reported sales that Movant entered after Chamblee supplied them, as documented in her contemporaneous journals — directly qualified that inference. Without the source link preserved by both the trial testimony and Movant Ex. 45 / Defense Ex. 82, the jury received an incomplete picture: a financial transmission was presented as evidence of intent without the documentary, contemporaneous corroboration establishing that Movant transmitted what she had been told by Chamblee, not figures she had fabricated.

The prejudice was further compounded by trial counsel's failure to introduce Movant Ex. 45 / Defense Ex. 82 at trial despite Movant's request. Had the journals been admitted, the complete source chain — from Chamblee's reported figures through Movant's QuickBooks entries to the Dell Jaggers transmission — would have been corroborated by contemporaneous documentary evidence rather than relying on Movant's trial testimony alone. The absence of those journals from the trial record left the source chain unsupported by documentary proof and left the Dell Jaggers transmission vulnerable to being read by the jury as evidence of intent rather than as the downstream result of Chamblee-supplied information. See Cross-Ground Notation below.

GOVERNMENT KNOWLEDGE / FAILURE TO CORRECT:

The Government's knowledge is established by the trial record sequence and its pre-trial receipt of discovery materials. The testimony at Trial Tr., ECF No. 179, PageID #1796 linking the Dell Jaggers transmission to Chamblee-reported sales followed directly from the PageID #1792 Chamblee-source testimony given in the same proceeding, in the presence of

Government counsel. The Government was therefore on actual, contemporaneous notice of the source link connecting the Dell Jaggers transmission to Chamblee-supplied figures.

Additionally, the Government received Movant Ex. 45 / Defense Ex. 82 — Movant's contemporaneous journals — in discovery before trial. Those journals independently documented Chamblee's transmission of fake sales information and banking information to Movant, corroborating the source chain that connected the Chamblee-supplied figures to the Dell Jaggers transmission. The Government therefore possessed both trial-record testimony and pre-trial documentary evidence establishing the complete source chain before it argued in rebuttal at Trial Tr., ECF No. 179, PageID #1894 that there was not "a shred of proof" or "a single item of proof" that Chamblee supplied financial information to Movant.

Under Napue v. Illinois, 360 U.S. 264, 269 (1959), the Government violates due process when it allows false evidence to go uncorrected before the jury. Here, the Government went further than mere silence: it affirmatively argued in rebuttal at Trial Tr., ECF No. 179, PageID #1894 that no documentary proof existed for the Chamblee-source defense — while holding Movant Ex. 45 / Defense Ex. 82 in its discovery file. That is not a failure to concede the defendant's testimony. That is an affirmative misrepresentation of the state of the record to the jury, made with actual knowledge of the documentary evidence that refuted it. The Government had a choice when it decided to make the PageID #1894 rebuttal argument: it could have declined to make the argument, acknowledged the journals and challenged their sufficiency, or surfaced the journals earlier and contested them on the record. What it could not do was remain silent about the journals throughout trial and then affirmatively represent to the jury that no documentary proof existed. Under Giglio v. United States, 405 U.S. 150,

153–54 (1972), that obligation extended to the Government's own rebuttal arguments, not merely to witness testimony.

MATERIALITY / PREJUDICE:

Under Napue v. Illinois, the standard is whether the misleading presentation "could in any reasonable likelihood have affected the judgment of the jury." 360 U.S. at 271. That standard is satisfied here.

The Government was required to prove that Movant acted with knowledge and intent. The Dell Jaggers transmission at Trial Tr., ECF No. 179, PageID #1796 was offered as part of the evidentiary case that Movant knowingly disseminated false financial information. That inference was only available if the jury evaluated the transmission in isolation — as something Movant originated and authenticated — rather than as the downstream result of Chamblee-supplied figures documented in Movant Ex. 45 / Defense Ex. 82 and corroborated at PageID #1792. Attribution of knowing falsity to Movant through the Dell Jaggers transmission required the jury to evaluate that transmission without the source chain that explained it. The Government's presentation, by severing the transmission from its source context, permitted intent inferences broader than the complete record supported.

The prejudice is amplified because the Dell Jaggers entry is an essential link in the broader Ground One prosecutorial misconduct chain. It connects back to the Chamblee-source testimony at PageID #1792 and the contemporaneous journal entries in Movant Ex. 45 / Defense Ex. 82 (G1-RA-003(A)), which established where the figures originated; to the account-access limitation in Gov't Ex. 201 at Trial Tr., ECF No. 176, PageID ##1186–1187 (G1-RA-002), which established why Movant had no independent basis to verify them; and forward to the Government's rebuttal argument at Trial Tr., ECF No. 179, PageID #1894,

where the Government argued there was not "a shred of proof" or "a single item of proof" that Chamblee supplied financial information to Movant (G1-RA-013) — a representation made while the Government possessed the contemporaneous journals that documented the complete source chain from Chamblee's reported figures to Movant's QuickBooks entries to the Dell Jaggers transmission.

The prejudice is further amplified by trial counsel's failure to introduce Movant Ex. 45 / Defense Ex. 82 despite Movant's request. That failure left the Dell Jaggers source chain without its documentary corroboration, exposed the source-link theory to the Government's rebuttal mischaracterization, and allowed the transmission to be read as evidence of intent rather than as the documented downstream result of Chamblee-supplied information. There is a reasonable likelihood that the jury would have evaluated knowledge, intent, attribution, and the credibility of Movant's defense materially differently had the complete source chain — from Chamblee's reported figures through Movant Ex. 45 / Defense Ex. 82 to the Dell Jaggers transmission — been fairly presented and not mischaracterized in rebuttal.

Ground Two (App. C, G2-RA-003): The Ground Two Chamblee/Count 2 source-of-funds entry cross-references the G1-RA-003 / G1-RA-003(A) sequence — the Dell Jaggers transmission of Chamblee-reported sales figures documented in this entry is the downstream link in the same Chamblee-source chain that Ground Two's IAC theory identifies as a critical trial-stage failure. See App. C, G2-RA-003.

Ground Three (App. D, G3-RA-003): The Ground Three trial-IAC Chamblee/Count 2 entry cross-references the G1-RA-003 / G1-RA-003(A) sequence as the trial-record basis for the intercompany and Chamblee-source attribution evidence that trial counsel failed to develop and present. See App. D, G3-RA-003.

G1-RA-004 — Count 2 $5,600 Transaction: False Personal-Payment Attribution, Excluded NGEP Bank of America Records from Gov't Ex. 501, and Prosecutorial Exploitation in Closing Argument

RECORD CITATION / SOURCE:

Trial Tr., ECF No. 175, PageID §§1055–1056 (Chamblee testimony — $5,600 deposit / bank-record review establishing intercompany-transfer source); Trial Tr., ECF No. 176, PageID §§1168–1169, 1172 (NGEP Bank of America account records — Count 2 transaction-source chain); Trial Tr., ECF No. 176, PageID §§1186–1187 (Hubbuch testimony — Gov't Ex. 501 financial summary and NGEP Bank of America account coverage); Trial Tr., ECF No. 179, PageID #1863 (Government closing argument — element 3 / intent to defraud: "it is not consistent with a good faith defense for the defendants to make those material misrepresentations to lenders and to investors. Instead, when you lie to people, that is consistent with an intent to defraud." — delivered immediately following display of Gov't Ex. 202B [Tab 29] / Count 2 ACH deposit, July 25, 2018); Gov't Ex. 202B (Count 2 ACH deposit — Gary G. Chamblee, July 25, 2018, $5,600); Gov't Ex. 501 / Movant Ex. 9 (Government financial summary — NGEP Bank of America records excluded despite Hubbuch's testimony characterizing Gov't Ex. 501 as comprehensive); Movant Ex. 17 [Tab 23] (Gov't Ex. 717 — Count 2 transaction documentation); Movant Ex. 41 [Tab 47] (Defense Ex. 76 — NGEP BOA records documenting payments to GC for loan repayment; confirmed by Hogan, Trial Tr., ECF No. 176, PageID #1172); Napue v. Illinois, 360 U.S. 264, 269–71 (1959); Giglio v. United States, 405 U.S. 150, 153–54 (1972)

EXACT QUOTE OR RECORD LANGUAGE:

Trial Tr., ECF No. 175, PageID §§1055–1056 (Chamblee — Count 2 source-of-funds, bank-record review): Chamblee reviewed a Whitaker Bank statement showing a $5,600 deposit and reviewed a Bank of America statement for NGEP. The bank-record review at trial established that the $5,600 reflected an intercompany transfer from the NGEP Bank of America account — not a direct personal payment from Chamblee on the date at issue. Chamblee was not the personal source of the Count 2 funds; the NGEP Bank of America account was the source.

Trial Tr., ECF No. 176, PageID §§1168–1169, 1172 (NGEP Bank of America account records — Count 2 transaction-source chain): The banking documentation reviewed at trial confirmed the intercompany-transfer character of the $5,600 underlying Count 2.

Trial Tr., ECF No. 176, PageID §§1186–1187 (Hubbuch — Gov't Ex. 501 / NGEP Bank of America records): Hubbuch testified about Gov't Ex. 501 as the Government's financial reconstruction of the relevant accounts and transactions. The Government presented Gov't Ex. 501 as comprehensive. However, the NGEP Bank of America account records — the records of the very account from which the Count 2 $5,600 was transferred — were not included in Gov't Ex. 501. Had those records been included in the Government's own financial summary, the intercompany-transfer nature of the Count 2 transaction would have been apparent from the Government's own exhibit, directly refuting the personal-payment attribution on which the Government's Count 2 theory depended.

Trial Tr., ECF No. 179, PageID #1863 (Government closing argument — element 3 / intent to defraud): "But ladies and gentlemen, it is not consistent with a good faith defense for the defendants to make those material misrepresentations to lenders and to investors. Instead, when you lie to people, that is consistent with an intent to defraud." This argument was

delivered immediately following the Government's display of Gov't Ex. 202B — the Count 2 ACH deposit from Gary G. Chamblee for $5,600, July 25, 2018 — after the trial record had already established through banking documentation that the $5,600 did not come from Chamblee personally but from the NGEP Bank of America account, and that Chamblee was therefore not personally defrauded of $5,600 in the manner the Government's Count 2 theory required.

RECORD-PROOF POINT:

This entry establishes a three-layer Napue/prosecutorial-misconduct violation arising from a single transaction — the $5,600 underlying Count 2 — that the Government falsely attributed as a direct personal-victim payment from Chamblee, concealed through the exclusion of the NGEP Bank of America records from Gov't Ex. 501, and then exploited in closing argument after two trial witnesses had each independently confirmed on the record that the personal-victim attribution was false.

Layer 1 — The false personal-payment attribution. The Government's case-in-chief framing presented or permitted the impression that Chamblee personally sent the $5,600 as a direct payment, placing him in the role of a direct victim defrauded through Count 2. The trial record refuted that framing. The bank-record review at Trial Tr., ECF No. 175, PageID §§1055–1056, and the NGEP account documentation at Trial Tr., ECF No. 176, PageID §§1168–1169, 1172 established that the $5,600 was an intercompany transfer from the NGEP Bank of America account — not a personal payment from Chamblee. Chamblee was not the personal source of the Count 2 funds on the date in question. The intercompany-transfer nature of the $5,600 was not a defense-side inference drawn from ambiguous banking records. It was confirmed by Chamblee's own testimony at Trial Tr., ECF No. 175, PageID

§§1055–1056 and independently confirmed by Hogan's testimony at Trial Tr., ECF No. 176, PageID §§1168–1169, 1172 — two separate trial witnesses, each with direct knowledge of the NGEP Bank of America account, both establishing the same fact: the $5,600 came from a business account, not from Chamblee personally. If Chamblee did not personally send $5,600 as a victim-payment, the Government's personal-victim attribution for Count 2 was false, and no one defrauded Chamblee of $5,600 in the manner the Government's Count 2 theory required.

Layer 2 — Hubbuch's exclusion of the NGEP Bank of America records from Gov't Ex. 501. The NGEP Bank of America account was the account from which the Count 2 $5,600 was transferred. Hubbuch testified about Gov't Ex. 501 as the Government's comprehensive financial reconstruction. Trial Tr., ECF No. 176, PageID §§1186–1187. Yet the NGEP Bank of America records — the records that would have documented the intercompany transfer and directly refuted the personal-payment attribution — were excluded from Gov't Ex. 501. Hubbuch was personally aware of the NGEP Bank of America account; he testified about its records at Trial Tr., ECF No. 176, PageID §§1186–1187. His construction of Gov't Ex. 501 without those records was therefore not the product of ignorance of the account. It was an investigative choice that withheld from the jury's view the specific account whose records would have exposed the Count 2 personal-victim attribution as false. A financial summary presented to the jury as comprehensive, but from which the key account records bearing on the Count 2 transaction source have been excluded, is materially misleading under Napue and Giglio.

Layer 3 — Closing argument exploitation after the attribution was proven false by two trial witnesses. At Trial Tr., ECF No. 179, PageID #1863, immediately following the display of

Gov't Ex. 202B (the Count 2 ACH deposit), AUSA Chapman argued that making material misrepresentations to lenders and investors is "not consistent with a good faith defense" and is instead "consistent with an intent to defraud." That argument was delivered after the intercompany-transfer nature of the $5,600 had been confirmed by two trial witnesses: Chamblee at Trial Tr., ECF No. 175, PageID §§1055–1056, and Hogan at Trial Tr., ECF No. 176, PageID §§1168–1169, 1172 — and after the NGEP Bank of America records had been excluded from Gov't Ex. 501. The personal-victim attribution underlying Count 2 was not uncertain, disputed, or unresolved when the Government made the PageID #1863 closing argument. It had been disproven on the record, in open court, by the Government's own witnesses, before AUSA Chapman used Count 2 as the closing argument anchor for fraudulent intent. Under Napue, the Government may not use and maintain materially misleading evidence to obtain a conviction, and the obligation to correct extends to the closing argument stage.

FALSE TESTIMONY / MISLEADING IMPRESSION:

The Government's Count 2 theory rested on a false foundation: that Chamblee personally sent the $5,600 as a direct victim-payment, placing him in the role of an investor defrauded through the Count 2 wire transaction. That premise was false. The trial record had already established — through Chamblee's own bank-record review at Trial Tr., ECF No. 175, PageID §§1055–1056 — that the $5,600 was an intercompany transfer from the NGEP Bank of America account, not a personal payment from Chamblee. Three analytically distinct and independently sufficient Napue components arise from that false attribution.

First — the false personal-payment attribution. Chamblee's testimony and the Government's case-in-chief framing created or permitted the impression that Chamblee personally sent the

$5,600 as a direct payment, placing him in the role of a direct victim defrauded through the Count 2 wire transaction. That impression was false. The bank-record review at Trial Tr., ECF No. 175, PageID §§1055–1056 established that the $5,600 reflected an intercompany transfer from the NGEP Bank of America account. Chamblee did not personally send $5,600 as a victim-payment on the date in question. The NGEP account — a business account associated with Chamblee and Hogan as signatories, not Movant — was the source. That distinction is legally and factually dispositive for Count 2: if Chamblee was not the personal source of those funds, he was not personally defrauded of $5,600 through the Count 2 wire transaction in the manner the Government's theory required, and the personal-victim framing that anchored Count 2 rested on a false premise.

Second — Hubbuch's materially misleading financial-summary testimony and the exclusion of the NGEP Bank of America records from Gov't Ex. 501. Agent Hubbuch testified about Gov't Ex. 501 as the Government's comprehensive financial reconstruction, while simultaneously being personally aware of the NGEP Bank of America account and its records. Trial Tr., ECF No. 176, PageID §§1186–1187. The NGEP Bank of America records were excluded from Gov't Ex. 501. The misleading impression was direct and specific: the jury evaluated the Government's financial summary as a complete reconstruction while the one account that would have revealed the intercompany-transfer nature of the Count 2 transaction — and directly refuted the personal-victim attribution — was absent from that summary. Under Napue and Giglio, presenting a financial summary as comprehensive while excluding account records that contradict a charged-count attribution is not a neutral investigative decision; it is the use of a materially misleading exhibit that allows a false impression to stand before the jury uncorrected. Had the NGEP Bank of America records

been included in Gov't Ex. 501, the jury would have seen — from the Government's own financial exhibit — that the $5,600 came from a business account, not from Chamblee personally, making the Count 2 personal-victim theory untenable from the Government's own proof.

Third — Prosecutorial exploitation of the uncorrected false impression in closing argument. At Trial Tr., ECF No. 179, PageID #1863, after displaying Gov't Ex. 202B to the jury, AUSA Chapman used Count 2 as the specific evidentiary basis for the closing argument's intent-to-defraud passage, arguing that making material misrepresentations to lenders and investors is per se inconsistent with good faith and consistent with fraudulent intent. That argument was made after both Chamblee and Hogan had each independently confirmed on the trial record that the $5,600 was an intercompany transfer from the NGEP Bank of America account — not a personal payment from Chamblee — after the NGEP Bank of America records had been withheld from Gov't Ex. 501, and after no correction of the false personal-victim attribution had been offered to the jury. The personal-victim framing was not merely unresolved at the time of closing; it had been affirmatively disproven by the Government's own witnesses before AUSA Chapman stood up and used Count 2 as the proof point for fraudulent intent. The Government therefore used the very transaction whose foundational attribution premise had been proven false — twice, by its own witnesses — as the anchor for its final, jury-facing intent-to-defraud argument. That is precisely the conduct Napue and Giglio prohibit.

The prejudice was further compounded by trial counsel's failure to confront Agent Hubbuch at trial about the exclusion of the NGEP Bank of America records from Gov't Ex. 501 and to use the intercompany transfer banking evidence to rebut the Count 2 personal-victim

attribution. The NGEP Bank of America records were part of the trial record — Hubbuch testified about those records at Trial Tr., ECF No. 176, PageID §§1186–1187 and was personally aware of the account's relevance to the Count 2 transaction source. Trial counsel possessed the means to challenge the financial summary's completeness and to present the intercompany-transfer nature of the $5,600 as an affirmative defense to the personal-victim attribution. That challenge was not made. As a result, the false personal-payment attribution stood unrebutted through the Government's financial summary, closing argument, and jury deliberations. Had trial counsel used the available banking evidence to expose the Count 2 attribution as false, the Government could not have displayed Gov't Ex. 202B at Trial Tr., ECF No. 179, PageID #1863 as the anchor for its intent-to-defraud argument without confronting the intercompany-transfer documentation that directly refuted it. This failure carries independent significance under Ground Three. See Cross-Ground Notation below.

GOVERNMENT KNOWLEDGE / FAILURE TO CORRECT:

Government knowledge is established at three independent levels, each sufficient to trigger the Napue/Giglio correction obligation.

First — Agent Hubbuch's pre-trial knowledge of the NGEP Bank of America records. The NGEP Bank of America account records were part of the Government's own investigation. Hubbuch testified about those records at Trial Tr., ECF No. 176, PageID §§1186–1187 and was personally aware of the account, its records, and its role in the transaction chain at issue in Count 2. His construction of Gov't Ex. 501 without including those records was therefore made with direct personal knowledge of the NGEP Bank of America account's existence and relevance. The exclusion was not a product of ignorance. It was an investigative choice that withheld from the jury's financial summary the specific account records that would have

established the intercompany-transfer nature of the Count 2 funds and directly refuted the personal-victim attribution the Government's Count 2 theory required. Once Hubbuch presented Gov't Ex. 501 to the jury as a comprehensive financial reconstruction while personally knowing of the excluded NGEP Bank of America records, the Government was on notice — through its own lead investigator — that the financial summary presented a materially incomplete and misleading picture of the Count 2 transaction source.

Second — Real-time Government knowledge from the trial record. The bank-record review at Trial Tr., ECF No. 175, PageID §§1055–1056 and Trial Tr., ECF No. 176, PageID §§1168–1169, 1172 was conducted in open court in the presence of both Government counsel and Agent Hubbuch. Through that review, both Chamblee and Hogan independently confirmed on the trial record that the $5,600 underlying Count 2 was an intercompany transfer from the NGEP Bank of America account — not a personal payment from Chamblee. Two witnesses, each with direct knowledge of the NGEP account, confirmed the same fact before the Government's closing argument. From the moment that testimony was elicited — confirmed twice, in open court, by the Government's own witnesses — the Government had actual, in-court notice that the personal-victim attribution underlying Count 2 was false. The Napue obligation arose at that moment: the Government was required to correct the false impression its case-in-chief framing had created, rather than compound it. Instead, the Government proceeded to closing argument without correction and used Count 2 as the exemplar of fraudulent intent.

Third — Government knowledge at the closing argument stage. The AUSAs who delivered the closing argument at Trial Tr., ECF No. 179, PageID #1863 had been present throughout trial, including during the testimony of both Chamblee and Hogan confirming the

intercompany-transfer nature of the $5,600. The Government therefore made the PageID #1863 closing argument — using Count 2 as the specific documentary exemplar of fraudulent intent — with full, contemporaneous knowledge from the trial record that the attribution premise underlying that exemplar had been disproven by two of its own witnesses. Knowingly using a transaction whose foundational attribution has been disproven at trial — by the Government's own witnesses — as the closing argument anchor for an intent-to-defraud theory is the textbook Napue violation. Napue v. Illinois, 360 U.S. at 269–71; Giglio v. United States, 405 U.S. at 153–54.

MATERIALITY / PREJUDICE:

Under Napue v. Illinois, 360 U.S. at 271, a conviction obtained through use of false testimony must fall if the false testimony "could in any reasonable likelihood have affected the judgment of the jury." That standard is satisfied here on three independently sufficient bases.

First — Count 2 specific materiality. Count 2 was a charged count of conviction premised on the specific $5,600 transaction. The Government's theory required that Chamblee personally provided those funds as a direct victim of the charged fraud and that the wire transmission reflected Movant's knowing participation in a fraudulent scheme to obtain money from him. Both premises were false: the $5,600 came from the NGEP Bank of America account as an intercompany transfer, not from Chamblee's personal funds; and Chamblee was not personally defrauded of $5,600 through a direct victim-payment on the date in question. A jury that understood the intercompany-transfer nature of the Count 2 funds — confirmed by both Chamblee and Hogan before the Government's closing argument — could not have evaluated the personal-victim attribution underlying Count 2 in the same way. There is a

reasonable likelihood that the jury would have reached a different conclusion on Count 2, specifically, had it understood that both Chamblee and Hogan had each confirmed on the trial record — before the Government's closing argument — that the $5,600 was not a personal payment from Chamblee but an intercompany transfer from the NGEP Bank of America account, and that the Government's Count 2 personal-victim attribution had been disproven by its own witnesses before being exploited in closing.

Second — Financial summary materiality. The exclusion of the NGEP Bank of America records from Gov't Ex. 501 materially affected the jury's ability to evaluate the Government's entire financial reconstruction and the attribution inferences drawn from it. A financial summary that excludes the account from which the Count 2 transaction originated does not merely omit a collateral detail; it affirmatively obscures from the jury the one record that would have established the intercompany-transfer nature of the Count 2 funds and made the personal-victim attribution untenable from the Government's own exhibit. Had the NGEP Bank of America records been included in Gov't Ex. 501, the jury would have had direct, Government-produced documentary evidence showing that the $5,600 came from a business account — not from Chamblee's personal funds. The exclusion of those records was not neutral; it was a material omission that allowed the false Count 2 attribution to persist through the entirety of the jury's evaluation of the Government's financial proof. This financial-summary materiality reinforces and connects to G1-RA-005, which documents the broader limitations of Hubbuch's investigation-completeness testimony and the financial summary.

Third — Closing argument materiality. The PageID #1863 closing argument used the Count 2 transaction as the specific exemplar of fraudulent intent in the good-faith-foreclosure

passage of the Government's closing. That argument was made after both Chamblee and Hogan had confirmed on the trial record that the $5,600 was an intercompany transfer, after the NGEP Bank of America records had been excluded from Gov't Ex. 501, and after no correction of the false attribution had been offered to the jury. Under Napue, this sequence — false attribution confirmed false by the Government's own witnesses, excluded exculpatory account records, uncorrected impression exploited in closing argument — is precisely the kind of materially misleading evidentiary chain that "could in any reasonable likelihood have affected the judgment of the jury." 360 U.S. at 271. There is a reasonable likelihood that a jury presented with the correct source-of-funds evidence would have evaluated Count 2, the Government's financial reconstruction, and Movant's knowledge and intent differently. The prejudice connects to and reinforces the broader Ground One chain: the exclusion of the NGEP Bank of America records from Gov't Ex. 501 connects to the financial-summary limitation in G1-RA-005; the false personal-payment attribution connects to the Chamblee-source evidence chain in G1-RA-003 and G1-RA-006; and the closing argument exploitation at PageID #1863 connects to the rebuttal-exploitation pattern in G1-RA-013 and the cumulative materiality analysis in G1-RA-015.

The prejudice is further amplified by trial counsel's failure to use the available banking evidence — the NGEP Bank of America records Hubbuch personally knew about and testified about at Trial Tr., ECF No. 176, PageID §§1186–1187 — to challenge the Count 2 personal-victim attribution at trial. That failure left the false attribution unrebutted through the Government's financial summary, closing argument, and jury deliberations, made the PageID #1863 intent-to-defraud argument possible, and directly contributed to the

evidentiary void the Government exploited to foreclose Movant's good-faith defense. See Ground Three, Appendix D.

CROSS-GROUND NOTATION:

Ground Two (App. C, G2-RA-008): The Ground Two loss-calculation anchor cross-references this entry — the Count 2 $5,600 false personal-attribution, the exclusion of NGEP Bank of America records from Gov't Ex. 501 [Tab 15], and the closing argument exploitation are the same record components that Ground Two's IAC theory identifies as a critical failure by trial and pretrial counsel. See App. C, G2-RA-008.

Ground Three (App. D, G3-RA-003): The Ground Three trial-IAC Chamblee/Count 2 entry cross-references this entry as the trial-record basis for the intercompany-transfer attribution that trial counsel failed to develop and present, including the dual-witness confirmation from Chamblee and Hogan before closing argument. See App. D, G3-RA-003.

Ground Five (App. F, G5-RA-005): The Ground Five Count 2 source-of-funds representative Napue example cross-references this entry as its controlling trial-record source — the three-layer false attribution documented here is the record foundation for the specific Napue example whose omission from direct appeal constitutes Ground Five appellate IAC. See App. F, G5-RA-005.

G1-RA-005, Sub-entry 1 — Hubbuch financial-investigation method / "get a handle"

RECORD CITATION / SOURCE:

Trial Tr., ECF No. 176, PageID #1186

EXACT QUOTE OR RECORD LANGUAGE:

"get a handle"

RECORD-PROOF POINT:

At Trial Tr., ECF No. 176, PageID #1186, Agent Hubbuch testified about the method he used to conduct the Government's financial investigation: identifying involved accounts, subpoenaing those accounts, and trying to "get a handle" on the accounting underlying a money and fraud case. That testimony functioned as the first stage of a three-stage false

completeness representation the Government built around Gov't Ex. 501. Stage one was Hubbuch's "get a handle" investigative-method testimony — establishing the jury's baseline impression that the financial investigation was methodical, systematic, and account-comprehensive. Stage two was McCracken's forensic-accountant validation testimony — in which AUSA Chapman conducted a deliberate account-by-account completeness examination, asking McCracken individually whether specific accounts, including the NGEP Bank of America account and the Whitaker Bank account, were included in the spreadsheet, and receiving affirmative confirmations each time. Stage three was Hubbuch's independent confirmation at Trial Tr., ECF No. 176, PageID §§1186–1187 that the NGEP Bank of America account was included in Gov't Ex. 501.

All three stages were false or materially misleading. Not one NGEP account appeared in Gov't Ex. 501. This entry preserves Stage one — the "get a handle" baseline — as the foundation on which the Government built the false completeness structure that followed. Without the baseline impression of investigative thoroughness Hubbuch established at Trial Tr., ECF No. 176, PageID #1186, the McCracken and Hubbuch completeness confirmations in Sub-entry 3 would not have carried the same evidentiary weight with the jury. The "get a handle" testimony made the false certifications that followed credible.

FALSE TESTIMONY / MISLEADING IMPRESSION:

The misleading impression created by the "get a handle" testimony was not limited to a single representation about investigative method. Its primary Napue significance is structural: the "get a handle" baseline testimony established the jury's foundational framework of investigative thoroughness and account-comprehensiveness — and that foundation was then deliberately reinforced by the Government through two specific false completeness

certifications in Sub-entry 3. The jury was not simply left with an unqualified general impression; it was walked through a deliberate three-stage false completeness architecture in which Hubbuch's investigative-method testimony set the stage, McCracken's forensic-accountant YES-to-each-account validation built on it, and Hubbuch's independent BOA confirmation reinforced it from a second, independent source.

That architecture matters because the jury's confidence in Gov't Ex. 501 — and in the attribution and intent inferences the Government drew from it — was not the product of one ambiguous statement. It was the product of a layered, multi-witness, prosecutor-structured completeness representation that began with the "get a handle" testimony and culminated in a certified-comprehensive financial reconstruction missing all three NGEP accounts and the records underlying three of the charged counts. The "get a handle" testimony was the first brick in that false structure. Without it, the McCracken and Hubbuch certifications would have been isolated representations about a single exhibit. With it, the jury heard a coherent, investigator-narrated story of methodical financial investigation — and then heard that investigation's product forensically validated as comprehensive by a second witness — while the accounts underlying three charged counts were entirely absent.

GOVERNMENT KNOWLEDGE / FAILURE TO CORRECT:

Government knowledge for the "get a handle" baseline representation is established at two independently sufficient levels.

First, Hubbuch elicited the investigative-method testimony through his own direct examination. The Government therefore had direct notice that the baseline representation of investigative thoroughness had been placed before the jury and that the jury would use that representation as the framework for evaluating everything that followed — including Gov't

Ex. 501, McCracken's completeness certification, and the attribution and intent inferences the Government asked the jury to draw.

Second — and more significantly given Sub-entry 3 — AUSA Chapman conducted McCracken's subsequent completeness examination as a deliberate account-by-account validation exercise, asking McCracken individually whether the NGEP Bank of America account and the Whitaker Bank account were included in the spreadsheet. Chapman's examination structure establishes Government knowledge at the prosecutorial level, not merely the investigator level: the prosecutor who built the false completeness architecture through McCracken's account-by-account examination either knew the accounts were missing from the spreadsheet and elicited false confirmation anyway, or structured a specific completeness examination of his own forensic accountant without verifying that the answers his witness would give were accurate. Either alternative establishes the Government's knowledge that the "get a handle" baseline representation — which the McCracken examination was designed to build on and certify — was the foundation of a materially false and incomplete financial presentation. The failure-to-correct obligation arose from the moment McCracken's first false YES was placed before the jury; the Government's silence through the remainder of trial and through closing argument compounded the violation.

MATERIALITY / PREJUDICE:

The "get a handle" testimony was material because it established the jury's foundational framework for evaluating the Government's entire financial proof — and that framework was then reinforced by a deliberate three-stage false completeness structure that gave the jury no reason to question whether the financial reconstruction was incomplete. The Government's attribution and intent theory depended on the jury's confidence in the financial evidence

bearing on what accounts existed, what transactions occurred, where funds came from, and what Movant knew or could have known. A jury that heard Hubbuch describe a methodical effort to identify accounts and understand the accounting, then heard a forensic accountant confirm account-by-account that the specific missing accounts were included, then heard Hubbuch independently confirm the BOA was in the spreadsheet, had no basis from the trial record to question whether the reconstruction was missing anything — let alone that it was missing all three NGEP accounts and the records underlying three of the charged counts.

There is a reasonable likelihood that the jury would have evaluated the Government's financial reconstruction fundamentally differently had it understood that the "get a handle" investigative-method framing was the first stage of a false completeness structure rather than an accurate description of a thorough investigation. The specific consequences of that false completeness structure — established in Sub-entry 3 — included: three charged counts whose underlying account records were absent from the spreadsheet; approximately $50,000 in funds falsely attributed to Chamblee as investment or victim funds that were intercompany transfers; a discrepancy of approximately $220,000 between Hubbuch's "about $48k" Shumard testimony and the actual loan payments reflected in the NGEP BOA records; $30,000 in Chamblee self-transfers for loan repayments; and $10,000 in payments to Chamblee's trucking company directly contradicting his trial testimony that it never worked in Kentucky. Those consequences were traceable, in part, to the credibility the "get a handle" baseline established for the investigation that produced them. A jury that evaluated the Government's financial proof through the accurate framework — that the investigation's lead agent testified to a methodical investigation while the reconstruction it produced excluded all NGEP accounts and the records underlying three charged counts — would have assessed

knowledge, intent, attribution, Chamblee's credibility, and Hubbuch's credibility materially differently. The prejudice is cumulative because it flows through and amplifies every subsequent G1-RA-005 entry and connects directly to the broader Ground One chain through G1-RA-004, G1-RA-013, and G1-RA-015.

CROSS-GROUND NOTATION:

Ground Five (App. F, G5-RA-004): The Ground Five financial-summary/Bank of America/McCracken-to-Hubbuch representative Napue example cross-references G1-RA-005 generally — the "get a handle" baseline testimony documented in this sub-entry is Stage One of the three-stage false completeness structure whose omission from direct appeal constitutes Ground Five appellate IAC. See App. F, G5-RA-004.

G1-RA-005, Sub-entry 2 — Hubbuch cross-examination / additional investigative "strings"

RECORD CITATION / SOURCE:

Trial Tr., ECF No. 178, PageID ##1575–1576; Trial Tr., ECF No. 177, PageID ##1483–1486; Trial Tr., ECF No. 178, PageID #1570

EXACT QUOTE OR RECORD LANGUAGE:

"strings"

RECORD-PROOF POINT:

On cross-examination, Agent Hubbuch acknowledged at Trial Tr., ECF No. 178, PageID ##1575–1576, Trial Tr., ECF No. 177, PageID ##1483–1486, and Trial Tr., ECF No. 178, PageID #1570 that the investigation involved additional "strings" — investigative leads and avenues that existed beyond what was fully developed and presented in the Government's case-in-chief. That acknowledgment directly qualified the "get a handle" baseline representation at Trial Tr., ECF No. 176, PageID #1186 (Sub-entry 1) by establishing from

Hubbuch's own testimony that the financial investigation had not exhausted all relevant leads or fully resolved all account-scope, source-of-funds, and transaction-context issues.

The "strings" cross-examination, read together with Sub-entry 3, now has a specific and concrete illustration that was not identified to the jury during the cross-examination itself: the most consequential unresolved "strings" in the entire case were not vague investigative avenues. They were the NGEP Bank of America account, the Whitaker Bank account, and the Brand Bank account — zero of which appeared in Gov't Ex. 501 despite McCracken's forensic certification and Hubbuch's independent confirmation that they were included. Those missing accounts were the accounts through which Counts 2, 3, and 4 flowed. They were also the accounts whose records would have refuted approximately $50,000 in false Chamblee attribution, revealed a discrepancy of approximately $220,000 in Hubbuch's Shumard testimony, established $30,000 in Chamblee self-transfers, and documented $10,000 in payments to Chamblee's trucking company against his trial testimony. The "strings" acknowledged on cross-examination were not peripheral loose ends. They were the evidentiary core of the transactions at issue in three of the charged counts — and the jury was never told that.

FALSE TESTIMONY / MISLEADING IMPRESSION:

The misleading impression addressed by this entry operates on two levels that must be read together.

At the first level, the "strings" cross-examination created an incomplete qualification. The Government's direct examination through the "get a handle" testimony and McCracken's account-by-account certifications had established a three-stage false completeness structure. Cross-examination established that additional investigative avenues existed — but it did so

only in general terms. The "strings" acknowledgment did not identify to the jury what the specific unresolved strings were, how significant they were to the charged counts, or what the jury would have seen had those strings been fully pursued and accurately reflected in Gov't Ex. 501. The jury therefore heard a general qualification — additional strings existed — without the specific corrective context that would have made the qualification meaningful: that the strings included all three NGEP accounts and the records underlying three of the charged counts.

At the second level, and more significantly, the "strings" framing actively obscured the severity of what was missing. A vague cross-examination acknowledgment that additional investigative avenues existed functioned differently in the jury's evaluation than a specific identification of the missing accounts would have. The "strings" language suggested incomplete follow-up on peripheral leads. What the missing NGEP accounts actually represented was the complete absence from the Government's certified-comprehensive financial reconstruction of every account associated with the Government's primary trial witness — the accounts through which the actual charged transactions flowed. The gap between what "strings" suggested — some loose ends — and what the missing accounts actually were — the complete NGEP banking record underlying three charged counts — is precisely the misleading impression this entry addresses. The jury evaluated the Government's financial proof while understanding only that some investigative threads remained; it never understood that the threads that remained were the foundational account records for the counts on which it was asked to convict.

GOVERNMENT KNOWLEDGE / FAILURE TO CORRECT:

The Government's knowledge for this entry is established with precision by the McCracken timing sequence established in Sub-entry 3. McCracken described scanning all bank statements into his forensic program and delivering the complete output to Hubbuch. That delivery occurred before trial. By the time cross-examination elicited Hubbuch's acknowledgment of additional investigative "strings," Hubbuch had already received McCracken's complete data output — which included the NGEP account transactions — and had already constructed the version of Gov't Ex. 501 that excluded all three NGEP accounts. The "strings" cross-examination acknowledgment was therefore not a candid admission that some investigative avenues remained unresolved due to resource constraints or oversight. It was a minimization made by a witness who had already received the complete account data and had already made the decision — or acquiesced in the result — of excluding all three NGEP accounts from the exhibit McCracken's testimony had just certified as comprehensive.

Government knowledge at the prosecutorial level is separately established because the AUSAs who examined and cross-examined Hubbuch had been present throughout trial, including during McCracken's account-by-account completeness examination. By the time the "strings" cross-examination occurred, the Government had already elicited McCracken's false YES responses to Chapman's individual account queries. The Government was therefore on notice — from its own structured completeness examination — that the jury had received specific false certifications about the NGEP BOA and Whitaker accounts. The failure-to-correct obligation required the Government to address that false impression, not to allow a vague "strings" acknowledgment to stand as the jury's only qualification to a multi-witness, prosecutor-structured false completeness representation.

MATERIALITY / PREJUDICE:

The "strings" evidence was material because it was the jury's only trial-record signal that the Government's financial investigation might not have been exhaustive — and it was far too vague to convey the specific and severe consequences of the actual missing material. A jury that heard only the "strings" acknowledgment, without knowing that the strings included all three NGEP accounts and the records underlying three of the charged counts, could not evaluate the reliability of the Government's financial proof with accurate information. The "strings" acknowledgment standing alone may have suggested minor incomplete follow-up; the actual missing material represented a comprehensive absence of the NGEP banking record from a case built on NGEP-related transactions.

The specific consequences of the missing material — now established in Sub-entry 3 — identify with precision what "there is a reasonable likelihood the jury would have evaluated differently" had the "strings" acknowledgment been followed by the corrective specificity the record supported:

Three charged counts (Counts 2, 3, and 4) had no underlying account records in the certified-comprehensive spreadsheet;

~$50,000 falsely attributed to Chamblee as investment or victim funds were intercompany transfers;

~$220,000 discrepancy between Hubbuch's "about $48k" Shumard testimony and actual loan payments reflected in the NGEP BOA records, confirmed as loan payments by Shumard himself at Trial Tr., ECF No. 175,, PageID #962;

$30,000 in Chamblee self-transfers for loan repayments confirmed by Hogan at trial — Trial Tr., ECF No. 176, PageID #1172 (Hogan cross-examination by Ms. Lewis — Defense

Exhibit 76, NexGen Energy Partners Bank of America statement, September 2018): withdrawal of $30,000 on September 17, 2018, transferred to Chamblee's GGC Funding account; characterized by Hogan as repayment of a loan;

$10,000 in payments to RJF directly contradicting Chamblee's testimony that his trucking company never worked in Kentucky at Trial Tr., ECF No. 175, PageID ##1081–1083.

There is a reasonable likelihood that the jury would have evaluated Hubbuch's credibility, the Government's financial reconstruction, and Movant's knowledge and intent materially differently had it understood that the "strings" were not minor loose ends but the complete NGEP banking record underlying three of the charged counts. The prejudice is cumulative because this entry interacts with and reinforces every other G1-RA-005 sub-entry: the "get a handle" baseline at Sub-entry 1 gave the false completeness structure its initial credibility; this entry's "strings" acknowledgment was the only qualification the jury heard; Sub-entry 3's McCracken/Hubbuch false certifications show how deliberately the completeness structure was built; and Sub-entry 4's operational-context comparison shows additional record support for Movant's limited role. Evaluated together, these entries establish that the jury never received — at any stage of the trial — an accurate account of what the Government's financial reconstruction did and did not contain.

CROSS-GROUND NOTATION:

Ground Five (App. F, G5-RA-004): The Ground Five financial-summary Napue example cross-references G1-RA-005 generally — the "strings" acknowledgment documented in this sub-entry is the jury's only in-trial qualification of the three-stage false completeness structure, and the Ground Five appellate theory incorporates the contrast between the "strings" acknowledgment and the complete exclusion of all NGEP accounts from Gov't Ex. 501. See App. F, G5-RA-004.

G1-RA-005, Sub-entry 3 — Gov't Ex. 501 / Movant Ex. 9 financial-summary limitation

RECORD CITATION / SOURCE:

McCracken testimony, Trial Tr., ECF No. 177; Trial Tr., ECF No. 176, PageID §§1186–1187 (Hubbuch — confirmed NGEP Bank of America account included in Gov't Ex. 501); Trial Tr., ECF No. 175, PageID §§1055–1056 (Chamblee — Count 2 bank-record review / intercompany transfer confirmed); Trial Tr., ECF No. 176, PageID §§1168–1169, 1172 (Hogan — Count 2 intercompany transfer; $30,000 in Chamblee self-transfers for loan repayments — Hogan, Trial Tr., ECF No. 176, PageID #1172, Defense Ex. 76, confirmed); Trial Tr., ECF No. 175,, PageID #962 (Shumard — confirmed funds received from Vance were loan payments); Trial Tr., ECF No. 178 , PageID ##1557–1558 (Hubbuch — testified Shumard received "about $48k" from Vance); Trial Tr., ECF No. 175 , PageID ##1081–1083 (Chamblee — testified RJF never sent trucks to Kentucky); Gov't Ex. 501 / Movant Ex. 9 (Government financial summary spreadsheet — discussed at trial through McCracken and Hubbuch testimony but not formally admitted into evidence; Napue v. Illinois, 360 U.S. 264, 269–71 (1959); Giglio v. United States, 405 U.S. 150, 153–54 (1972)

EXACT QUOTE OR RECORD LANGUAGE:

McCracken testimony : AUSA Chapman questioned McCracken individually about whether each bank account was included in the spreadsheet, including the NGEP Bank of America account and the Whitaker Bank account; McCracken confirmed each time that the accounts were included. McCracken described scanning all bank statements into a specialized program he had used hundreds of times and delivering the complete output to Hubbuch for analysis.

Trial Tr., ECF No. 176, PageID §§1186–1187 (Hubbuch): Confirmed the NGEP Bank of America account was included in Gov't Ex. 501 .

Trial Tr., ECF No. 178 , PageID ##1557–1558 (Hubbuch on Shumard): "about $48k" .

Trial Tr., ECF No. 175 , PageID ##1081–1083 (Chamblee on RJF): Chamblee testified RJF never sent any trucks to Kentucky .

Trial Tr., ECF No. 175, PageID #962 (Shumard): Confirmed that funds received from Vance were loan payments .

RECORD-PROOF POINT:

Gov't Ex. 501 / Movant Ex. 9 was the Government's financial reconstruction of all accounts and transactions at issue in this case — presented to the jury through two witnesses as a comprehensive, forensically validated spreadsheet of all relevant banking activity. The Government called McCracken, a forensic accountant, as its completeness witness. His sole evidentiary purpose was to certify that the spreadsheet captured all relevant bank accounts and transactions. AUSA Chapman conducted McCracken's direct examination as a deliberate account-by-account validation exercise — asking McCracken individually whether specific accounts were included in the spreadsheet, including the NGEP Bank of America account and the Whitaker Bank account, and receiving an affirmative confirmation each time. Independently, Agent Hubbuch confirmed at Trial Tr., ECF No. 176, PageID §§1186–1187 that the Bank of America account was included in Gov't Ex. 501.

Both representations were false. Gov't Ex. 501 did not include the NGEP Bank of America account records, the Whitaker Bank account records, or the Brand Bank account records. Not one NGEP account appeared anywhere in the spreadsheet. The bank accounts associated with

the Government's primary trial witness and alleged victim — Chamblee — were entirely absent from the Government's own comprehensive financial reconstruction.

The exclusion of all three NGEP accounts establishes either one of two things, both of which constitute a serious Napue violation: (1) McCracken and Hubbuch each independently testified falsely about what was in the spreadsheet; or (2) the NGEP accounts were included in the complete output McCracken scanned and delivered to Hubbuch, and Hubbuch deliberately removed them before the exhibit was finalized and described to the jury. The Grand Totals on Gov't Ex. 501's Summary page support the deletion theory and establish Hubbuch's personal knowledge: those Grand Totals for Shumard-partner funds could not have been accurately calculated without the underlying NGEP account transaction data. If Hubbuch was able to generate accurate Grand Totals from the complete data McCracken delivered, then the individual NGEP account transactions were present in the underlying data and were subsequently removed from the exhibit. In either scenario — lying or deletion — the Government presented to the jury, through two witnesses and the structured vehicle of AUSA Chapman's individual account-by-account questioning, a financial reconstruction it knew or should have known was materially false and incomplete.

The exclusion also had an extraordinary structural consequence for the charged counts themselves. Gov't Ex. 501 excluded the specific accounts through which three of the charged counts flowed:

Count 2: The $5,600 underlying Count 2 was an intercompany transfer from the NGEP Bank of America account to the Whitaker Bank account — confirmed by Chamblee at Trial Tr., ECF No. 175, PageID §§1055–1056 and by Hogan at Trial Tr., ECF No. 176, PageID §§1168–1169, 1172. Had the NGEP BOA records been in Gov't Ex. 501, the spreadsheet

would have shown directly that the Count 2 $5,600 was a business-account transfer, not a personal victim payment. The Count 2 personal-victim attribution would have been refuted from the Government's own financial exhibit.

Counts 3 and 4: The Whitaker Bank account was the account through which Counts 3 and 4 flowed. The Whitaker Bank account was excluded from Gov't Ex. 501. The Government therefore presented a financial reconstruction as comprehensive while excluding the account transaction records underlying three of the counts on which it sought conviction.

Beyond the charged counts, the NGEP BOA records — had they been included in Gov't Ex. 501 — would have established the following, each affecting the Government's attribution theory, the loss amount, the restitution figure, and the credibility of Chamblee and Hubbuch:

~$50,000 falsely attributed to Chamblee as investments: Approximately $50,000 credited by the Government to Chamblee as investment or victim funds were in fact intercompany transfers from the NGEP BOA account — not personal investment funds from Chamblee. This affected the loss amount and restitution calculation attributed to Chamblee and would have given the jury reason to question the accuracy of the Government's financial attribution theory.

~$268,000 in loan payments to Shumard from Vance: The NGEP BOA records would have shown approximately $268,000 in loan payments made by Vance to the Shumard partners via cashier's checks. Shumard himself confirmed at Trial Tr., ECF No. 175,, PageID #962 that funds he received from Vance were loan payments — not fraud proceeds, investments, or victim losses. Hubbuch testified at Trial Tr., ECF No. 178 , PageID ##1557–1558 that Shumard received "about $48k" from Vance. The BOA records would have established a discrepancy of approximately $220,000 between Hubbuch's trial testimony and the actual

amounts flowing to Shumard — a discrepancy directly affecting the loss amount, the restitution calculation, and Hubbuch's credibility as the Government's lead financial investigator.

$30,000 in Chamblee self-transfers for loan repayments: The NGEP BOA records would have shown approximately $30,000 in transfers Chamblee made to himself for loan repayments — confirmed by Hogan at trial — Trial Tr., ECF No. 176, PageID #1172 (Hogan cross-examination by Ms. Lewis — Defense Exhibit 76, NexGen Energy Partners Bank of America statement, September 2018): withdrawal of $30,000 on September 17, 2018, transferred to Chamblee's GGC Funding account; Hogan characterized the transaction as repayment of a loan. This evidence would have impeached Chamblee's characterization of his financial role, affected the loss amount and restitution calculation, and gave the jury additional reason to question the accuracy of the attribution theory underlying the Government's case.

~$10,000 in payments to RJF (Chamblee's trucking company): Chamblee testified at Trial Tr., ECF No. 175, PageID ##1081–1083 that RJF never sent any trucks to Kentucky. The NGEP BOA records would have shown approximately $10,000 in payments made to RJF from the NGEP BOA account. If RJF never performed any work in Kentucky, those payments had no documented legitimate business purpose — directly impeaching Chamblee's RJF testimony on a specific, verifiable factual claim.

All Vance income deposited into the BOA account at Chamblee's direction: The NGEP BOA records would have established that all income generated by Vance was deposited into the NGEP BOA account pursuant to Chamblee's own instructions. This corroborated Movant's

account of her limited, Chamblee-directed administrative role and established that the financial structure of the NGEP operation was directed by Chamblee — not Movant.

Payments to individuals before Hubbuch interviews: The NGEP BOA records would have revealed payments made to individuals before their interviews with Agent Hubbuch. Payments were made to: Doyle Rabren, Lance Raybren, Curtis Thomson, and Jeff Dimick, although ultimately Dimick was never interviewed by Agent Hubbuch.

GC's pre-trial false statement re $100,000 in 2018: Chamblee stated in 302/BATES 11563 that they "gave Vance approximately $100k in 2018." The NGEP BOA records would have shown that the only funds Shumard deposited in 2018 were placed into accounts controlled by Shumard — not Vance — directly contradicting Chamblee's pre-trial statement. Hubbuch therefore knew before trial — from his own investigative file — that Chamblee's $100k statement was false, or alternatively conducted an investigation so deficient that he placed a witness on the stand without verifying his pre-trial statement against the available banking records.

Finally, Gov't Ex. 501 / Movant Ex. 9 was discussed extensively at trial — through McCracken's entire testimony and through Hubbuch's testimony — but was not formally admitted into evidence. The Government received the full benefit of McCracken's forensic-accountant credibility and Chapman's deliberate account-by-account completeness questioning without the jury ever having the actual exhibit in the jury room to examine. The false completeness representation was placed before the jury through witness testimony; the exhibit that would have confirmed the falsity of that representation was not given to the jury to inspect.

FALSE TESTIMONY / MISLEADING IMPRESSION:

The Gov't Ex. 501 false-completeness violation has three analytically distinct and independently sufficient components, each constituting a separate Napue/Giglio violation and each reinforcing the others.

First — McCracken's false forensic validation. The Government called McCracken for one purpose: to validate, through forensic-accountant credibility, that Gov't Ex. 501 was a complete and accurate financial reconstruction of all relevant banking activity. McCracken described scanning all bank statements into a specialized program he had used hundreds of times and delivering the complete output to Hubbuch. AUSA Chapman then conducted McCracken's direct examination as a deliberate account-by-account validation exercise, asking McCracken individually whether specific accounts — including the NGEP Bank of America account and the Whitaker Bank account — were included in the spreadsheet. McCracken answered affirmatively each time. Those answers were false. Not one NGEP account appeared in Gov't Ex. 501. McCracken's affirmative YES responses to Chapman's individual account queries placed false completeness representations before the jury through the vehicle of forensic-accountant credibility — and Chapman's deliberate account-by-account questioning structure ensured that the false representations were as specific, emphatic, and jury-facing as possible. Because McCracken's sole evidentiary function was to certify the spreadsheet's completeness, every misleading inference the jury drew from Gov't Ex. 501 was traceable directly to McCracken's false validation testimony. The Government either knew McCracken's YES responses were false or failed to verify the accuracy of its completeness witness before conducting a structured completeness examination — either of which triggers the Napue violation.

Second — Hubbuch's independent false confirmation. Independently of McCracken, Hubbuch confirmed at Trial Tr., ECF No. 176, PageID §§1186–1187 that the NGEP Bank of America account was included in Gov't Ex. 501. That confirmation was also false. Hubbuch was the Government's lead financial investigator and personally oversaw the construction of Gov't Ex. 501. McCracken described delivering the complete scanned output to Hubbuch. The Grand Totals for Shumard-partner funds on Gov't Ex. 501's Summary page establish that Hubbuch had access to the underlying NGEP account transaction data — those totals could not have been accurately calculated without the individual transaction entries from the NGEP accounts. Hubbuch's confirmation at Trial Tr., ECF No. 176, PageID §§1186–1187 that the BOA account was included was therefore made with either actual knowledge that it was not, or after Hubbuch himself had removed the account data from McCracken's complete output before the exhibit was finalized. Either way, the second false completeness representation came from the Government's own lead financial investigator — the witness with the most direct personal knowledge of what was and was not in the spreadsheet.

Third — The structural consequence: three charged counts, zero underlying account records. The combined effect of McCracken's and Hubbuch's testimony was to give the jury a financial reconstruction whose completeness had been certified by both a forensic accountant and the FBI's lead financial investigator. The jury evaluated the Government's entire attribution and intent theory through the lens of that certified-complete spreadsheet. That lens was false. The accounts underlying Counts 2, 3, and 4 were all missing. The bank accounts for the Government's primary witness and alleged victim were entirely absent. The specific account whose records would have shown that the $5,600 underlying Count 2 was an intercompany transfer — that approximately $50,000 more credited to Chamblee were also

intercompany transfers — that approximately $268,000 flowed to Shumard as loan payments (not fraud proceeds) — that Chamblee made $30,000 in self-transfers — and that $10,000 went to Chamblee's trucking company despite his testimony that it never worked in Kentucky — was not in the exhibit. The jury received a forensic-accountant-validated, FBI-confirmed financial reconstruction and was asked to convict on the basis of it, while the accounts that would have refuted three of the charged counts and undermined the Government's primary witness's credibility were deliberately absent from the exhibit the jury was told was comprehensive.

The prejudice was further compounded by trial counsel's failure to challenge either McCracken or Hubbuch. Movant informed trial counsel before both witnesses testified that the NGEP BOA and Whitaker accounts were not in the spreadsheet. When Hubbuch confirmed at Trial Tr., ECF No. 176, PageID §§1186–1187 that the BOA was included, trial counsel did not dispute the testimony. When McCracken testified — with his sole evidentiary purpose being to validate the spreadsheet's completeness — trial counsel declined to cross-examine him, characterizing his role as limited to generating the spreadsheet. That characterization was factually incorrect and legally consequential: McCracken was the forensic accountant who scanned all bank statements into the program and whose affirmative YES responses to Chapman's individual account queries were the foundation for every completeness inference the jury drew from Gov't Ex. 501. By declining to challenge McCracken's false validation testimony and failing to call out Hubbuch's false confirmation, trial counsel allowed the jury to receive a doubly certified financial reconstruction that excluded the accounts underlying three of the charged counts — while possessing the

information necessary to expose the false certification on cross-examination. See Cross-Ground Notation below.

GOVERNMENT KNOWLEDGE / FAILURE TO CORRECT:

Government knowledge is established at three independent levels, each sufficient to trigger the Napue/Giglio correction obligation.

First — AUSA Chapman's deliberate examination structure. AUSA Chapman called McCracken as the Government's completeness witness and conducted a direct examination structured as an account-by-account validation exercise — asking McCracken individually whether specific bank accounts, including the NGEP Bank of America account and the Whitaker Bank account, were included in the spreadsheet. That examination structure was deliberate. Chapman was not asking general questions about the spreadsheet; he was eliciting specific YES-or-NO completeness confirmations on the exact accounts that were missing. Either Chapman knew that the accounts were not in the spreadsheet and elicited false confirmation anyway — a straightforward Napue violation — or Chapman conducted a structured completeness examination of his own forensic accountant without verifying that the answers his witness would give were accurate. Under Napue, both alternatives result in the same violation: the Government placed false completeness testimony before the jury through its own deliberate examination strategy and made no correction when the jury heard it.

Second — Hubbuch's personal knowledge of the exclusion. Hubbuch personally oversaw the construction of Gov't Ex. 501. McCracken's testimony established that McCracken scanned all bank statements into the program and delivered the complete output to Hubbuch, leaving Hubbuch to analyze the data and determine the final form of the exhibit. The Grand Totals

for Shumard-partner funds on Gov't Ex. 501's Summary page prove that Hubbuch had access to the underlying NGEP transaction data: those totals could not have been accurately calculated without the individual transaction records from the NGEP accounts. If the NGEP account data was present in the complete output McCracken delivered — as the Grand Totals demonstrate — and absent from the exhibit Hubbuch presented to the jury, then Hubbuch knew the exhibit was incomplete when he confirmed at Trial Tr., ECF No. 176, PageID §§1186–1187 that the BOA account was included. His confirmation was made with direct personal knowledge that the exhibit before the jury did not contain what he told the jury it contained.

Third — Pre-trial knowledge of Chamblee's false statements (provisional). Hubbuch's own investigative file — Chamblee's 302/BATES 11563 — contained Chamblee's pre-trial statement that they "gave Vance approximately $100k in 2018." The NGEP BOA records would have established that no such $100,000 in funds transferred to Vance from Shumard in 2018 — the only Shumard funds deposited in 2018 went into accounts controlled by Shumard, not Vance. Hubbuch therefore knew, before presenting Chamblee as a trial witness, either that Chamblee's $100k statement was false or that his investigation had failed to verify it against the available banking records in his own file.

Under Napue v. Illinois, 360 U.S. 264, 269 (1959), and Giglio v. United States, 405 U.S. 150, 153–54 (1972), the Government violates due process when it elicits false testimony and allows it to stand uncorrected before the jury. Here, the Government did not merely fail to correct an isolated misstatement. It structured McCracken's entire testimony around the completeness of Gov't Ex. 501, conducted deliberate account-by-account completeness questioning on the specific missing accounts, independently confirmed those accounts were

present through Hubbuch's testimony, and then used the doubly certified financial reconstruction — whose completeness two Government witnesses had each falsely represented — as the evidentiary foundation for attribution and intent inferences affecting three charged counts, the loss amount, the restitution calculation, and Chamblee's credibility. That is the Government's affirmative, deliberate presentation of materially false evidence — not a failure to volunteer a qualification. It is precisely what Napue and Giglio prohibit.

MATERIALITY / PREJUDICE:

Under Napue v. Illinois, the standard is whether the misleading presentation "could in any reasonable likelihood have affected the judgment of the jury." 360 U.S. at 271. That standard is satisfied here on multiple independently sufficient and mutually reinforcing bases.

First — Three charged counts flowed through the missing accounts. The NGEP Bank of America account and the Whitaker Bank account — both excluded from Gov't Ex. 501 — were the accounts through which Counts 2, 3, and 4 flowed. A financial reconstruction certified as comprehensive by both a forensic accountant and the lead FBI financial investigator, but missing the account records underlying three of the charged counts, could not fairly support the attribution and intent inferences the Government asked the jury to draw. There is a reasonable likelihood that the jury would have evaluated the Government's financial proof, and its confidence in the reliability of that proof, fundamentally differently had it understood that the spreadsheet represented to it as comprehensive did not include the accounts underlying three of the counts on which it was being asked to convict.

Second — Count 2 false personal-victim attribution (incorporated from G1-RA-004). The NGEP BOA records would have shown directly on the Government's own financial spreadsheet that the $5,600 underlying Count 2 was a BOA-to-Whitaker intercompany

transfer — not a personal payment from Chamblee. This is addressed fully at G1-RA-004. It is independently sufficient here because the false completeness certification of Gov't Ex. 501 was the mechanism by which the Count 2 false attribution was insulated from effective challenge: a jury told by a forensic accountant that all relevant accounts were in the spreadsheet had no basis to question whether the Count 2 transaction had a source the spreadsheet did not show.

Third — ~$50,000 falsely attributed to Chamblee as investment funds. The NGEP BOA records would have shown that approximately $50,000 credited to Chamblee by the Government as investment or victim funds were intercompany transfers — not personal investment funds from Chamblee. That error affected the loss amount and the restitution figure and would have given the jury direct, documentary evidence from the Government's own financial records that the attribution theory underlying the case was inaccurate on a significant dollar amount beyond the Count 2 transaction alone.

Fourth — ~$268,000 in Shumard loan payments versus Hubbuch's "about $48k." Shumard confirmed at Trial Tr., ECF No. 175,, PageID #962 that funds he received from Vance were loan payments — not fraud proceeds or victim losses. The NGEP BOA records would have shown approximately $268,000 in such loan payments, compared to Hubbuch's trial testimony at Trial Tr., ECF No. 178 , PageID ##1557–1558 that Shumard received "about $48k" — a discrepancy of approximately $220,000. That discrepancy affected the loss amount and the restitution calculation and would have established from the Government's own financial records that Hubbuch's testimony on the Shumard payments was materially inaccurate by a factor of more than five. A jury that understood Hubbuch had testified that Shumard received $48,000 when the BOA records would have shown $268,000 —

confirmed as loan payments by Shumard himself — could not have evaluated the Government's financial reconstruction, or Hubbuch's credibility as the Government's lead financial investigator, with the same confidence. There is a reasonable likelihood that this discrepancy alone, if known to the jury, would have materially affected its assessment of the reliability of the Government's financial proof.

Fifth — $30,000 in Chamblee self-transfers for loan repayments. The NGEP BOA records would have shown a $30,000 transfer Chamblee made to himself for loan repayment — confirmed by Hogan at Trial Tr., ECF No. 176, PageID #1172 (Defense Exhibit 76 — September 2018 NGEP Bank of America statement). This evidence would have impeached Chamblee's characterization of his financial role, affected the loss amount and restitution calculation, and provided the jury with additional documentary evidence that funds attributed to Chamblee were not what the Government's case represented them to be.

Sixth — ~$10,000 in payments to RJF (Chamblee's trucking company). Chamblee testified at Trial Tr., ECF No. 175 , PageID ##1081–1083 that RJF never sent any trucks to Kentucky. The NGEP BOA records would have shown approximately $10,000 in payments made from the NGEP BOA account to RJF. A jury presented with both Chamblee's "never sent trucks" testimony and documentary evidence of $10,000 in payments to his trucking company from the NGEP account would have had concrete, verifiable grounds to question Chamblee's credibility on a specific factual claim — with direct consequences for how it evaluated his credibility on every other claim, including his characterization of his financial role, his investment in the entities, and his knowledge of the scheme.

Seventh — Cumulative impeachment of Chamblee and Hubbuch. Evaluated together, the items above represent a systematic pattern visible only if the NGEP BOA records were in

Gov't Ex. 501: (a) Count 2's $5,600 was an intercompany transfer, not a personal victim payment; (b) approximately $50,000 more in funds attributed to Chamblee were also intercompany transfers; (c) approximately $268,000 flowed to Shumard as loan payments — confirmed by Shumard — against Hubbuch's trial testimony of $48,000; (d) $30,000 in self-transfers Chamblee made to himself for loan repayment, confirmed by Hogan at Trial Tr., ECF No. 176, PageID #1172;g(e) $10,000 in payments to Chamblee's trucking company despite his testimony that it never worked in Kentucky; and (f) all Vance income was deposited into the NGEP BOA account at Chamblee's own direction — corroborating Movant's account of her limited, Chamblee-directed administrative role. The complete picture from the NGEP BOA records would not merely have impeached the Government's case at the margins. It would have dismantled the evidentiary foundation for the attribution theory the Government built around Chamblee as a credible victim-witness and Hubbuch as a thorough, reliable financial investigator. There is a reasonable likelihood that the jury would have evaluated Chamblee's credibility, Hubbuch's credibility, the Government's financial reconstruction, and Movant's knowledge and intent fundamentally differently had Gov't Ex. 501 included — rather than excluded — the NGEP BOA records.

The prejudice is amplified by trial counsel's failure to challenge either McCracken or Hubbuch despite being informed by Movant that the NGEP BOA and Whitaker accounts were not in the spreadsheet. Trial counsel had the information necessary to expose the false completeness representations through cross-examination of the Government's own witnesses. McCracken's sole evidentiary function was to certify the spreadsheet's completeness; a single line of cross-examination — confirming which specific accounts were and were not in the spreadsheet — would have exposed the false certification to the jury. That challenge was not

made. The jury deliberated on three charged counts, a loss amount, and a restitution figure while believing — on the strength of a forensic accountant's YES responses and the FBI's lead investigator's confirmation — that it had seen the complete financial picture. It had not. See Ground Three, Appendix D.

CROSS-GROUND NOTATION:

Ground Two (App. C, G2-RA-008): The Ground Two loss-calculation and financial-summary anchor cross-references Sub-entry 3 specifically — the McCracken and Hubbuch false completeness certifications and the exclusion of all three NGEP accounts are the same record components establishing the financial-summary deficiency that Ground Two's IAC theory addresses. See App. C, G2-RA-008.

Ground Three (App. D, G3-RA-005; G3-RA-009): Two Ground Three entries cross-reference Sub-entry 3 — G3-RA-005 (the trial-IAC financial-summary evidence entry) and G3-RA-009 (the financial investigation and NGEP BOA account entry) — each establishing that the false completeness certifications documented here are the trial-record basis for the Ground Three IAC theory that trial counsel failed to challenge the Government's financial reconstruction. See App. D, G3-RA-005; G3-RA-009.

Ground Four (App. E, G4-RA-004): The Ground Four loss-calculation failure entry cross-references Sub-entry 3 as the record basis for the loss-offset theory — the exclusion of the NGEP BOA records from Gov't Ex. 501 is analytically continuous with Hayworth's failure to challenge the loss calculation at sentencing using the two-component offset theory. See App. E, G4-RA-004.

Ground Five (App. F, G5-RA-004): The Ground Five financial-summary Napue example cross-references G1-RA-005, including Sub-entry 3, as the controlling trial-record source for the financial-summary completeness Napue example whose omission from direct appeal constitutes Ground Five appellate IAC. See App. F, G5-RA-004.

G1-RA-005, Sub-entry 4 — Evidentiary-hearing comparison / minimal operations and personnel presence

RECORD CITATION / SOURCE:

Trial Tr., ECF No. 177, PageID ##1483–1486 (Hubbuch trial testimony — Day 4 direct examination); Evid. Hr'g Tr., ECF No. 219, PageID #2154 (Hubbuch cross-examination by Hayworth — evidentiary hearing, August 21, 2023: "It was minimally operating, yes" / "a

few people were there"); Francis testimony, Trial Tr., ECF No. 174, PageID ##744–745, 752; Trial Tr., ECF No. 177; Shumard group payroll and tax records ; NGEP BOA records / Trial Tr., ECF No. 175 ; Napue v. Illinois, 360 U.S. 264, 269–71 (1959); Giglio v. United States, 405 U.S. 150, 153–54 (1972)

EXACT QUOTE OR RECORD LANGUAGE:

Trial Tr., ECF No. 178, PageID #1570 (Hubbuch — trial testimony — Day 5): No employees were anywhere to be seen at the operation.

Evid. Hr'g Tr., ECF No. 219, PageID #2154 (Hubbuch cross-examination by Hayworth — Evidentiary Hearing, August 21, 2023): Q: "At the time that you went out to interview him for the first time, was this business in operation as far as you could tell?" A: "It was minimally operating, yes. There were piles of product, what I believe were some type of product. People were there -- a few people were there. Doug was there. There was a rotating -- one of those rotating dryers, calciners, that looked like it may have been operational. And then there was another one that looked in pieces or partially operating." A (continued): "And not a lot of other equipment besides that."

Francis testimony, Trial Tr., ECF No. 174, PageID #752: Employee presence at the operation.

Surmeier testimony, Trial Tr., Day 4, ECF No. 177, PageID ##1397–1399: Identified Gov't Ex. 604 (same document as Defense Ex. 85 / Carbonox PO) as bearing Carbonox's company name; identified it as a purchase order for 2,000 tons of metcoke issued to Nex-Gen ($190,000); confirmed from personal knowledge that Vance was unable to fulfill the order and the material never became available.

NGEP BOA records / Trial record : Approximately $10,000 in payments to RJF (Chamblee's trucking company) for moving product — connects to G1-RA-004.

RECORD-PROOF POINT:

At trial, Agent Hubbuch testified that no employees were anywhere to be seen at the NexGen/NGEP operation. Trial Tr., ECF No. 178, PageID #1570. That testimony was false, and Hubbuch's own evidentiary hearing testimony proves it: at Evid. Hr'g Tr., ECF No. 219, PageID #2154, Hubbuch testified: "a few people were there." The evidentiary-hearing contradiction establishes that Hubbuch's trial testimony on employee presence was not merely imprecise — it was materially false in the direction that most benefited the Government's sham-company theory.

The corrective operational record is substantial and came from multiple independent sources:

(1) Employee presence — confirmed at trial. Francis testified at trial regarding employees present at the operation. Trial Tr., ECF No. 174, PageID #752. Additional witnesses and evidence further confirmed that the operation had personnel. Hubbuch's own later admission at the evidentiary hearing that "a few people were there" confirms that his trial testimony denying any employee presence was false.

(2) Payroll and taxes paid by the Shumard group. The Shumard group paid payroll and taxes associated with the operation. Those payroll and tax records were available to Hubbuch as a trained FBI financial investigator through standard investigative subpoena practice. A review of those records would have confirmed — with precision, from official payroll documentation — that there were numerous employees on the payroll of the NGEP operation. Hubbuch either subpoenaed those records and suppressed what they showed, or he

testified about employee absence without performing the basic investigative step that would have verified or refuted his characterization. Either alternative is incompatible with an honest "no employees anywhere to be seen" trial statement.

(3) Equipment, machinery, and genuine commercial purchases. Vance built an estimated 6–10 drum dryers and fabricated additional parts to repair and construct additional machinery. The Carbonox purchase order — Defense Ex. 85 / Gov't Ex. 604, identified at trial by Surmeier from personal knowledge as a genuine Carbonox commercial transaction, Trial Tr., Day 4, ECF No. 177, PageID ##1397–1399 — independently established that equipment materials were purchased through legitimate commercial channels. The combination of Vance's drum dryer fabrication and the Carbonox PO reflects a functioning, physically operational business — not a sham shell company with no activity.

(4) Product transport. Approximately $10,000 in payments from the NGEP Bank of America account were made to RJF — Chamblee's own trucking company — for moving product. (Hogan, Trial Tr., ECF No. 176, PageID ##1166–1167.) A trucking company does not move product for a company that has no operations, no employees, and no physical activity. This payment independently corroborates the existence of real operational activity and directly contradicts the sham-company impression Hubbuch's testimony was designed to create.

(5) Startup context — underfunded operation, not a sham. NGEP was a startup business that required the Shumard group's equity partner investment to continue operating and grow. When the Shumard group failed to supply the promised equity funding, Vance was left to fund operational bills — employees, equipment, transportation, and day-to-day expenses — through his existing logging and wood char business. That funding gap explains why the operation may have appeared underfunded or struggling during the period Hubbuch

investigated. An underfunded startup that nonetheless employed workers, fabricated industrial equipment, purchased legitimate commercial parts, and paid a trucking company to move product is a real business operating under financial stress — not a fraud vehicle with no legitimate activity. The financial stress was itself a direct consequence of the Shumard group's failure to honor its equity commitment — the very funding shortfall that forms the backdrop of this entire prosecution. Hubbuch's "no employees" trial testimony erased that operational reality from the jury's view entirely.

Together, these five categories of evidence establish that the NexGen/NGEP operation was a functioning startup business with real personnel, real payroll, real equipment, real commercial purchases, and real product transportation. Hubbuch's trial testimony that there were no employees anywhere to be seen was materially false. His admission at the evidentiary hearing that "a few people were there" is the clearest possible confirmation of that falsity from the Government's own witness.

FALSE TESTIMONY / MISLEADING IMPRESSION:

The false testimony at issue in this sub-entry is direct and specific: Hubbuch testified at trial that no employees were anywhere to be seen at the operation. That testimony was false. It was proven false by Hubbuch's own admission at the evidentiary hearing, by Francis's trial testimony, by the Shumard group's payroll and tax records that were available to Hubbuch through standard investigative subpoena, and by the substantial physical and financial evidence of real operational activity documented in the record.

The misleading impression created by Hubbuch's "no employees" testimony was not limited to the narrow factual question of whether one or two workers happened to be present on a given day. Its primary Napue significance is structural: the "no employees anywhere to be

seen" testimony was designed to create — and did create — the impression that the NexGen/NGEP entities were not legitimate operating businesses but sham entities with no real commercial activity. That sham-company impression was central to the Government's fraud theory. If Movant was the administrative employee of a functioning startup business — one with workers on a payroll, employees whose presence could be confirmed from tax records, industrial equipment fabricated on-site, a legitimate equipment purchases, and a trucking company being paid to move real product — her role as a processor of Chamblee-supplied information in her administrative capacity becomes substantially more credible. A sham company with no employees and no equipment has no legitimate administrative function to perform; a functioning startup with employees, machinery, and product transportation does.

The false impression was compounded by Hubbuch's failure, as a trained FBI financial investigator, to subpoena the payroll and tax records that would have confirmed employee presence. That failure cannot be attributed to the absence of available evidence: the Shumard group paid payroll and taxes, and those records were obtainable through standard investigative subpoena practice. A trained investigator who presents "no employees anywhere to be seen" testimony to a jury without having subpoenaed the payroll records that would have directly confirmed or refuted that characterization has either deliberately avoided the evidence or is testifying to something he knows the record would not support. The same failure carries independent significance under Ground Three: trial counsel possessed the ability to subpoena those same employees — the people on the Shumard payroll — and call them as defense witnesses to directly impeach Hubbuch's characterization that the business was a sham. Those employees had first-hand knowledge of the operation's legitimate activity

and could have testified to what they personally witnessed. That cross-examination and defense testimony was never pursued.

By falsely representing that there were no employees to be seen, Hubbuch used the "no employees" impression as a building block for the broader sham-company narrative the Government advanced to support its fraud theory. That narrative required the jury to conclude that the entities had no real operations, no real employees, and no real commercial activity — so that any financial representations associated with those entities could be characterized as inherently false. The corrective evidence — multiple employees confirmed by Francis and the payroll record, 10–12 drum dryers fabricated by Vance, a Carbonox purchase order identified by Surmeier from personal knowledge as a genuine commercial transaction, and over $10,000 in RJF trucking payments for moving product — dismantles that narrative at its foundation. Hubbuch's admission at the evidentiary hearing: "a few people were there" confirms he knew at trial that his "no employees anywhere to be seen" testimony was false.

GOVERNMENT KNOWLEDGE / FAILURE TO CORRECT:

Government knowledge is established at three independently sufficient levels.

First — Hubbuch's own investigative knowledge and the payroll record gap. Hubbuch was the Government's lead FBI financial investigator. He investigated the NexGen/NGEP operation, reviewed its records, interviewed its witnesses, and oversaw the Government's evidence collection. As a trained FBI financial investigator, Hubbuch had both the authority and the professional obligation to subpoena payroll records, tax filings, and employment documentation associated with the NGEP operation. The Shumard group paid payroll and taxes; those records were available through standard investigative subpoena and would have

revealed, from official documentation, that there were employees on the payroll. Hubbuch either subpoenaed those records and did not disclose what they showed — or he testified to the jury that there were no employees anywhere to be seen without ever performing the basic investigative step that would have confirmed or refuted that characterization. Either alternative establishes Government knowledge through its lead investigator: a trained FBI financial agent cannot testify honestly about the absence of employees at a business he investigated without first verifying that no payroll or employment records existed for that business.

Second — Real-time Government knowledge from the trial record. Francis testified at trial regarding employee presence at the operation. Trial Tr., ECF No. 174, PageID #752. Surmeier testified on Day 4 of trial and identified Gov't Ex. 604 / Defense Ex. 85 (the Carbonox PO) as a genuine Carbonox document from personal knowledge — confirming the commercial transaction with Nex-Gen and that Vance was unable to fulfill the order. Trial Tr., Day 4, ECF No. 177, PageID ##1397–1399. Both witnesses were part of the trial record — developed in open court, in the presence of Government counsel. From the moment that testimony was given, the Government was on actual, contemporaneous notice that the trial record contained evidence directly contradicting Hubbuch's "no employees" and implied "no real operations" testimony. The Napue failure-to-correct obligation arose from that moment: once Francis confirmed employee presence and Surmeier identified the Carbonox PO as a genuine commercial transaction from personal knowledge, the Government was required to correct the sham-company impression its lead investigator had placed before the jury — rather than allowing it to stand through closing argument.

Third — Evidentiary-hearing confirmation. Hubbuch's evidentiary-hearing admission at ECF No. 219, PageID #2154 — "It was minimally operating, yes" and "a few people were there" closes the loop. The Government's own lead investigator, testifying under oath after trial, directly contradicted the trial testimony he had given to the jury. That post-trial contradiction — combined with the trial-record evidence from Francis and Surmeier, the payroll records available through subpoena, and the substantial operational evidence — establishes that the "no employees" trial testimony was knowingly false and was not corrected when the corrective evidence appeared in the trial record through other witnesses.

The Government did not correct the false impression at any point during trial. The sham-company framing remained available for use in the Government's theory of fraudulent intent through the entirety of closing argument and jury deliberations — while the payroll records that would have confirmed employee presence were never subpoenaed and the corrective evidence from Francis and Surmeier was not affirmatively tied to the refutation of Hubbuch's false impression.

MATERIALITY / PREJUDICE:

Under Napue v. Illinois, the standard is whether the misleading presentation "could in any reasonable likelihood have affected the judgment of the jury." 360 U.S. at 271. That standard is satisfied here on multiple independently sufficient and mutually reinforcing bases.

First — Sham-company narrative materiality. The Government's fraud theory depended, in substantial part, on establishing that the NexGen/NGEP entities were sham businesses — that they had no real operations, no real employees, and no real commercial activity, and that any representations made in connection with those entities were therefore inherently fraudulent. Hubbuch's "no employees anywhere to be seen" trial testimony was a direct building block of

that narrative. A jury that heard the lead FBI investigator testify that no one was working at the operation had a basis to conclude that the business was a fiction — and that Movant, as someone who processed financial documents for those entities, must have known the businesses were not real.

The corrective evidence destroys that inference at its foundation. Multiple employees were confirmed at the operation by Francis and others. The Shumard group paid payroll and taxes, and those payroll records were available to Hubbuch through standard investigative subpoena — meaning the employees could have been identified, subpoenaed, and called to testify by either the Government or the defense about the legitimate operations they personally witnessed. Vance built an estimated 6–10 drum dryers and fabricated additional machinery. The Carbonox purchase order (Gov't Ex. 604 / Defense Ex. 85) was identified by Surmeier from personal knowledge as a genuine commercial transaction. Chamblee's own trucking company was paid over $10,000 to move actual product. A business with employees, fabricated industrial equipment, legitimate parts purchases, and commercial product transportation is not a sham. There is a reasonable likelihood that the jury would have assessed the legitimacy of the operation, and Movant's knowledge of its true nature, fundamentally differently had it received the complete picture.

Second — Startup context and the Shumard funding gap. The startup context adds an independently material dimension. NGEP was not a long-running established business; it was a startup that required the Shumard group's equity partner investment to scale operations, pay employees, and sustain growth. When the Shumard group failed to supply the promised equity funding, Vance was left to fund operational costs — payroll, equipment, transportation, and ongoing expenses — through his existing logging and wood char

business. That funding gap — caused by the Shumard group's own failure to perform on its equity commitment — explains why the operation may have appeared underfunded or financially stressed during the period covered by the Government's investigation. A jury that understood the startup context and the Shumard funding gap could not have evaluated the operational evidence through the same lens as a jury presented only with the false sham-company impression. An underfunded startup that nonetheless had employees on a payroll, fabricated industrial drum dryers, purchased legitimate equipment through commercial channels, and paid a trucking company to move product is a real business operating under financial stress directly traceable to the failure of its promised equity investment — not a fraud vehicle with no legitimate purpose. There is a reasonable likelihood that this startup context, properly presented, would have materially affected the jury's evaluation of the legitimacy of the business, the credibility of Movant's administrative role, and the attribution of fraudulent intent.

Third — Movant's knowledge and intent. The sham-company narrative directly affected the jury's evaluation of what Movant knew and intended. If the jury believed the operation had no employees, no machinery, and no real activity, it would follow that anyone who participated in the business's financial administration knew it was a fiction. The corrective evidence reverses that inference: an administrative employee of a startup business with workers on a payroll, drum dryers fabricated on-site, legitimate equipment purchases, and product being transported by a trucking company has a legitimate administrative function to perform. Movant's reliance on Chamblee-supplied information to process financial records for a business with real operations is materially more credible than reliance on information from a sham entity with nothing to document.

Fourth — Hubbuch's credibility as the Government's lead investigator. The evidentiary-hearing contradiction establishes that Hubbuch was willing to testify falsely at trial on a factually verifiable point — the presence of employees at the operation. A jury that learned Hubbuch testified at trial that there were no employees anywhere to be seen, while payroll and tax records were available through standard investigative subpoena that would have confirmed employees existed, and while Hubbuch later admitted at the evidentiary hearing that "a few people were there" (ECF No. 219, PageID #2154), would have had direct, concrete grounds to question his credibility across every other aspect of his financial investigation testimony — including his testimony about account scope, the completeness of Gov't Ex. 501 (Sub-entry 3), the attribution theory, and the loss and restitution calculations that affected both conviction and sentence.

Fifth — The employee subpoena failure — both Hubbuch and trial counsel. Because the Shumard group paid payroll and taxes, the employees of the NGEP operation were identifiable and subpoenable. Hubbuch, as the lead FBI investigator, could have subpoenaed those employees and presented their testimony to establish the true nature of the operation — or, if their testimony confirmed real operations, acknowledged that the business had legitimate employees. He did neither. Trial counsel, independently, could have subpoenaed those same employees as defense witnesses to directly impeach Hubbuch's sham-company characterization with first-hand testimony from people who personally worked at the operation and could speak to what they observed. That subpoena was never issued. The resulting evidentiary gap — the absence of employee testimony from either side — was not the product of a record that lacked available witnesses. It was the product of a Government investigator who did not pursue available payroll-confirmed employees whose testimony

would have contradicted his theory, and of trial counsel who did not subpoena the same available witnesses to impeach the Government's false narrative. See Ground Three, Appendix D.

Sixth — Connection to the broader Ground One chain. The sham-company false impression connects directly to the surrounding Ground One entries. Hubbuch's investigation produced Gov't Ex. 501 — the financial reconstruction from which all three NGEP accounts were excluded (Sub-entry 3). The "no employees" false impression reinforced the false investigative-completeness framework from the "get a handle" testimony (Sub-entry 1): a jury told by the same lead investigator that the operation had no employees, and that the financial investigation had methodically captured all relevant accounts, received two mutually reinforcing false impressions from the same witness — both pointing toward sham-company fraud, both traceable to Hubbuch's knowing misrepresentation of the record. There is a reasonable likelihood that the jury would have evaluated the Government's entire financial and operational case differently had it understood that the same investigator who falsely testified about employee presence also presented a financial reconstruction missing all three NGEP accounts and the records underlying three of the charged counts.

The prejudice is further amplified by trial counsel's failure to use the available operational evidence — Francis's testimony, the Carbonox PO, the RJF payment record, and the Shumard payroll and tax records — to directly confront and refute Hubbuch's "no employees" trial testimony, and to subpoena operation employees who could have impeached Hubbuch's sham-company characterization with first-hand testimony. See Ground Three, Appendix D.

CROSS-GROUND NOTATION:

Ground Three (App. D, G3-RA-005; G3-RA-006): Two Ground Three entries cross-reference Sub-entry 4 — G3-RA-005 (the trial-IAC financial-summary evidence entry) and G3-RA-006 (the operational context comparison between Hubbuch's "no employees" trial testimony and his evidentiary-hearing admission) — each establishing that this sub-entry is a component of the trial-record basis for the Ground Three IAC theory. See App. D, G3-RA-005; G3-RA-006.

G1-RA-006 — Chamblee's False Loan Documentation Testimony: No Loan Documents Existed Prior to FBI Contact; Post-FBI Fabrication of Loan Documents; NGEP Operating Agreement Violations; and Chamblee's Single Personal Deposit Made 20 Months Before the Count 2 Transaction

RECORD CITATION / SOURCE:

Trial Tr., ECF No. 175, PageID ##1034–1036 (Chamblee — cross-examination re loan documentation); Trial Tr., ECF No. 176, PageID ##1144, 1151 (Hogan — cross-examination re board vote on loans); Movant Ex. 20 [Tab 26] (Gov't Ex. 703) — NGEP Operating Agreement: Section 9.3 (prohibition on return of Capital Contributions); Section 6.4(b) (loans over $10,000 require affirmative Majority Vote of Members); Section 14.6(a) (Member loans require approval by Majority Vote); Post-FBI loan documents, Movant Ex. 43 [Tab 49] / Defense Ex. 4 (Post-FBI loan documents, created November 24, 2018); Trial Tr., ECF No. 175, PageID §§1055–1056 [Chamblee bank-record review / single personal deposit timing — connects to G1-RA-004]; Napue v. Illinois, 360 U.S. 264, 269–71 (1959); Giglio v. United States, 405 U.S. 150, 153–54 (1972)

EXACT QUOTE OR RECORD LANGUAGE:

"in loans to Mr. Vance,"; "a lot of it was loan as well."; Trial Tr., ECF No. 175, PageID #1034 (Chamblee — cross-examination re loan documentation): Q: "If there was a loan, would there be some document memorializing a loan with terms?" A: "Yes."

Trial Tr., ECF No. 176, PageID #1144 (Hogan — cross-examination): Q: "Did you vote on each one of these loans?" A: "No." Q: "Why not?" A: "We didn't go through the formal process of voting." Trial Tr., ECF No. 176, PageID #1151 (Hogan — cross-examination): Q: "although the operating agreement called for a vote before a loan, you all didn't do that?" A: "Correct."

(Hogan admitted at trial that no board vote was taken on the loans.)

Movant Ex. 20 (Gov't Ex. 703) — NGEP Operating Agreement, three controlling provisions:

Section 9.3 (Interest On and Return of Capital Contributions): "No Member shall be entitled to interest on such Member's Capital Contributions or to a return of its Capital Contributions, except as otherwise specifically provided for in this Agreement."

Section 6.4(b) (Major Decisions — affirmative Majority Vote required for): "the issuance by the Company of any debt securities or similar instruments or otherwise incurring indebtedness, or increase in the existing indebtedness, of the Company in excess of $10,000.00;"

Section 14.6(a) (Loans and Advances from Members to Company): "In the event that any Member shall lend money to the Company with the approval of the Members by Majority Vote, the principal and interest with respect to such loan shall be paid in full prior to any distribution of funds to the Members under terms of Section 9.1(d) of this Agreement unless such loan contains a specific provision to the contrary. Any Member who shall lend money to

the Company under the terms of this Section 14.6 shall be considered an unrelated creditor with respect to such loan, to the extent allowed by law."

Post-FBI loan documents, Movant Ex. 43 / Defense Ex. 4 (created November 24, 2018): Hogan and Chamblee provided loan documentation to Vance after FBI involvement began. No loan documents existed prior to FBI contact.

Trial Tr., ECF No. 175, PageID §§1055–1056: Chamblee made one personal deposit into the NGEP business, made approximately 20 months before the $5,600 underlying Count 2. No further personal deposits by Chamblee are documented in the record.

RECORD-PROOF POINT:

This entry establishes that Chamblee's trial testimony regarding loan documentation was false, and that the Government either knew or should have known it was false — because the NGEP operating agreement the Government possessed prohibited the loan structure Chamblee described on three independently dispositive grounds, and because the loan documents themselves did not exist until after FBI contact.

The foundational fact: No loan documents existed prior to FBI involvement in the NGEP investigation. When the FBI began investigating, Hogan and Chamblee created loan documents covering all of the equity they had invested in NGEP — and then provided those documents to Vance after FBI contact. Trial record, Movant Ex. 43 / Defense Ex. 4. The provision of loan documents to Vance after FBI involvement is independently dispositive proof that no loans existed before that point: if loans had been made to Vance during the course of the business, Vance would have known about them and already possessed the documentation. The fact that Hogan and Chamblee had to send Vance loan documents after

the FBI became involved proves that those documents — and the loan characterization underlying them — were created in response to the investigation, not in the ordinary course of the business relationship.

The operating agreement prohibitions. The NGEP operating agreement independently prohibited the entire post-FBI loan structure on three grounds, each of which was violated:

(1) Equity could not be converted to loans. The equity the Shumard partners — including Chamblee and Hogan — invested in the NGEP partnership could not be characterized or recharacterized as loans to be repaid. Movant Ex. 43 / Defense Ex. 4. The Shumard partners' funds were equity contributions, not loans. Converting equity to loans was prohibited by the governing agreement of the very entity they invested in.

(2) Loans over $10,000 required a board vote. Any loan to NGEP exceeding $10,000 required a vote of the board members. Hogan admitted at trial that no board vote was ever taken on any of the purported loans. Trial Tr., ECF No. 176, PageID ##1144, 1151. Because no board vote occurred, no loan over $10,000 was authorized under the NGEP operating agreement — regardless of whether loan documents were created. Every loan document Hogan and Chamblee provided to Vance after FBI contact reflected a loan that lacked the governance approval the operating agreement required.

(3) Vance was required to be notified of loans. The NGEP operating agreement required that Vance be notified when loans were made to the company. Movant Ex. 43 / Defense Ex. 4. The proof that Vance was never notified is the loan documents themselves: Hogan and Chamblee provided those documents to Vance after the FBI became involved. If Vance had been told loans were being made during the course of the business, he would have received and signed loan documentation at the time, not years later in response to an FBI

investigation. The delivery of post-FBI loan documents to Vance is therefore self-proving evidence that the operating agreement notification requirement was never satisfied.

Chamblee's single personal deposit and the Count 2 connection. The record reflects that Chamblee made exactly one personal deposit into the NGEP business — made approximately 20 months before the $5,600 underlying Count 2. Trial Tr., ECF No. 175, PageID §§1055–1056. No subsequent personal deposits by Chamblee appear in the record. This fact has two converging consequences: First, it reinforces the G1-RA-004 proof that the $5,600 underlying Count 2 was an intercompany transfer from the NGEP Bank of America account — not a personal payment from Chamblee — because Chamblee's last direct personal deposit preceded Count 2 by approximately 20 months. Second, it directly undermines the loan narrative: if Chamblee was making loans to the business, one would expect an ongoing pattern of documented personal transfers with corresponding loan documentation — not a single personal deposit 20 months earlier and no contemporaneous loan documents of any kind.

The cumulative significance. Taken together, these facts establish that Chamblee's trial testimony treating the Shumard equity as loan transactions — and implying that loan documentation existed or would exist — was false at every level: (1) no loan documents existed before FBI contact; (2) the operating agreement prohibited converting equity to loans; (3) no board vote authorized any loan over $10,000; (4) Vance was never notified of any loans; and (5) Chamblee's only personal deposit into the business occurred 20 months before the Count 2 transaction, with no further personal transfers documented in the record.

FALSE TESTIMONY / MISLEADING IMPRESSION:

Chamblee testified at trial in a manner that implied loans had been made to Vance and that loan documentation existed or would exist for those transactions. Trial Tr., ECF No. 175, PageID ##1034–1036. That testimony was false on its face— and the Government knew it was false, because the NGEP operating agreement the Government possessed independently refuted every element of the loan characterization Chamblee placed before the jury.

The misleading impression had two reinforcing components.

First — the false loan-existence representation. Chamblee's testimony implied that the Shumard equity contributions included or could be characterized as loans — transactions with documentation, repayment terms, and the formal structure of a creditor-debtor relationship. That representation was false. No loan documents of any kind existed during the period of the business relationship. The documents were created only after FBI contact, provided to Vance by Hogan and Chamblee after the investigation began. A jury that heard Chamblee's testimony without the corrective context — that loan documentation surfaced only after FBI involvement and was provided to Vance after the fact, rather than existing as contemporaneous business records — could not have fairly evaluated the credibility of the loan characterization or of Chamblee himself.

Second — the operating agreement prohibition. The NGEP operating agreement — a document in the Government's possession — prohibited the entire loan structure on three grounds: equity could not be converted to loans; loans over $10,000 required a board vote that never occurred; and Vance had to be notified of loans, which the post-FBI document delivery proves never happened. A witness who testifies at trial about loans made to a business, when the governing agreement of that business prohibited the characterization of equity as loans, prohibited loans over $10,000 without a board vote, and required notification

of Vance — and when Hogan himself admitted no board vote occurred — is testifying to a characterization the record's own governing documents refute. The jury heard none of that. It heard Chamblee's loan narrative without the operating agreement prohibitions, without the board vote admission, and without the knowledge that loan documents did not exist until the FBI began investigating.

The prejudice was further compounded by the Government's failure to correct the false loan characterization through the trial record it possessed, and by trial counsel's failure to use the operating agreement to expose the structural impossibility of the post-FBI loan documents as legitimate contemporaneous business records.

GOVERNMENT KNOWLEDGE / FAILURE TO CORRECT:

Government knowledge is established at three independent levels, each sufficient to trigger the Napue/Giglio correction obligation.

First — the NGEP operating agreement. The Government possessed the NGEP operating agreement as part of its investigative file and exhibit materials. That agreement expressly prohibited: converting equity to loans; loans over $10,000 without a board vote; and loans made without notifying Vance. From the moment Chamblee testified in a manner that implied loans had been made and loan documentation existed, the Government was on notice — through its own exhibit materials — that the loan characterization Chamblee was placing before the jury was prohibited by the governing document of the very entity at issue. Under Napue, the Government cannot allow a witness to testify to a transaction structure that the Government's own documents prove was prohibited.

Second — the post-FBI loan document timing. The Government's own investigative file established when the loan documents were created and delivered to Vance. The fact that Hogan and Chamblee provided loan documents to Vance after FBI contact — rather than Vance possessing those documents as ordinary course business records — was known to the Government through its own investigation. The Government therefore knew, when Chamblee testified about loans, that no contemporaneous loan documentation had existed during the business relationship and that the documents were created after the investigation began. Allowing Chamblee's loan testimony to stand before the jury without disclosing the post-FBI timing of the documentation was the knowing use of materially misleading testimony.

Third — Hogan's board vote admission. Hogan testified at trial that no board vote was taken on the loans. Trial Tr., ECF No. 176, PageID ##1144, 1151. That admission was in the trial record before the jury. Once Hogan admitted that no board vote occurred, the Government was on contemporaneous notice that the loan transactions — as described by Chamblee — lacked the governance authorization the NGEP operating agreement required for any loan over $10,000. The Government was required under Napue and Giglio to ensure that the jury received the corrective context of the operating agreement prohibition alongside Hogan's admission, rather than allowing the jury to evaluate Chamblee's loan characterization without the governing document that rendered the entire structure unauthorized.

MATERIALITY / PREJUDICE:

Under Napue v. Illinois, the standard is whether the misleading presentation "could in any reasonable likelihood have affected the judgment of the jury." 360 U.S. at 271. That standard is satisfied here on multiple independently sufficient and mutually reinforcing bases.

First — Chamblee's credibility as the Government's primary witness. Chamblee was the Government's central investor-victim witness. His financial relationship with NGEP — what he contributed, in what capacity, on what terms — was foundational to the Government's fraud theory. A jury that learned Chamblee testified about loans and loan documentation when: (1) no loan documents existed during the business relationship; (2) the documents were created only after FBI contact and provided to Vance after the fact; (3) the NGEP operating agreement prohibited converting equity to loans; (4) loans over $10,000 required a board vote that Hogan admitted never occurred; and (5) Vance had to be notified of loans — which the post-FBI document delivery proves never happened — could not have evaluated Chamblee's credibility with the same confidence on any aspect of his testimony. A witness whose loan narrative is refuted by the governing agreement of the entity he invested in, and whose loan documentation did not exist until the FBI began investigating, is not a credible witness about the financial structure of the business, the nature of his contributions, or the intent of the people he accused.

Second — Count 2 reinforcement. The false loan narrative directly reinforces the G1-RA-004 Count 2 false attribution. Chamblee's only personal deposit into the NGEP business occurred approximately 20 months before the $5,600 underlying Count 2. No further personal transfers by Chamblee appear in the record. The post-FBI creation of loan documents covering equity that the operating agreement prohibited from being characterized as loans gives the jury additional reason to question the entire financial attribution theory underlying Count 2 — not merely whether the $5,600 was an intercompany transfer (established at G1-RA-004), but whether Chamblee's characterization of his financial role was credible at all. There is a reasonable likelihood that a jury that evaluated Chamblee's loan

testimony alongside the operating agreement prohibitions, the post-FBI document timing, the board vote admission, and the 20-month deposit gap would have assessed the Count 2 personal-victim attribution — and the Government's entire financial theory — materially differently.

Third — Restitution and loss amount. The characterization of Shumard equity contributions as loans — prohibited by the NGEP operating agreement — affected the loss amount and restitution calculation. If equity contributions could not lawfully be characterized as loans, the financial structure underlying the Government's victim-loss and restitution theory was built on a transaction framework that the governing documents of the entity prohibited. A jury that understood the operating agreement prohibitions could not have accepted Chamblee's loan characterization as the basis for a loss or restitution calculation without question.

Fourth — Cumulative effect across the Ground One chain. The false loan narrative did not operate in isolation. It reinforced the broader Ground One sequence: Chamblee testified falsely about loans (this entry); simultaneously testified falsely about the source of the Count 2 $5,600 — an intercompany transfer that Chamblee and Hogan each confirmed before closing argument (G1-RA-004); and presided over a financial investigation that excluded all three NGEP accounts from the Government's certified-comprehensive financial reconstruction (G1-RA-005 Sub-entry 3). The cumulative picture is of a Government witness whose testimony about the financial structure of the NGEP operation was false at multiple levels — loans that did not exist, documentation fabricated post-FBI, governing prohibitions never disclosed, and a personal deposit gap spanning 20 months. There is a reasonable likelihood that the jury would have evaluated the Government's entire financial and

attribution theory fundamentally differently had it received the complete picture of Chamblee's false loan testimony and its relationship to the NGEP operating agreement.

CROSS-GROUND NOTATION:

Ground Two (App. C, G2-RA-008; G2-RA-008 Sub-1; G2-RA-011): Three Ground Two entries cross-reference G1-RA-006 — G2-RA-008 (the loss-calculation anchor), G2-RA-008 Sub-1 (the loss-offset and LOC secured-conversion sub-entry), and G2-RA-011 (the secured-conversion and NGEP Operating Agreement financial-structure entry) — each establishing that the Chamblee loan characterization and the NGEP Operating Agreement evidence documented here are components of the broader financial-attribution theory that Ground Two's IAC theory addresses. See App. C, G2-RA-008; G2-RA-008 Sub-1; G2-RA-011.

Ground Three (App. D, G3-RA-003; G3-RA-005): Two Ground Three entries cross-reference this entry — G3-RA-003 (the trial-IAC Chamblee/Count 2 entry) and G3-RA-005 (the financial-summary evidence trial-IAC entry) — each establishing that the loan documentation falsity and the NGEP Operating Agreement prohibitions documented here are part of the trial-record basis for the Ground Three theory. See App. D, G3-RA-003; G3-RA-005.

Ground Four (App. E, G4-RA-004; G4-RA-007): Two Ground Four entries cross-reference G1-RA-006 — G4-RA-004 (the loss-calculation failure, referencing the LOC/secured-conversion anchor) and G4-RA-007 (the "Ponzi-style returns" objection failure, referencing Chamblee's investor-characterization testimony) — establishing that the Chamblee financial-relationship evidence is the sentencing-stage record basis for the sentencing-IAC failures Hayworth was required to challenge. See App. E, G4-RA-004; G4-RA-007.

Ground Five (App. F, G5-RA-005): The Ground Five Count 2 source-of-funds Napue example cross-references G1-RA-006 as the Chamblee loan/investment qualification and NGEP Operating Agreement evidence that is the second component of the broader Count 2 false attribution theory. See App. F, G5-RA-005.

G1-RA-006, Sub-Entry 1— Hubbuch's False "Lien Interest" Testimony; Mischaracterization of the KRP/NGI Drum Dryer Transaction; Executed LOI Establishing NGI Was Building a Unit for KRP; Post-Payment Loan Conversion by KRP; and Judge Reeves' Finding That KRP Was Not a Victim

RECORD CITATION / SOURCE:

LOI (Letter of Intent) between KRP and Vance/NGI,Movant Ex. 10 [Tab 16] (Gov't Ex. 807); Movant Ex. 11 [Tab 17] (Gov't Ex. 502); Movant Ex. 12 [Tab 18] (Gov't Ex. 801);

Movant Ex. A [Tab 1] (KRP Barker Letter); Movant Ex. 13 [Tab 19] (Gov't Ex. 177); Gov't Ex. 807; Gov't Ex. 502; Gov't Ex. 801; Gov't Ex. 177; Trial Tr., ECF No. 177, PageID ##1515–1516 (Hubbuch — direct examination re KRP transaction documents and "lien interest"); LOI (Letter of Intent) between KRP and Vance/NGI, Movant Ex. 10 (Gov't Ex. 807); Movant Ex. 11 (Gov't Ex. 502); Movant Ex. 12 (Gov't Ex. 801); Loan documents executed by Vance after KRP requested conversion, Movant Ex. 12 (Gov't Ex. 801); Sent'g Tr., ECF No. 235, PageID #2394 ; Napue v. Illinois, 360 U.S. 264, 269–71 (1959); Giglio v. United States, 405 U.S. 150, 153–54 (1972)

EXACT QUOTE OR RECORD LANGUAGE:

"lien interest"; Trial Tr., ECF No. 177, PageID #1516 (Hubbuch — trial testimony re KRP): When asked whether there were any transaction documents showing KRP buying a unit from NGI/Vance, Hubbuch testified there were none — characterizing the transaction as KRP having only a "lien interest." (Hubbuch — direct examination re KRP): Q: "Do any of them describe KRP purchasing a unit or equipment from Nex-Gen?" A: "No, only having a lien interest in it."

LOI between KRP and Vance/NGI, Movant Ex. 10 (Gov't Ex. 807): Executed Letter of Intent establishing that NGI/Vance would build a drum dryer unit for KRP, with a leaseback arrangement under which KRP would lease the unit back to Vance after construction.

Movant Ex. 11 (Gov't Ex. 502): KRP made two payments toward the unit's construction before requesting the loan conversion. Movant Ex. 12 (Gov't Ex. 801): Loan documents executed by Vance after KRP requested conversion.

Sent'g Tr., ECF No. 235, PageID #2394: Judge Reeves determined that KRP was not a victim in this case.

RECORD-PROOF POINT:

This entry establishes that Hubbuch testified falsely at trial about the nature of the KRP transaction — mischaracterizing a documented drum-dryer construction contract with a leaseback structure as merely a "lien interest" — and that Judge Reeves ultimately determined at the evidentiary hearing/sentencing that KRP was not a victim.

The KRP transaction — what actually happened. KRP and Vance/NGI executed a Letter of Intent under which Vance/NGI would build a drum dryer unit for KRP, after which KRP would lease the unit back to Vance. Movant Ex. 10 (Gov't Ex. 807); That LOI was an executed contract — a signed, documented commercial transaction that clearly established NGI/Vance was building a unit for KRP. KRP began funding the construction, and Vance began building the unit. KRP made two of the three required payments before construction was near completion. Movant Ex. 11 (Gov't Ex. 502); Movant Ex. 12 (Gov't Ex. 801).

After two payments had already been made and the unit was close to completion, KRP contacted Vance and told him that the only way to obtain board approval for the transaction was to convert the two payments already made into a loan. KRP represented that it would convert the transaction back to the original lease arrangement later. Vance, who had already substantially completed the unit and trusted KRP to honor the representation, signed loan documents. Movant Ex. 12 (Gov't Ex. 801).

Hubbuch's false characterization. At trial, Hubbuch was asked whether there were any transaction documents showing KRP buying a unit from NGI/Vance. He testified there were

none — only KRP having a "lien interest." Trial Tr., ECF No. 177, PageID #1516. That testimony was false. The executed LOI between KRP and Vance/NGI was a transaction document showing exactly what Hubbuch denied existed: a documented commercial arrangement under which NGI/Vance was building a unit for KRP. The "lien interest" characterization misrepresented the nature of the relationship by focusing on the post-conversion loan instrument — which KRP itself had requested and which Vance signed mid-build under pressure and on KRP's representation that the transaction would revert to the original lease — while ignoring the executed LOI and the two pre-conversion payments that established the actual transactional structure.

Judge Reeves' finding. At the evidentiary hearing/sentencing, Judge Reeves determined that KRP was not a victim. Sent'g Tr., ECF No. 235, PageID #2394. That judicial determination directly validates the corrective factual narrative: the KRP transaction was not a fraud against KRP. It was a legitimate commercial construction arrangement that KRP itself restructured mid-stream at its own request for its own internal governance reasons. Hubbuch's "lien interest" testimony, presented to the jury in a manner that suggested fraudulent intent on Vance's part, was inconsistent with the actual documentary record of the transaction and was ultimately repudiated by the court's own post-trial finding.

FALSE TESTIMONY / MISLEADING IMPRESSION:

The false testimony at issue in this entry is Hubbuch's representation that no transaction documents existed showing KRP buying a unit from NGI/Vance — and his characterization of the transaction as merely a "lien interest." Both representations were false and misleading.

The executed LOI between KRP and Vance/NGI was a transaction document. It established a commercial arrangement under which Vance/NGI would build a drum dryer and KRP would

fund the construction, with a leaseback to follow. That document said precisely what Hubbuch told the jury did not exist: a record of KRP and NGI/Vance engaged in a unit-purchase and leaseback transaction. Hubbuch's denial of its existence — or his failure to acknowledge it when asked directly about transaction documents — was materially false.

The "lien interest" characterization compounded the false impression. By describing KRP's position as a "lien interest" rather than a construction-and-leaseback arrangement that KRP itself had converted to a loan mid-stream for internal board approval reasons, Hubbuch presented the jury with an image of KRP as a creditor with a security interest — implying Vance had structured the transaction in a way that gave KRP only a collateral position rather than the promised unit. That is the opposite of what happened. KRP was the party that requested the loan conversion after two payments had already been made. Vance signed loan documents only because KRP asked him to — after the build was substantially complete — with the representation that the transaction would revert to the original lease. The jury heard none of that. It heard "lien interest" — a characterization that stripped the actual commercial history from the transaction and replaced it with a description that invited fraudulent-intent inferences against Vance and, by extension, against Movant.

The false impression was material because Hubbuch's characterization invited the jury to treat the KRP transaction as evidence of fraudulent structuring when the documentary record showed the opposite: a legitimate commercial transaction that KRP itself restructured, under circumstances entirely within KRP's control, and which Judge Reeves ultimately determined did not make KRP a victim at all.

GOVERNMENT KNOWLEDGE / FAILURE TO CORRECT:

Government knowledge is established at two independently sufficient levels.

First — Hubbuch's personal knowledge of the LOI. Hubbuch was the Government's lead FBI financial investigator. He reviewed the transaction records, conducted interviews, and oversaw the Government's evidence collection regarding the KRP transaction. The executed LOI between KRP and Vance/NGI was part of the investigative record. A lead FBI financial investigator who testifies at trial that no transaction documents showed KRP buying a unit from NGI — while the investigative file contains an executed LOI establishing exactly that — is either testifying to something he knows to be false or testifying to something he failed to verify in his own investigative file. Either alternative establishes Government knowledge through its lead investigator under Napue and Giglio.

Second — Documentary record available at trial. The LOI, the KRP payment records, and the post-conversion loan documents were available in the record. From the moment Hubbuch characterized the KRP transaction as merely a "lien interest," the Government was on notice that the trial record contained documentary evidence — including the executed LOI — that directly contradicted that characterization. The Napue failure-to-correct obligation arose from that moment. The Government was required to ensure that the jury received the accurate documentary history of the KRP transaction rather than a "lien interest" characterization that misrepresented the nature of the arrangement and invited fraudulent-intent inferences the documentary record did not support.

MATERIALITY / PREJUDICE:

Under Napue v. Illinois, the standard is whether the misleading presentation "could in any reasonable likelihood have affected the judgment of the jury." 360 U.S. at 271. That standard is satisfied here on two independently sufficient bases.

First — Hubbuch's credibility across the entirety of his testimony. The KRP false characterization adds to the cumulative record of Hubbuch's testimony being contradicted by the documentary evidence. Taken together with his false "no employees anywhere to be seen" testimony refuted by his own evidentiary-hearing admission (Sub-entry 4), his false confirmation that the NGEP Bank of America account was included in Gov't Ex. 501 (Sub-entry 3), and his "no employees" sham-company framing refuted by Francis, Surmeier, and the operational record — the "lien interest" mischaracterization of the KRP transaction contributes to a pattern of the Government's lead investigator testifying in ways that consistently and materially favored the Government's theory while being inconsistent with the documentary and operational record. A jury that evaluated the full pattern of Hubbuch's testimony against the full documentary record would have had substantial and concrete grounds to question the reliability of every attribution and intent inference he placed before it. There is a reasonable likelihood that the cumulative impeachment of Hubbuch's credibility across these entries would have materially affected the jury's assessment of the Government's entire financial and attribution case.

Second — The KRP transaction and fraudulent intent. The "lien interest" characterization invited the jury to treat the KRP transaction as evidence of fraudulent structuring by Vance — and by extension as context for evaluating Movant's knowledge and participation in a broader fraudulent scheme. Had the jury received the accurate documentary history — the executed LOI, KRP's two pre-conversion payments, KRP's own request for the loan conversion for internal board approval reasons, and Judge Reeves' post-trial finding that KRP was not a victim — there is a reasonable likelihood it would have evaluated the KRP transaction not as evidence of fraud but as a legitimate commercial arrangement that KRP

itself restructured under circumstances within KRP's own control. That evaluation would have directly affected the jury's assessment of whether Movant knowingly participated in a fraudulent scheme involving a transaction that the court ultimately determined produced no victim at all.

CROSS-GROUND NOTATION:

Ground Two (App. C, G2-RA-007): The Ground Two Deware bank-access and signatory-contradiction entry cross-references this entry as the trial-record anchor establishing Deware's signatory and control status — the same trial-record evidence that grounds Ground Two's trial-IAC theory on the company-formation false narrative. See App. C, G2-RA-007.

Ground Three (App. D, G3-RA-004; G3-RA-009): Two Ground Three entries cross-reference this entry — G3-RA-004 (the trial-IAC Deware bank-access and signatory contradiction entry) and G3-RA-009 (the NGEP BOA account and financial investigation entry) — each establishing that the company-formation and V4 Carbon formation evidence documented here is part of the trial-record basis for Ground Three. See App. D, G3-RA-004; G3-RA-009.

Ground Five (App. F, G5-RA-006): The Ground Five Deware bank-access/signatory Napue example specifically cross-references this entry as the controlling trial-record source for the "company never created" false narrative, the V4 Carbon formation evidence, and the Smith 302 (BATES USA-00049465) establishing Deware's pre-trial known control and signatory status. See App. F, G5-RA-006.

G1-RA-007 — Napue Violation: Knowing Presentation of False 'Company Never Created' Testimony and Suppression of V4 Carbon Formation Evidence and Smith Interview Notes

RECORD CITATION / SOURCE:

Trial Tr., ECF No. 174, PageID #731 (Rosenberg, AUSA — opening statement: Government's affirmative representation that Vance and McKinnon "did not set up the company they promised to create"); Trial Tr., ECF No. 174, PageID #803 (Deware, direct examination by Chapman: "We agreed to form an LLC, yes. I'm not aware of that LLC actually ever getting formed."); Movant Ex. 14 [Tab 20] (Govt. Ex. 507) — V4 Carbon bank account applications and authorized signatory cards establishing V4 Carbon was formed, that

McKinnon and Deware opened the account together, and that Deware was listed as an authorized signatory — the Government's own exhibit; Movant Ex. 15 [Tab 21] (Govt. Ex. 508) — Carbon Holdings bank account applications and authorized signatory cards establishing Carbon Holdings was formed, that McKinnon and Deware opened the account together, and that Deware was listed as an authorized signatory — the Government's own exhibit; Movant Ex. 1 [Tab 7], BATES USA-00049465 (Smith 302 — David Smith pre-trial FBI interview: "Deware had control and was signatory on the nexgen account for the Kentucky business"); Movant Ex. 8 [Tab 14], BATES USA-00011554 (Hubbuch handwritten interview notes from Deware interview — multiple written references to "V4" establishing V4 Carbon was discussed; all V4 references omitted entirely from typed Deware 302; Napue v. Illinois, 360 U.S. 264, 269–71 (1959); Giglio v. United States, 405 U.S. 150, 153–54 (1972)

EXACT QUOTE OR RECORD LANGUAGE:

Trial Tr., ECF No. 174, PageID #731 (Rosenberg, AUSA — opening statement): "But Mr. Deware will tell you, when he invested it was the clear understanding from Mr. Vance and Ms. McKinnon that he was the sole partner with Vance in the new company that they promised to create. He will also tell you how, about nine months later and $370,000 poorer, he got a tip from someone inside the Nex-Gen company. This person saw how Vance and McKinnon were operating and knew that something just wasn't right. It was that insider tip that set Mr. Deware on a path of learning that Vance and McKinnon did not set up the company they promised to create, that the two of them were in business with other investors that he didn't know about, and that his hundreds and thousands of -- hundreds of thousands of dollars were being put into a business that he didn't even own."

Trial Tr., ECF No. 174, PageID #803 (Deware — direct examination by Chapman): "We agreed to form an LLC, yes. I'm not aware of that LLC actually ever getting formed."

Movant Ex. 1, BATES USA-00049465 (Smith 302 — David Smith pre-trial FBI interview): "Deware had control and was signatory on the nexgen account for the Kentucky business."

Movant Ex. 14 (Govt. Ex. 507): V4 Carbon bank account applications and authorized signatory cards — McKinnon and Deware opened the V4 Carbon account together; Deware listed as authorized signatory.

Movant Ex. 15 (Govt. Ex. 508): Carbon Holdings bank account applications and authorized signatory cards — McKinnon and Deware opened the Carbon Holdings account together; Deware listed as authorized signatory.

Movant Ex. 8, BATES USA-00011554 (Hubbuch handwritten interview notes): Multiple written references to "V4" — recorded during Hubbuch's interview of Allan Deware, clearly establishing that V4 Carbon was discussed during the interview. No reference to V4 Carbon appears anywhere in the typed Deware 302 generated from the same interview.

RECORD-PROOF POINT:

This entry establishes one of the most direct and structurally complete Napue violations in the entire Ground One record: the Government opened trial with an affirmative false factual proposition, elicited testimony from its primary investor witness corroborating that false proposition, admitted into evidence its own exhibits that conclusively proved the proposition was false, and never corrected the false impression at any point during trial. No inference is required. No circumstantial reasoning is needed. The Government's own trial exhibits prove that its opening statement and Deware's trial testimony were false.

The false proposition. In opening statement at Trial Tr., ECF No. 174, PageID #731, AUSA Rosenberg made a direct declarative representation to the jury: that Vance and McKinnon "did not set up the company they promised to create." That proposition was placed before the jury at the outset of trial as a foundational pillar of the Government's fraud theory — establishing from the beginning that Vance and McKinnon took Deware's investment money with no intention of honoring their commitment to form the promised entity. That proposition was false, and the Government knew it was false at the time it was made.

Deware's corroborating false testimony. At Trial Tr., ECF No. 174, PageID #803, on direct examination by AUSA Chapman, Deware testified: "We agreed to form an LLC, yes. I'm not aware of that LLC actually ever getting formed." That testimony directly corroborated the false opening proposition and placed before the jury — from the Government's most sympathetic witness, a decorated veteran who had invested approximately $400,000 — the same false claim that the promised entity was never created.

The Government's own exhibits proved both the opening statement and Deware's testimony were false. The prosecution admitted into evidence, as its own trial exhibits, documents that directly and conclusively refuted both the opening statement and Deware's testimony:

(1) Govt. Ex. 507 / Movant Ex. 14 — V4 Carbon bank account applications and signature cards. These documents established three facts: V4 Carbon was formed as a legal entity; McKinnon and Deware opened the V4 Carbon bank account together; and Deware was listed as an authorized signatory on the V4 Carbon account. A person who is "not aware" that a company was formed does not co-open that company's bank account and appear on its authorized signatory card.

(2) Govt. Ex. 508 / Movant Ex. 15 — Carbon Holdings bank account applications and signature cards. These documents established three parallel facts: Carbon Holdings was formed as a legal entity; McKinnon and Deware opened the Carbon Holdings bank account together; and Deware was listed as an authorized signatory on the Carbon Holdings account.

The prosecutor who opened trial by telling the jury that Vance and McKinnon "did not set up the company they promised to create" had, in his own exhibit list, two sets of bank account documents proving that both V4 Carbon and Carbon Holdings were created — and that Deware himself opened those accounts jointly with McKinnon and held authorized signatory rights on both. The Napue violation requires no inference. The prosecution's own selected, marked, and admitted exhibits proved that its opening statement and Deware's trial testimony were false.

The Smith 302 independently confirms Deware's knowledge. David Smith — Deware's business associate and the person who introduced Deware to McKinnon — was interviewed by FBI Special Agent Hubbuch prior to trial. In the typed 302 generated from that interview (Movant Ex. 1, BATES USA-00049465), Smith stated that "Deware had control and was signatory on the nexgen account for the Kentucky business." That statement — made by Deware's own intermediary to the FBI before trial — directly contradicts Deware's trial testimony that he was "not aware" of the LLC ever being formed. A person who "had control and was signatory on the nexgen account for the Kentucky business" unquestionably knew that the Kentucky business existed. Smith's pre-trial statement to Hubbuch confirmed what Govt. Exs. 507 and 508 established documentarily: Deware not only knew the companies were created — he had opened the accounts jointly with McKinnon, held signatory authority over those accounts, and exercised control over the Kentucky business accounts.

Hubbuch's deliberate omission of V4 from the typed Deware 302. Despite V4 Carbon being the central entity Deware claimed was never created, Hubbuch's handwritten interview notes from his Deware interview contain multiple written references to "V4" — clearly establishing that V4 Carbon was specifically discussed during the interview. Movant Ex. 8, BATES USA-00011554. Yet in the formal typed Deware 302 Hubbuch prepared from that same interview, there is no mention of V4 Carbon whatsoever. The omission was not inadvertent. An FBI agent conducting a financial fraud interview in a case centered on the creation of V4 Carbon does not record multiple references to "V4" in his handwritten notes and then inadvertently omit all reference to V4 Carbon when preparing the official report. The contrast between the handwritten notes — multiple V4 references present — and the typed 302 — all V4 references entirely absent — reflects a deliberate decision by Hubbuch to exclude from the official investigative record information that would have undermined the prosecution's "company never created" narrative and corroborated McKinnon's defense. The practical effect was to bury the V4 reference in 50,000 pages of undifferentiated discovery while producing a clean typed 302 that omitted it entirely — ensuring the false "company never created" narrative would go unchallenged at trial by defense counsel operating without paralegal assistance or any organized discovery framework.

FALSE TESTIMONY / MISLEADING IMPRESSION:

The false testimony and misleading impressions in this entry operate at three analytically distinct but reinforcing levels.

First — the false opening proposition and Deware's corroborating false testimony. The Government opened trial with the direct assertion that Vance and McKinnon "did not set up the company they promised to create." Trial Tr., ECF No. 174, PageID #731. AUSA

Chapman then elicited from Deware the direct corroborating testimony that he was "not aware" of the LLC ever being formed. Trial Tr., ECF No. 174, PageID #803. Both the opening statement and Deware's testimony were false. The Government knew they were false at the time they were made. The Government's own Govt. Exs. 507 and 508 — selected, marked, and admitted by the prosecution — proved that both V4 Carbon and Carbon Holdings were formed, that Deware opened both accounts jointly with McKinnon, and that Deware held authorized signatory authority on both. A witness who claims to be unaware that a company was formed, while bank signature cards in evidence show he co-opened that company's bank account, is not testifying truthfully. The Government that opened trial by asserting the company was never created, while possessing its own exhibits proving it was — and that Deware was a co-signatory — was not presenting an honest statement of the evidence.

Second — the Deware 302 omission and the "company never created" narrative protection. David Smith's pre-trial statement to Hubbuch — that Deware "had control and was signatory on the nexgen account for the Kentucky business" (Movant Ex. 1, BATES USA-00049465) — was in the Government's investigative file before trial. That statement directly contradicted the "not aware" testimony the Government was planning to elicit from Deware. The Government nonetheless elicited Deware's false testimony without disclosing the contradiction in its own investigative record. The misleading impression was compounded by Hubbuch's deliberate omission of all V4 references from the typed Deware 302, which ensured that the most direct documentary contradiction of the "company never created" narrative — that V4 Carbon was specifically discussed during the Deware interview — was

not accessible to defense counsel through the typed 302 that served as the operative record of that interview.

Third — the structural fraud-theory significance. The "company never created" proposition was not a peripheral element of the prosecution's case. It was the opening argument — the first substantive fraud proposition placed before the jury — and it served as the human anchor for the Government's entire fraud theory. Deware was the Government's most sympathetic witness: a decorated veteran and businessman who invested approximately $400,000 and testified he received nothing. His testimony that he was "not aware" of the company ever being formed was the embodiment of the prosecution's theory of promises made and nothing delivered. The jury evaluated everything that followed — the financial evidence, the attribution theory, Movant's role — through the lens of that initial false impression. Correcting it would not have been a minor adjustment; it would have dismantled the emotional and factual foundation on which the Government's fraud narrative rested.

GOVERNMENT KNOWLEDGE / FAILURE TO CORRECT:

Government knowledge is established at three independent levels, each sufficient to trigger the Napue/Giglio correction obligation.

First — the Government's own trial exhibits. The prosecution selected, marked, and admitted Govt. Exs. 507 and 508 as its own trial exhibits. Those exhibits — V4 Carbon and Carbon Holdings bank account applications and authorized signatory cards — established that both companies were formed, that McKinnon and Deware opened both accounts together, and that Deware held authorized signatory authority on both. The prosecutor who delivered the opening statement at Trial Tr., ECF No. 174, PageID #731 asserting the companies were never created had access to his own exhibit list, which contained the documentary proof that

the companies existed and that Deware had co-signed the account documents. Under Napue v. Illinois, the Government violates due process when it presents false testimony and allows it to go uncorrected. Here the Government did both: it made the false assertion in opening, elicited corroborating false testimony from Deware, and never corrected the false impression — while its own admitted exhibits sat in evidence proving the assertion was untrue.

Second — the Smith 302 and Hubbuch's pre-trial investigative file. Hubbuch's typed Smith 302 (Movant Ex. 1, BATES USA-00049465) contained Smith's pre-trial statement that Deware "had control and was signatory on the nexgen account for the Kentucky business." That statement was in the Government's investigative file before trial. The Government therefore possessed, before a single witness took the stand, a pre-trial FBI interview record from Deware's own business associate establishing that Deware had control of and signatory authority over the Kentucky business accounts. Eliciting Deware's "not aware" testimony — Trial Tr., ECF No. 174, PageID #803 — while possessing Smith's pre-trial contradiction in its own investigative file, and while its own Govt. Exs. 507 and 508 independently established the same contradiction, was the knowing use of false testimony that Napue and Giglio prohibit.

Third — Hubbuch's deliberate V4 omission. Hubbuch's handwritten interview notes from the Deware interview contain multiple written references to "V4" — clearly establishing that V4 Carbon was specifically discussed during the interview. Movant Ex. 8, BATES USA-00011554. Hubbuch prepared the typed Deware 302 from those same notes. The typed 302 contains no reference to V4 Carbon. The omission was deliberate: a trained FBI agent conducting a fraud investigation in a case whose central entity is V4 Carbon does not record "V4" in his handwritten contemporaneous notes and then omit it from the official typed

record through inadvertence. Hubbuch's choice to exclude all V4 references from the typed 302 — while retaining multiple V4 references in his handwritten notes — establishes that Hubbuch knew the V4 references existed, knew it would undermine the "company never created" narrative, and made a deliberate investigative-record decision to exclude it from the document defense counsel and the prosecution would use as the operative record of the Deware interview. That deliberate omission constitutes Government knowledge and misconduct in the preparation of official investigative records, independent of and in addition to the Napue violation arising from the knowing elicitation of Deware's false trial testimony.

Under Napue v. Illinois, 360 U.S. at 269, "the same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." Here the State did both — it solicited the false testimony and allowed it to stand unremedied while possessing three independent sources proving the testimony was false: its own Govt. Exs. 507 and 508, the Smith 302, and Hubbuch's handwritten notes. The failure-to-correct obligation was triggered from the moment Deware's "not aware" testimony was placed before the jury and persisted through the entirety of closing argument and jury deliberations without correction.

MATERIALITY / PREJUDICE:

Under Napue v. Illinois, the standard is whether the misleading presentation "could in any reasonable likelihood have affected the judgment of the jury." 360 U.S. at 271. That standard is satisfied here on multiple independently sufficient and mutually reinforcing bases.

First — the "company never created" theory was the opening foundation of the prosecution's case. The false proposition was not a peripheral or ancillary argument. It was the first substantive fraud claim AUSA Rosenberg placed before the jury at Trial Tr., ECF No. 174, PageID #731. The jury was told at the outset of trial — before any witness testified and

before any exhibit was shown — that Vance and McKinnon had taken Deware's money with no intention of honoring their commitment to form the promised entity. That foundational framing shaped how the jury evaluated every subsequent piece of evidence: the financial transactions, the attribution theory, the entity-use evidence, and Movant's role. A jury that received the correct factual picture at the outset — that both companies were formed, that Deware co-opened both bank accounts with McKinnon, and that Deware held authorized signatory authority on both — would have been required to evaluate the entire prosecution through a fundamentally different lens from the beginning of trial.

Second — Deware's credibility as the Government's primary investor witness. Deware was the Government's most sympathetic witness: a decorated veteran and successful businessman who had invested approximately $400,000 and testified he received nothing in return. His "not aware" testimony at Trial Tr., ECF No. 174, PageID #803 was the human embodiment of the prosecution's fraud narrative. Had Govt. Exs. 507 and 508 been used by the defense to confront Deware — asking him directly how he could claim to be unaware of a company whose bank account he co-opened with McKinnon and on which he held authorized signatory authority — his credibility as the Government's primary investor witness would have been destroyed on the most fundamental fact in the case. A witness who claims to be unaware that a company was formed, while bank signature cards show he opened that company's account himself, is not credible on any aspect of the fraud narrative. There is a reasonable likelihood that the jury would have evaluated the Government's entire fraud theory materially differently had Deware been impeached on the foundational false proposition with the Government's own exhibit materials.

Third — Movant's role in the alleged scheme. The prosecution's "company never created" theory required the jury to believe that McKinnon helped Vance deceive Deware by promising a company that was never formed. Govt. Exs. 507 and 508 directly contradicted that theory on its most specific factual claim: McKinnon was sitting next to Deware at the bank when both company accounts were opened. She did not conceal the companies from Deware — she co-created the accounts with him. A jury that understood that Movant opened the V4 Carbon and Carbon Holdings accounts jointly with Deware would have had to evaluate the "McKinnon deceived Deware" theory of the prosecution through the lens of Deware's own co-signatory status — which is incompatible with a theory of concealment and deception. There is a reasonable likelihood that this would have materially affected the jury's assessment of Movant's knowledge and intent.

Fourth — Hubbuch's credibility across the full investigative record. Hubbuch's deliberate omission of V4 from the typed Deware 302 — while retaining the "V4" notation in his handwritten notes — would have given the jury concrete, documentary grounds to question the integrity of the Government's entire investigative record. A lead FBI agent who recorded "V4" in his handwritten interview notes and then produced a typed 302 with no reference to V4 is not an agent who made an innocent transcription error. He is an agent who made a deliberate choice about what to include in the official investigative record. A jury that understood the contrast between the handwritten notes and the typed 302 would have had direct reason to question whether the Government's investigative record — including Hubbuch's financial reconstruction, his account-scope decisions for Gov't Ex. 501, and his trial testimony across all charged counts — was the product of objective, thorough investigation or of selective documentation designed to support a predetermined narrative.

Fifth — cumulative connection to the broader Ground One chain. The "company never created" false impression did not operate independently of the other Ground One violations. It formed the jury's foundational framework — the sham-company narrative that Hubbuch's "no employees anywhere to be seen" testimony (Sub-entry 4) reinforced, that the exclusion of all three NGEP accounts from Gov't Ex. 501 (Sub-entry 3) supported, and that the Government's rebuttal argument at Trial Tr., ECF No. 179, PageID #1894 — that there was not "a shred of proof" supporting Movant's defense (G1-RA-013) — exploited. Each of those violations was more powerful because the jury had already accepted, from the opening statement, that the businesses were shams created to defraud investors. The corrective evidence — that the companies were formed, that Deware co-signed the accounts, that employees were present, that legitimate equipment was built, and that Chamblee supplied the financial information Movant transmitted — would have dismantled that foundational framework entry by entry. There is a reasonable likelihood that the jury would have evaluated the Government's entire prosecution fundamentally differently had the "company never created" false proposition been corrected and the Government's own exhibits used to expose it at trial.

CROSS-GROUND NOTATION:

Ground Two (App. C, G2-RA-007): The Ground Two Deware bank-access and signatory-contradiction entry cross-references this entry as the trial-record anchor establishing Deware's signatory and control status — the same trial-record evidence that grounds Ground Two's trial-IAC theory on the company-formation false narrative. See App. C, G2-RA-007.

Ground Three (App. D, G3-RA-004; G3-RA-009): Two Ground Three entries cross-reference this entry — G3-RA-004 (the trial-IAC Deware bank-access and signatory contradiction entry) and G3-RA-009 (the NGEP BOA account and financial investigation entry) — each establishing that the company-formation and V4 Carbon formation evidence documented here is part of the trial-record basis for Ground Three. See App. D, G3-RA-004; G3-RA-009.

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G1-RA-008 — McKinnon Letter as Pre-Indictment Contemporaneous State-of-Mind Evidence: Prosecution's Selective Introduction of Letter Reference Through Gov't Ex. 401; Trial Restriction on Full Presentation of Letter Contents; and Rebuttal Exploitation of the Resulting Documentary Void

RECORD CITATION / SOURCE:

Trial Tr., ECF No. 179, PageID #1792 (McKinnon — Chamblee directed QuickBooks entries; Chamblee supplied sales information); PageID #1796 (McKinnon — Dell Jaggers financial information reflected Chamblee-reported sales). NOTE: McKinnon did NOT testify about the McKinnon Letter at any of these page IDs. The letter was completely excluded from the jury by court order. ; Trial Tr., ECF No. 179, PageID ##1776–1779 (court ruling — ABSOLUTE BAR: letter excluded from jury entirely; all counsel gagged from referencing letter or its contents in closing arguments; letter filed as Defendant Vance Court Exhibit 1 — court record only, not seen by jury) ; Trial Tr., ECF No. 177, PageID ##1521–1522 (Hubbuch — "a letter that Molly had" — through Gov't Ex. 401 presentation) [cross-reference G1-RA-009]; Trial Tr., ECF No. 179, PageID #1894 (Government rebuttal — "a shred of proof" / "a single item of proof" / "a single email or document" — rebuttal exploitation of documentary void) [cross-reference G1-RA-013]; Movant Ex. C [Tab 3]

(McKinnon Letter — November 14, 2018; addressed to Vance's attorney, c/o Douglas Vance; documenting Movant's limited role, lack of ownership/control, reliance on Chamblee-supplied information, Chamblee's explicit coercion and threat sequence, and the timing of Chamblee's disclosure that sales figures were false); Movant Ex. F [Tab 6] (DOJ/FBI transcript of Gov't Ex. 401 — Hubbuch's December 2018 discussion of letter accessibility, exculpatory significance, and prosecutor follow-up commitment) [cross-reference G1-RA-010]; Gov't Ex. 401 (recorded Vance/Hubbuch interview, December 2018 — Government's own exhibit through which letter reference was introduced at trial) [cross-reference G1-RA-009]; McKinnon Decl. ¶¶11–15 ; Movant Ex. 45 / Defense Ex. 82 (contemporaneous journals — companion pre-indictment documentary corroboration of Chamblee-source defense) [cross-reference G1-RA-003(A)]; Napue v. Illinois, 360 U.S. 264, 269–71 (1959); Giglio v. United States, 405 U.S. 150, 153–54 (1972)

EXACT QUOTE OR RECORD LANGUAGE:

Trial Tr., ECF No. 177, PageID ##1521–1522 (Hubbuch — through Gov't Ex. 401 presentation): "a letter that Molly had"

Trial Tr., ECF No. 179, PageID #1792 (McKinnon — Chamblee-source/QuickBooks testimony — INDEPENDENT OF LETTER): "Mr. Chamblee told me that he had made some sales and gave me information to input into the QuickBooks." [McKinnon did NOT testify about the McKinnon Letter's contents. The court's absolute bar at PageID ##1776–1779 prohibited any such testimony. This citation establishes the Chamblee-source chain independently.] PageID #1796 (McKinnon — Dell Jaggers/Chamblee-source chain): "The information I sent was information that I had input into QuickBooks that reflected Gary Chamblee's sales." [Independent Chamblee-source citation — not letter testimony.]

Trial Tr., ECF No. 179, PageID #1894 (Government rebuttal — AUSA Chapman): "where in the records that you've seen, where in the emails, where in the documents is there a shred of proof that Mr. Chamblee provided Ms. McKinnon information to be put into those financial documents?"; "There isn't a single item of proof in the document -- in the emails that prove that."; "a single email or document". [Cross-reference G1-RA-013.]

`Movant Ex. C (McKinnon Letter — November 14, 2018):

(Page 2 — Chamblee directed QuickBooks changes): "Chamblee required that I make various changes to Quick Books whereby an initial loss of $267k (as reported by me) ultimately became a $17k profit for year 2016 (as reported on tax return)"

(Page 4 — Chamblee supplied bogus sales information): "Chamblee routinely provided me with information on those sales and asked me to provide written updates to him and his partners. Everything was proceeding smoothly.....or I thought they were, until I found out later those sales were, in fact, bogus. Unbeknownst to me, Chamblee was apparently also providing those same updates to investors outside the company."

(Page 5 — Coercion and explicit threats): "Chamblee...told me that he needed me to 'make up' bank statements to coincide with the entries I made. I immediately refused and we had subsequent conversations including several where his threats ranged from civil & criminal charges for willful misconduct & fraud, to reporting me to the FBI, to physical threats to me, Vance, my sister and 'anyone else important to me.' I hate to admit it but I was terrified and told him I would do it but still held out hope that something would change and he would find another solution. I stalled as long as I could but ultimately produced altered bank statements and submitted those to Hogan because his threats became increasing worse."

(Page 3 — Movant's employee status): "Vance and I were both supposed to be paid a salary. Mine was to be paid directly from the Shumard office and Vance's was to be paid from the business."

(Page 6 — Vance's lack of knowledge): "Until I told Vance about Chamblee's bogus sales and 'blackmail', he had no knowledge of what Chamblee had told me to do and had no involvement in it whatsoever, however, I believe he can corroborate some of what happened due to his own conversations with Chamblee."

(Page 2 — Letter cross-references the journals): "I am still going through all my communications and transferring information from journals I kept during this time period in an effort to prepare a much more detailed timeline... once I am able to transfer information from journals I kept during this time period, I should be able to provide much more specific details. I also recorded many conversations with Chamblee and am in the process of trying to retrieve, transcribe and catalog those."`Movant Ex. F (DOJ/FBI transcript of Gov't Ex. 401 — Hubbuch interview of Vance, December 2018): "Because the letter is so easy for you to get."; "if there's some letter out there that-that-that is exculpatory for you"; "all the blame on Molly,"; "I will ask the prosecutor, the A.U.S.A. to reach out to your attorney for this letter."; "not only those bank statements but … other bank accounts." [Cross-reference G1-RA-010. Verbatim quotes confirmed in prior sessions.]

McKinnon Decl. ¶¶11–15: Addressed Movant's limited role, reliance on Chamblee-supplied information, and related state-of-mind context consistent with the McKinnon Letter.

RECORD-PROOF POINT:

This entry establishes one of the two core documentary Napue violations underlying the Government's rebuttal misrepresentation at Trial Tr., ECF No. 179, PageID #1894 — the other being Movant Ex. 45 / Defense Ex. 82 (addressed at G1-RA-003(A)). Together, the McKinnon Letter and the contemporaneous journals represent two independent categories of pre-indictment documentary evidence corroborating the Chamblee-source defense that the Government possessed, restricted at trial, and then falsely told the jury did not exist in rebuttal.

The McKinnon Letter as pre-indictment state-of-mind evidence. Movant Ex. C — the McKinnon Letter — was written by Movant November 14, 2018, before the FBI's recorded interview with Vance in December 2018, before any charges were filed, and before any criminal proceedings were pending against Movant. The letter was addressed to Vance's attorney. It documented, in Movant's own contemporaneous words: (1) her limited role in the NexGen/NGEP operation; (2) her lack of ownership or control over the business; (3) her reliance upon information supplied by Chamblee as the basis for the financial figures she entered and transmitted; and (4) the timing of Chamblee's disclosure that the sales figures she had been given were false. McKinnon Decl. ¶¶11–15 independently preserves the same account.

The letter's evidentiary significance is not limited to its content. It derives from its temporal character. The McKinnon Letter was not an after-the-fact litigation narrative constructed to support a trial defense. It was a pre-indictment, contemporaneous document written before Movant was a defendant, before a criminal trial strategy existed, and before she had any motive to fabricate an exculpatory account for a jury. A document of that character carries a fundamentally different probative weight than trial testimony alone. The temporal gap

between the letter's authorship and the trial is its most important feature: Movant stated the same account in writing, contemporaneously — before any charges, before any strategy — that she documented in writing — before she was a defendant, before any charges, before any litigation motive — the same Chamblee-source account she later testified to independently at PageID #1792 and PageID #1796 at trial. That convergence, combined with the independent corroboration of Movant Ex. 45 / Defense Ex. 82 (contemporaneous journals in the Government's discovery file), establishes the Chamblee-source defense as a documented, corroborated account grounded in pre-indictment contemporaneous records — not mere trial testimony.

The Government's knowledge of the letter from December 2018. The Government was put on actual notice of the McKinnon Letter's existence and its potential exculpatory significance no later than the December 2018 FBI interview documented in Gov't Ex. 401 and Movant Ex. F. During that interview, Vance referenced "a letter that Molly had." Trial Tr., ECF No. 177, PageID ##1521–1522. The DOJ/FBI transcript of that interview — Movant Ex. F — shows that Hubbuch responded in terms that established Government-side knowledge of the letter's content and significance: he acknowledged it as potentially "exculpatory for you," characterized it as placing "all the blame on Molly," acknowledged Vance's description of the letter as "easy to get," and committed to involving the prosecuting AUSA directly — telling Vance: "I will ask the prosecutor, the A.U.S.A. to reach out to your attorney for this letter." That commitment placed the McKinnon Letter on the Government's investigative radar at the prosecutorial level no later than December 2018.

The trial restriction. At Trial Tr., ECF No. 179, PageID ##1776–1779, the court issued an ABSOLUTE BAR on the McKinnon Letter — not a limitation on McKinnon's testimony,

but a three-part prohibition: (1) the letter was completely excluded from the jury ("It will not be allowed to go back to the jury"); (2) all counsel were gagged from referencing the letter or its contents in closing arguments; and (3) the letter was filed as Defendant Vance Court Exhibit 1 — court record only, never seen by the jury. McKinnon NEVER testified about the letter's contents — the absolute bar prohibited any such testimony. The jury received only the awareness that a letter existed — through the selective playing of Gov't Ex. 401 via Hubbuch's reference to "a letter that Molly had" at Trial Tr., ECF No. 177, PageID ##1521–1522 — with no access to the letter's contents, its date, its pre-indictment character, or its exculpatory significance. The Government's use of Gov't Ex. 401 and Hubbuch's testimony at Trial Tr., ECF No. 177, PageID ##1521–1522 — that a letter existed and had been referenced in the FBI's own recorded exhibit. The jury therefore received partial exposure: it knew a letter existed, knew it was referenced in the Government's own recorded interview, but did not receive the full benefit of the letter's contemporaneous state-of-mind documentation.

The rebuttal exploitation. At Trial Tr., ECF No. 179, PageID #1894, after the court's absolute bar had completely excluded the letter from the jury — McKinnon never testified about the letter, and counsel were gagged from referencing it in closing — the Government argued in rebuttal that there was not "a shred of proof," not "a single item of proof," and not "a single email or document" supporting the Chamblee-source defense. That argument was made while the Government possessed Movant Ex. C — a pre-indictment contemporaneous document addressing exactly the subject the Government claimed had no documentary support — and while it possessed Movant Ex. 45 / Defense Ex. 82, the journals produced in discovery before trial. The Government had tracked the McKinnon Letter since December

2018, had characterized it as potentially exculpatory through its own investigator, had seen its contents reflected in Movant's trial testimony at PageID ##1791–1796, and then told the jury the documentary record was empty of proof for the very defense the letter addressed. That sequence — from investigative knowledge to trial restriction to rebuttal exploitation — is the core Napue violation this entry documents.

FALSE TESTIMONY / MISLEADING IMPRESSION:

The misleading impressions in this entry operate at three analytically distinct and reinforcing levels.

First — the rebuttal misrepresentation. The Government's rebuttal argument at Trial Tr., ECF No. 179, PageID #1894 that there was not "a shred of proof," not "a single item of proof," and not "a single email or document" supporting the Chamblee-source defense was an affirmative misrepresentation of the state of the record. The McKinnon Letter — Movant Ex. C — was a pre-indictment contemporaneous document written approximately November 2018 that addressed exactly the subjects the Government claimed had no documentary support: Movant's limited role, lack of ownership or control, reliance on Chamblee-supplied information, and the timing of when she learned the sales figures were false. That document was in the Government's knowledge from no later than December 2018. For the Government to then stand up in rebuttal and tell the jury there was no documentary proof of the Chamblee-source defense — while Movant Ex. C existed, while the Government had committed in December 2018 to involving the AUSA in obtaining it, and while McKinnon had testified at PageID #1792 that Chamblee directed her QuickBooks entries and supplied sales information, and at PageID #1796 that the information she transmitted to Dell Jaggers reflected Chamblee's reported sales — establishing the Chamblee-source chain

independently in the trial record in the prosecution's presence — was a direct and knowing misrepresentation of the evidentiary record. Under Napue v. Illinois, 360 U.S. 264, 269 (1959), the Government violates due process when it allows false impressions to go uncorrected before the jury. Here, the Government affirmatively created the false impression through its own rebuttal argument, rather than merely failing to correct a witness's error.

Second — the selective introduction of the letter reference through Gov't Ex. 401. The Government used Gov't Ex. 401 and Hubbuch's related testimony at Trial Tr., ECF No. 177, PageID ##1521–1522 to place before the jury a reference to "a letter that Molly had," while the full contents of the letter were restricted from development at trial through the dispute at Trial Tr., ECF No. 179, PageID ##1776–1779. The result was a structurally misleading presentation: the jury knew a letter existed because the Government's own exhibit and witness had referenced it, but the jury could not evaluate the letter's contents, which addressed the most critical state-of-mind questions in the case. A jury that hears about a letter in a fraud trial but cannot assess its substance is not in a position to give that letter its proper corroborative weight. A Government that introduces the letter reference through its own exhibit — while restricting the letter's full development — and then argues in rebuttal that there is no documentary proof of the defense cannot fairly characterize the record as lacking documentation. It is precisely the Government's own selective use of the letter-reference evidence that created the documentary void the rebuttal then exploited.

Third — the mischaracterization of the letter's temporal significance. The McKinnon Letter was written November 14, 2018 — before the FBI's December 2018 recording, before any charges, and before any criminal proceedings were pending. The Government's rebuttal argument — framing the absence of proof as though the defense had nothing more than trial

testimony to offer — misrepresented the nature of the McKinnon Letter as though it were a litigation artifact rather than a pre-indictment contemporaneous record. The misleading impression was that documentary proof of the Chamblee-source defense was absent when it was not; and that the defense rested on nothing more than Movant's word at trial, when her account was grounded in a document written more than four years before trial, before she was a defendant, in her own hand.

GOVERNMENT KNOWLEDGE / FAILURE TO CORRECT:

Government knowledge is established at three independent levels, each sufficient to trigger the Napue/Giglio correction obligation.

First — December 2018 FBI interview knowledge. By no later than December 2018, the Government's lead investigator had been told by Vance that a letter written by Movant existed. The DOJ/FBI transcript of that interview — Movant Ex. F — establishes that Hubbuch discussed the letter in terms of its potential exculpatory significance, acknowledged Vance described it as "easy to get," committed to involving the prosecuting AUSA in obtaining it, and acknowledged it might place "all the blame on Molly." That discussion established knowledge at both the investigator level and the prosecutorial level: Hubbuch told Vance he would ask the AUSA to reach out to Vance's attorney for the letter. From that moment forward, the Government — through its lead investigator's own interview conduct — was on actual notice that a letter existed, that it was potentially exculpatory, that it concerned Movant's role and knowledge, and that a specific commitment had been made to pursue it through the prosecuting AUSA. Under Napue and Giglio, that investigative knowledge became prosecutorial knowledge when Hubbuch committed to involving the AUSA directly in obtaining the letter.

Second — trial-record knowledge from McKinnon's testimony. At Trial Tr., ECF No. 179, PageID #1792, Movant testified in open court, in the presence of Government counsel, that Chamblee directed her QuickBooks entries and supplied sales information — establishing the Chamblee-source chain as an independent fact in the trial record. At PageID #1796, Movant further testified that the information she transmitted to Dell Jaggers reflected Chamblee's reported sales. NOTE: Movant did NOT testify about the McKinnon Letter's contents at any of these page IDs — the court's absolute bar at PageID ##1776–1779 prohibited any such testimony. From the moment McKinnon's Chamblee-source testimony was given, the Government was on actual, contemporaneous notice that the trial record itself contained sworn, independent Chamblee-source testimony — and that its rebuttal argument claiming "not a shred of proof" existed was false even as to the testimonial record before the jury. McKinnon Decl. ¶¶11–15 further preserved the same account in the declaration record. From the moment those sources were in the record, the Government was on notice that the trial record itself supported the Chamblee-source defense through McKinnon's own testimony and declaration — and that the underlying letter, which Hubbuch had acknowledged Vance's description of it as "easy to get" in December 2018, addressed those same subjects. The Napue obligation arose from that moment: the Government was required to ensure the jury received the corrective context of the letter rather than exploit the trial restriction to argue in rebuttal that no documentary proof existed.

Third — course of conduct from December 2018 to rebuttal. The Government's course of conduct with respect to the McKinnon Letter spans more than four years: from the December 2018 interview in which Hubbuch discussed the letter's exculpatory significance and committed to pursuing it through the AUSA, through the trial restriction at PageID ##1776–

1779 that limited the letter's full development, to the rebuttal argument at PageID #1894 that falsely told the jury no documentary proof of the Chamblee-source defense existed. That course of conduct — investigative knowledge, prosecutorial commitment, trial restriction, rebuttal exploitation — is independently significant under Napue and Giglio. The Government did not merely fail to volunteer the letter's significance. It tracked the letter from December 2018, committed to obtaining it through the prosecuting AUSA, participated in and benefited from an absolute court bar that completely excluded the letter from the jury, obtained a gag order preventing counsel from even referencing it in closing, and then affirmatively told the jury the documentary record was empty of exactly the evidence the letter addressed. Under Napue v. Illinois, 360 U.S. at 269, "the same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." Here, the Government went further: it used its own course of conduct to deprive the jury of contemporaneous evidence it had tracked since December 2018 and then affirmatively told the jury the evidence did not exist.

MATERIALITY / PREJUDICE:

Under Napue v. Illinois, the standard is whether the misleading presentation "could in any reasonable likelihood have affected the judgment of the jury." 360 U.S. at 271. That standard is satisfied here on multiple independently sufficient and mutually reinforcing bases.

First — the corroborative weight of the pre-indictment letter. The Government was required to prove that Movant acted with knowledge and intent. A pre-indictment contemporaneous letter, written in Movant's own words before she was a defendant and before any criminal proceedings were pending, documenting her limited role, lack of ownership or control, reliance on Chamblee-supplied information, and the timing of when she learned the sales

figures were false, is the most powerful form of corroboration for a knowledge-and-intent defense available in any case. Its probative value is orders of magnitude greater than after-the-fact trial testimony alone precisely because it eliminates the principal challenge to such testimony: that the defendant constructed the narrative for litigation purposes. A contemporaneous pre-indictment letter has no such motive — it was written before the defendant became a defendant. There is a reasonable likelihood that a jury that evaluated Movant's knowledge-and-intent defense through the McKinnon Letter — rather than through trial testimony alone, or through the bare awareness that a letter existed — with zero access to its contents, because the court's absolute bar completely excluded the letter from the jury, all counsel were gagged from referencing it in closing, and McKinnon never testified about it — would have assessed that defense materially differently.

Second — the direct falsity of the rebuttal and its timing. The Government's rebuttal argument at Trial Tr., ECF No. 179, PageID #1894 was the last substantive argument the Government made to the jury on knowledge and intent before deliberations began. The jury deliberated and convicted on the strength of a rebuttal that directly misrepresented the state of the documentary record. Had the McKinnon Letter been fully presented and the rebuttal misrepresentation corrected, the jury would have been left with a fundamentally different picture: not a defendant whose defense rested on bare trial testimony with no documentary support, but a defendant whose account was corroborated by a pre-indictment letter written before she was a defendant and by contemporaneous journals produced to the Government in discovery. There is a reasonable likelihood that the jury would have evaluated knowledge and intent — the central issue at trial — differently had the false rebuttal representation been

corrected. The argument struck at the heart of the defense, made false claims about the entire evidentiary record, and did so in the final moments before the jury began deliberating.

Third — the cumulative Napue violation with Movant Ex. 45 / Defense Ex. 82. G1-RA-008 and G1-RA-003(A) establish that the Government's rebuttal misrepresentation at PageID #1894 was false from two independent and simultaneous sources: the McKinnon Letter (this entry) and the contemporaneous journals (G1-RA-003(A)). These were not one overlooked document — they were two independent categories of pre-indictment contemporaneous documentation, both corroborating the same defense the Government told the jury had no documentary support. The Government possessed both. It tracked the McKinnon Letter from December 2018 and received the journals in discovery before trial. The rebuttal argument that claimed no documentary proof existed was therefore false twice over — doubly, independently, and simultaneously. The cumulative prejudice from the joint violation is substantially greater than either source alone: the jury was denied access to both the letter and the journals, and heard the Government falsely represent that the documentary record was empty, when it contained two independent contemporaneous sources corroborating Movant's defense.

Fourth — the broader Ground One chain. The McKinnon Letter is the state-of-mind anchor of the broader Ground One sequence. It connects to the account-access limitation in G1-RA-002 (explaining why Movant relied on Chamblee-supplied information rather than independently verifying it — she was not a signer on the NGEP account); to the Chamblee-source chain in G1-RA-003 (establishing what Chamblee actually supplied); to the financial-summary limitation in G1-RA-005 Sub-entry 3 (which concealed the NGEP account records that would have corroborated the intercompany-transfer nature of the charged transactions);

and to the rebuttal exploitation in G1-RA-013. Taken together, the Ground One chain shows that the jury was systematically deprived of the corrective context necessary to evaluate Movant's knowledge and intent — account access, source-of-information documentation, financial-summary completeness, and contemporaneous state-of-mind evidence — while the Government affirmatively represented in rebuttal that no such evidence existed. The McKinnon Letter's absolute exclusion from the jury — and the Government's subsequent exploitation of that exclusion in its final rebuttal argument — amplify the prejudice flowing from every other Ground One entry. There is a reasonable likelihood that the jury would have evaluated the Government's entire prosecution materially differently had it received the full corrective context — including the McKinnon Letter — that the Government's rebuttal falsely characterized as absent.

Fifth — sentencing implications. The false rebuttal representation affected not only the verdict but the post-trial record for sentencing purposes. The jury's conviction on knowledge-and-intent grounds, obtained in part through the Government's rebuttal misrepresentation of the documentary record, formed the evidentiary foundation for the sentencing findings that determined loss amount and restitution. A jury that understood from the McKinnon Letter and the contemporaneous journals that Movant had documented her limited role and her reliance on Chamblee before she was a defendant would have been less likely to return the conviction that set the sentencing baseline for those findings. The materiality therefore extends from the verdict through the sentence.

CROSS-GROUND NOTATION:

Ground Two (App. C, G2-RA-004): The Ground Two McKinnon Letter/Gov't Ex. 401 pattern anchor cross-references this entry directly — the McKinnon Letter's pre-indictment contemporaneous character, the Government's knowledge from December 2018, and the Vance-initiated voluntary contact context are the same

record components that Ground Two's IAC theory identifies as critical trial-stage failures. See App. C, G2-RA-004.

Ground Three (App. D, G3-RA-007; G3-RA-010): Two Ground Three entries cross-reference this entry — G3-RA-007 (the McKinnon Letter and Gov't Ex. 401 trial-IAC entry) and G3-RA-010 (the Day 6 preservation anchor) — establishing that the McKinnon Letter sequence documented here is the trial-record foundation for the Ground Three theory that trial counsel failed to protect the letter's exculpatory significance. See App. D, G3-RA-007; G3-RA-010.

Ground Five (App. F, G5-RA-007): The Ground Five representative-not-exhaustive incorporation entry documenting the McKinnon Letter/Gov't Ex. 401 pattern cross-references this entry as its primary App. B anchor for the most outcome-material component of the omitted appellate Napue claim. See App. F, G5-RA-007.

G1-RA-009 — Selective Trial Presentation of Gov't Ex. 401: Government Introduced Minimal Letter Reference Through Its Own Recorded Interview While Withholding the Fuller Context Establishing the Letter's Location, Exculpatory Significance, and the Government's Own Investigator's Commitment to Obtain It

RECORD CITATION / SOURCE:

Trial Tr., ECF No. 177, PageID ##1521–1522 (Hubbuch — testimony referencing "a letter that Molly had" through the Government's presentation of Gov't Ex. 401) ; Gov't Ex. 401 (audio recording of Vance/Hubbuch interview, December 2018 — Government's own trial exhibit through which the letter reference was introduced; NOT the transcript and NOT the McKinnon Letter — source separation controlling) ; Movant Ex. F (DOJ/FBI transcript of Gov't Ex. 401 — SEPARATE exhibit from the recording itself; contains the fuller letter-discussion context omitted from the trial presentation, including: letter location with Vance's attorney ; "Because the letter is so easy for you to get"; "if there's some letter out there that-that-that is exculpatory for you"; "all the blame on Molly,"; "I will ask the prosecutor, the A.U.S.A. to reach out to your attorney for this letter"; "not only those bank statements but …

other bank accounts") ; Movant Ex. C (McKinnon Letter — the document referenced in the recording; the underlying pre-indictment contemporaneous state-of-mind document whose existence was disclosed to the jury only through the minimal "a letter that Molly had" reference) [cross-reference G1-RA-008]; Trial Tr., ECF No. 179, PageID #1894 (Government rebuttal — "a shred of proof" / "a single item of proof" / "a single email or document" — rebuttal exploitation of the evidentiary void created in part by the selective trial presentation at Trial Tr., ECF No. 177, PageID ##1521–1522) [cross-reference G1-RA-013]; Napue v. Illinois, 360 U.S. 264, 269–71 (1959); Giglio v. United States, 405 U.S. 150, 153–54 (1972)

EXACT QUOTE OR RECORD LANGUAGE:

Trial Tr., ECF No. 177, PageID ##1521–1522 (Hubbuch — through Gov't Ex. 401 presentation): "a letter that Molly had"

Movant Ex. F (DOJ/FBI transcript of Gov't Ex. 401 — fuller context omitted from trial presentation):

Vance disclosed the letter's specific location: with his attorney.

"Because the letter is so easy for you to get."

"if there's some letter out there that-that-that is exculpatory for you"

"all the blame on Molly,"

"I will ask the prosecutor, the A.U.S.A. to reach out to your attorney for this letter."

"not only those bank statements but … other bank accounts."

Trial Tr., ECF No. 179, PageID #1894 (Government rebuttal): "where in the records that you've seen, where in the emails, where in the documents is there a shred of proof that Mr. Chamblee provided Ms. McKinnon information to be put into those financial documents?"; "There isn't a single item of proof in the document -- in the emails that prove that."; "a single email or document"

RECORD-PROOF POINT:

This entry documents the mechanism by which the Government introduced the McKinnon Letter to the jury's awareness while simultaneously withholding the context that gave the letter its evidentiary significance. The Government's selective use of Gov't Ex. 401 at Trial Tr., ECF No. 177, PageID ##1521–1522 placed "a letter that Molly had" before the jury — no more. The fuller discussion of that letter during the same December 2018 interview, preserved in the DOJ/FBI transcript Movant Ex. F, was not presented to the jury through the Government's trial examination.

What the jury received through the trial presentation. Through Hubbuch's testimony at Trial Tr., ECF No. 177, PageID ##1521–1522, the jury learned only that a letter existed — that Vance had told Hubbuch there was "a letter that Molly had." That minimal characterization gave the jury no basis to evaluate the letter's subject matter, its potential evidentiary significance, its location, or the steps the Government's own investigator had taken in response to learning of its existence. The letter entered the jury's awareness as a passing reference — a vague mention that a document existed — with no context to evaluate what it said or why it mattered.

What the fuller context showed — and what the jury did not receive. The DOJ/FBI transcript of that same interview — Movant Ex. F — documents a substantially more significant

discussion than the minimal reference the jury received. During the December 2018 interview, Vance did not merely mention the letter in passing. He told Hubbuch where the letter was: with his attorney. That specific location disclosure transformed the reference from a vague mention of a document into a directed retrieval instruction with a known custodian. Hubbuch responded by: acknowledging the letter could be "exculpatory for you"; characterizing it as placing "all the blame on Molly"; calling it "easy to get" — in the specific context of knowing exactly where it was; and committing to involve the prosecuting AUSA directly, telling Vance: "I will ask the prosecutor, the A.U.S.A. to reach out to your attorney for this letter."

None of that context was presented to the jury through the Government's trial examination. The jury heard that a letter existed. It did not hear that the letter's location had been disclosed. It did not hear that Hubbuch had characterized it as potentially exculpatory. It did not hear that Hubbuch had committed to involving the prosecuting AUSA in obtaining it. It did not hear that the Government's own investigator, in December 2018, had treated the letter as a specific, locatable, potentially significant document rather than a peripheral reference. The jury heard only the shell of the letter's existence — stripped of every detail that would have allowed the jury to evaluate its significance or the Government's knowledge of it.

The source separation significance. Gov't Ex. 401 is the audio recording of the Vance/Hubbuch interview — the Government's own trial exhibit. Movant Ex. F is the DOJ/FBI transcript of that same recording — a separate exhibit. These two sources are distinct and may not be conflated. The significance of maintaining that distinction here is precise: the Government chose what to present from Gov't Ex. 401 at trial through its examination of Hubbuch. Whatever portions of the recording were presented or testified

about, the fuller letter-discussion context was not among them. That omission was a prosecutorial choice about what to surface from the Government's own recorded exhibit. The fuller context existed — documented in Movant Ex. F — and was not presented to the jury.

The connection to the rebuttal exploitation. The selective presentation at Trial Tr., ECF No. 177, PageID ##1521–1522 was not an isolated evidentiary decision. It was the first step in a two-part sequence that culminated in the rebuttal argument at Trial Tr., ECF No. 179, PageID #1894. By introducing only the minimal letter reference while withholding the fuller context, the Government ensured the jury had no evidentiary framework to recognize the letter's significance — making the "shred of proof" rebuttal argument possible. A jury that had heard Hubbuch's December 2018 characterization of the letter as potentially exculpatory, his acknowledgment of its specific location, and his commitment to involve the AUSA in obtaining it would have evaluated the "no documentary proof" rebuttal claim through an entirely different lens. Instead, the jury heard about a letter it could not assess and then heard the Government say the documentary record was empty — when the Government's own investigator had, in December 2018, identified the letter as a specific, locatable, potentially exculpatory document and committed to pursuing it through the prosecuting AUSA.

FALSE TESTIMONY / MISLEADING IMPRESSION:

The misleading impression created by the selective Gov't Ex. 401 trial presentation operates at two reinforcing levels.

First — the minimization of the letter through selective extraction. The Government presented "a letter that Molly had" to the jury through its own recorded exhibit and Hubbuch's testimony. That minimal characterization created the impression that the letter was a passing reference of uncertain significance — a document mentioned in passing during

a recorded interview, with nothing more to establish what it said or why it mattered. The fuller context preserved in Movant Ex. F shows the opposite: the letter was discussed in substantive terms, with specific reference to its location, its potential exculpatory content, and a commitment by the Government's investigator to pursue it through the prosecuting AUSA. The gap between "a letter that Molly had" — the version the jury received — and the full discussion in Movant Ex. F — the version the jury did not receive — is the misleading impression this entry addresses. The Government extracted the minimal reference while leaving behind the context that gave the reference its meaning.

Second — the predicate for the rebuttal misrepresentation. The selective presentation at Trial Tr., ECF No. 177, PageID ##1521–1522 was the mechanism that created the evidentiary void the Government exploited in rebuttal at Trial Tr., ECF No. 179, PageID #1894. By presenting only the bare existence of the letter while withholding Hubbuch's December 2018 characterization of it as potentially exculpatory, his disclosure that its location was known, and his commitment to involve the AUSA in obtaining it, the Government ensured the jury had no context to recognize that the letter was a specific, locatable, potentially significant document the Government had been tracking since December 2018. The rebuttal claim — that there was not "a shred of proof" or "a single email or document" supporting the Chamblee-source defense — was directly enabled by the selective trial presentation. The jury could not weigh against the rebuttal claim evidence whose significance had been stripped from the record by the Government's own selective use of its own recorded exhibit.

GOVERNMENT KNOWLEDGE / FAILURE TO CORRECT:

Government knowledge is established at two independently sufficient levels.

First — the Government's own exhibit and examination. Gov't Ex. 401 was the Government's own trial exhibit. The Government selected which portions of the recorded interview to present or elicit through Hubbuch's testimony at Trial Tr., ECF No. 177, PageID ##1521–1522. The choice to present the minimal "a letter that Molly had" reference while not presenting the fuller letter-discussion context was a prosecutorial decision made with full access to the Government's own recorded exhibit and the DOJ/FBI transcript of that recording. The Government therefore knew — from its own exhibit and its own investigative transcript — exactly what the fuller letter-discussion context showed: the specific location disclosure, Hubbuch's exculpatory characterization, and the AUSA follow-up commitment. The decision to elicit only the minimal reference was made with actual knowledge of everything that was being omitted.

Second — Hubbuch's personal participation in the December 2018 interview. Hubbuch was the Government's lead FBI investigator. He conducted the December 2018 interview himself. He received Vance's disclosure of the letter's specific location — that it was with his attorney. He characterized the letter as potentially exculpatory. He called it easy to get. He committed to involving the AUSA. When Hubbuch testified at Trial Tr., ECF No. 177, PageID ##1521–1522 about the letter reference, he did so with direct, personal knowledge of the fuller context he was not conveying to the jury. Under Napue v. Illinois, 360 U.S. 264, 269 (1959), the Government's obligation extends to ensuring that the impressions created through its witnesses' testimony are not materially false or misleading. A witness who had personally conducted an interview, received a specific location disclosure, made a commitment to involve the prosecuting AUSA, and characterized the letter as potentially exculpatory — and who then testified to the jury only that a letter existed — is not providing

the jury with an accurate impression of the record. The Government's failure to correct that minimized impression through any other witness, exhibit, or argument compounded the violation.

MATERIALITY / PREJUDICE:

Under Napue v. Illinois, the standard is whether the misleading presentation "could in any reasonable likelihood have affected the judgment of the jury." 360 U.S. at 271. That standard is satisfied here on two independently sufficient and mutually reinforcing bases.

First — the letter's significance to knowledge and intent. The McKinnon Letter was Molly McKinnon's pre-indictment contemporaneous account of her limited role, her reliance on Chamblee-supplied information, and the timing of when she learned the sales figures were false. Those subjects went directly to the central elements the Government was required to prove: knowledge and intent. The jury needed an accurate understanding of the letter's significance — including what it said, the circumstances in which it was written, its specific location as disclosed by Vance, and the Government investigator's own December 2018 characterization of it as potentially exculpatory — to evaluate the Government's knowledge-and-intent theory against the full evidentiary record. The selective presentation denied the jury that understanding. A jury that received only "a letter that Molly had" could not evaluate the letter's corroborative significance for the Chamblee-source defense. A jury that received the fuller context — the specific location disclosure, the exculpatory characterization, the AUSA follow-up commitment — would have been required to evaluate the Government's knowledge-and-intent theory against a record in which the Government's own investigator had identified a potentially exculpatory document, learned its exact location, and committed in December 2018 to retrieving it through the prosecuting AUSA. There is a reasonable

likelihood that the jury would have evaluated knowledge, intent, and the credibility of the Government's investigation materially differently had that context been presented.

Second — the direct amplification of the rebuttal prejudice. The materiality of the selective presentation is amplified by its connection to the rebuttal argument at Trial Tr., ECF No. 179, PageID #1894. The "shred of proof" rebuttal was the Government's final argument to the jury on the central knowledge-and-intent issue before deliberations began. The selective presentation at Trial Tr., ECF No. 177, PageID ##1521–1522 was the mechanism that made that rebuttal argument possible: by presenting only the minimal letter reference, the Government ensured the jury had no evidentiary framework to recognize that the "no documentary proof" claim was false. Had the jury received the fuller context from Movant Ex. F — including Hubbuch's characterization of the letter as potentially exculpatory, his knowledge of its specific location, and his commitment to involve the AUSA — the rebuttal claim that the record contained no documentary proof of the Chamblee-source defense would have been directly and specifically contradicted by evidence already before the jury from the Government's own recorded exhibit and its own investigator's December 2018 conduct. The prejudice flowing from the selective presentation is therefore not limited to that presentation alone; it extends through and amplifies every component of the rebuttal exploitation addressed in G1-RA-013.

CROSS-GROUND NOTATION:

Ground Two (App. C, G2-RA-004): The Ground Two McKinnon Letter/Gov't Ex. 401 pattern anchor cross-references the complete G1-RA-008 through G1-RA-014 sequence — including this entry — as the trial-record documentation of the three-step documentary-void sequence that Ground Two's IAC theory identifies as a critical trial-stage failure. See App. C, G2-RA-004.

Ground Three (App. D, G3-RA-007; G3-RA-010): G3-RA-007 (the McKinnon Letter/Gov't Ex. 401 trial-IAC entry) and G3-RA-010 (the Day 6 preservation anchor) cross-reference the G1-RA-008 through G1-RA-013

group as the trial-record foundation for the Ground Three selective-presentation, omitted-context, and trial-restriction theory. See App. D, G3-RA-007; G3-RA-010.

Ground Five (App. F, G5-RA-007): The Ground Five McKinnon Letter/Gov't Ex. 401 incorporation entry cross-references the G1-RA-008 through G1-RA-014 group as the trial-record foundation for the most outcome-material component of the omitted appellate Napue claim. See App. F, G5-RA-007.

G1-RA-010 — Complete Omitted Context From Movant Ex. F (DOJ/FBI Transcript of Gov't Ex. 401): Five Independently Significant Passages Establishing Letter Location, Exculpatory Significance, Blame Framing, Prosecutorial Follow-Up Commitment, and Investigative Account-Scope Knowledge — None Presented to the Jury

RECORD CITATION / SOURCE:

Movant Ex. F (DOJ/FBI transcript of Gov't Ex. 401 — the TRANSCRIPT of the December 2018 Vance/Hubbuch recorded interview; NOT the recording itself and NOT the McKinnon Letter — source separation controlling; contains five independently significant passages omitted from the Government's trial presentation, each addressed in sub-sections below) ; Gov't Ex. 401 (the audio recording — the Government's own trial exhibit through which the selective letter reference was introduced; the source from which Movant Ex. F was transcribed — distinct from Movant Ex. F) [cross-reference G1-RA-009]; Trial Tr., ECF No. 177, PageID ##1521–1522 (selective trial presentation — the only letter-related context the jury received from the December 2018 interview) [cross-reference G1-RA-009]; Trial Tr., ECF No. 179, PageID ##1776–1779 (trial restriction on McKinnon Letter) [cross-reference G1-RA-008]; Trial Tr., ECF No. 179, PageID #1894 (Government rebuttal — "a shred of proof" / "a single item of proof" / "a single email or document") [cross-reference G1-RA-013]; Movant Ex. C (McKinnon Letter — the underlying document discussed in the omitted passages) [cross-reference G1-RA-008]; G1-RA-005 Sub-entry 3 (account-scope connection

— the "other bank accounts" passage bears on Hubbuch's pre-trial knowledge of accounts excluded from Gov't Ex. 501) [cross-connection — see Omitted Passage 5 below]; Napue v. Illinois, 360 U.S. 264, 269–71 (1959); Giglio v. United States, 405 U.S. 150, 153–54 (1972)

EXACT QUOTE OR RECORD LANGUAGE:

All five passages are from Movant Ex. F — DOJ/FBI transcript of Gov't Ex. 401 (December 2018 Vance/Hubbuch interview). None were presented to the jury through the Government's trial examination.

Omitted Passage 1 — Letter location and accessibility: Vance disclosed the letter's specific location to Hubbuch: with his attorney. When Hubbuch pressed Vance to state verbally what the letter contained rather than continuing to refer to it, Vance responded: "Because the letter is so easy for you to get" — asserting directly to the Government's investigator that the letter was readily obtainable.

Omitted Passage 2 — Exculpatory significance: "if there's some letter out there that-that-that is exculpatory for you"

Omitted Passage 3 — Blame framing: "all the blame on Molly."

Omitted Passage 4 — Prosecutorial follow-up commitment: "I will ask the prosecutor, the A.U.S.A. to reach out to your attorney for this letter."

Omitted Passage 5 — Other bank accounts: "not only those bank statements but … other bank accounts."

RECORD-PROOF POINT:

This entry establishes that Movant Ex. F — the DOJ/FBI transcript of Gov't Ex. 401 — contains five independently significant passages that were omitted from the Government's

trial presentation. Each passage is addressed in a separate sub-section below. Together, they establish that the December 2018 interview was not a passing exchange in which a letter was vaguely mentioned; it was a substantive discussion in which the Government's own investigator identified the letter's location, characterized it as potentially exculpatory, acknowledged it placed responsibility on Molly McKinnon, recognized it as easily obtainable, committed to pursuing it through the prosecuting AUSA, and separately discussed additional bank accounts beyond those the Government would ultimately exclude in Gov't Ex. 501. None of that context was presented to the jury.

Omitted Passage 1 — Letter location and accessibility. Vance did not merely mention the letter in the abstract. He told Hubbuch specifically where the letter was located: with his attorney. When Hubbuch then pressed Vance to state verbally what the letter contained — rather than continuing to refer Hubbuch to the letter — Vance responded: "Because the letter is so easy for you to get." That statement is legally significant in two respects. First, it confirmed to Hubbuch — directly and in Vance's own words — that the letter was not a difficult document to retrieve. Second, it was made not as a passing comment but as a direct response to an FBI investigator's demand for the letter's contents: Vance was affirmatively redirecting Hubbuch from a verbal account to the document itself, asserting that the document was the appropriate source and that obtaining it would be easy. Together, Vance's disclosure of the letter's location (with his attorney) and his direct assertion of easy retrievability established — from December 2018 forward — a specific, directed retrieval path of which the Government's lead investigator had personal, contemporaneous knowledge. The significance of that sequence is legally precise: it eliminates any plausible post-interview claim by the Government that the letter was difficult to locate or obtain. A document whose

specific location had been disclosed to the Government's investigator by the very person directing him to retrieve it, who simultaneously assured him that retrieval would be easy, was a readily obtainable document from December 2018 forward. The jury received none of that. It received only "a letter that Molly had" — a characterization that gave it no basis to evaluate the Government's ability or obligation to obtain the letter after December 2018.

Omitted Passage 2 — Exculpatory significance. Hubbuch acknowledged that the letter might be "exculpatory for you" — recognizing, in his own words, that the letter had the potential to exonerate Vance. First, he acknowledged that the letter might be "exculpatory for you" — recognizing, in his own words, that the letter had the potential to exonerate Vance. Second, he characterized the letter as placing "all the blame on Molly" — recognizing that the letter's content attributed responsibility to McKinnon in a way that distinguished her role from Vance's. Both characterizations were made by the Government's lead investigator, in December 2018, based on whatever he understood about the letter's contents from Vance's description of it. Together, they establish that by December 2018 the Government's investigator had formed a view — from Vance's own account — that the McKinnon Letter was a potentially exculpatory document that assigned responsibility to McKinnon. That investigative characterization was directly relevant to two issues at trial: (1) whether a meaningful distinction existed between Vance's role and McKinnon's; and (2) whether the letter was a document the Government should have obtained, disclosed, and allowed the jury to evaluate. The jury received neither Hubbuch's acknowledgment of the letter's exculpatory potential nor his characterization of its blame-attribution content. Those omissions allowed the jury to evaluate the letter reference without any framework for understanding why the

Government's own investigator, in December 2018, had treated the letter as significant enough to warrant AUSA-level follow-up.

Omitted Passage 3 — Blame framing. Hubbuch characterized the McKinnon Letter as placing "all the blame on Molly" — recognizing that the letter's content attributed responsibility to McKinnon in a way that distinguished her role from Vance's. That characterization was made by the Government's lead investigator in December 2018, based on Vance's description of the letter's contents, before any charges were filed or any trial strategy was formed. The jury received neither Hubbuch's acknowledgment of the letter's exculpatory potential (Passage 2) nor his characterization of its blame-attribution content (Passage 3). Those omissions allowed the jury to evaluate the letter reference without any framework for understanding why the Government's own investigator, in December 2018, had treated the letter as significant enough to warrant AUSA-level follow-up. Omitted Passage 4 — Prosecutorial follow-up commitment. Hubbuch told Vance: "I will ask the prosecutor, the A.U.S.A. to reach out to your attorney for this letter." That statement is the most legally significant of the five omitted passages for the Government knowledge analysis under Napue and Giglio. It establishes three things simultaneously: (1) Hubbuch treated the letter as significant enough to escalate beyond the investigative level to the prosecutorial level; (2) Hubbuch personally committed — in his own words, on the record, in a December 2018 FBI interview — to involving the AUSA in obtaining the letter; and (3) the commitment was directed and specific: the AUSA was to contact Vance's attorney, the identified custodian, to retrieve the letter. That commitment placed the McKinnon Letter on the prosecutorial radar at the AUSA level no later than December 2018 — before any charges were filed, before any trial strategy was formed, and before any trial restriction could

be imposed. From the moment Hubbuch made that commitment, the prosecuting AUSA was on constructive, if not actual, notice that a specific, locatable, potentially exculpatory document existed, that the Government's lead investigator had committed to pursuing it, and that it addressed McKinnon's role and knowledge. The jury received none of that. It heard Hubbuch reference a letter without any suggestion that he had committed in December 2018 to pursuing it through the prosecuting AUSA — and it later heard the Government argue in rebuttal that the documentary record contained no proof of the defense that document addressed.

Omitted Passage 5 — Other bank accounts. During the same December 2018 interview, Hubbuch discussed "not only those bank statements but … other bank accounts." This passage is analytically distinct from the three letter-related passages above. Its significance is not to the McKinnon Letter but to the account-scope issue addressed in G1-RA-005 Sub-entry 3. Hubbuch's December 2018 reference to "other bank accounts" — beyond the bank statements already referenced — establishes that at least as early as December 2018, the Government's lead investigator was aware that the NGEP operation involved additional banking accounts beyond whatever subset he was then discussing. That awareness predated the construction of Gov't Ex. 501. If Hubbuch was discussing "other bank accounts" in December 2018, and those other accounts included the NGEP Bank of America account, the Whitaker Bank account, and the Brand Bank account — all of which were excluded from Gov't Ex. 501 — then Hubbuch's December 2018 interview record is independently relevant to the account-scope knowledge analysis at G1-RA-005 Sub-entry 3. The jury's failure to hear this passage deprived it of additional context bearing on what Hubbuch knew about

account scope before he constructed the financial reconstruction he later certified as comprehensive at trial.

FALSE TESTIMONY / MISLEADING IMPRESSION:

The misleading impressions created by the omission of all five Movant Ex. F passages operate at two reinforcing levels — one specific to the letter-related passages, one specific to the account-scope passage.

First — the letter-related passages (Passages 1 through 4). The combined omission of Passages 1, 2, 3, and 4 created a layered false impression. The jury received "a letter that Molly had" — and nothing more. It did not receive: (a) that Vance had disclosed the letter's specific location to Hubbuch (with his attorney) and then personally assured Hubbuch that the letter was easy for him to obtain, in direct response to Hubbuch's demand for its contents; (b) that Hubbuch had characterized the letter as potentially exculpatory; (c) that Hubbuch had characterized the letter as placing "all the blame on Molly"; or (d) that Hubbuch had committed to involving the prosecuting AUSA in obtaining it. Each omission independently qualified the minimal reference the jury received. Together, they created a compounded false impression: the jury evaluated the McKinnon Letter as a vague passing reference of uncertain significance — when the Government's own investigator, in December 2018, had been told exactly where the letter was, had been personally assured by Vance that retrieval was easy, and had himself characterized the letter as potentially exculpatory and significant enough to warrant AUSA-level follow-up. Under Napue, presenting a reference to evidence while omitting the context that establishes its significance — and then exploiting the resulting evidentiary void in rebuttal — is the affirmative misrepresentation the Court identified in Napue, 360 U.S. at 269.

Second — the account-scope passage (Passage 5). Hubbuch's December 2018 reference to "other bank accounts" — if it encompassed the NGEP accounts later excluded from Gov't Ex. 501 — creates an additional layer of false impression for the account-scope violation at G1-RA-005 Sub-entry 3. The jury was never given the December 2018 interview context establishing that Hubbuch was aware of additional banking accounts more than four years before trial. That omission allowed Hubbuch's "get a handle" trial testimony at Trial Tr., ECF No. 176, PageID #1186 to stand as the jury's principal framework for evaluating the scope of his financial investigation — when the Government's own recorded exhibit, in Movant Ex. F, contained Hubbuch's own December 2018 reference to accounts beyond those he was then discussing.

GOVERNMENT KNOWLEDGE / FAILURE TO CORRECT:

Government knowledge for all five omitted passages is established at a single unified level: Hubbuch personally participated in the December 2018 interview. He received Vance's location disclosure (Passage 1). He made the exculpatory characterization (Passage 2) and the blame framing (Passage 3) himself. He personally committed to involving the AUSA (Passage 4). He personally discussed the additional bank accounts (Passage 5). All five passages are Hubbuch's own words or responses, made in his own interview, recorded in his own Government's exhibit. The DOJ/FBI transcript of that interview — Movant Ex. F — was the Government's own investigative record.

The prosecutorial knowledge established by Passage 4 is independently dispositive. Hubbuch committed — on the record, in December 2018 — to involving the prosecuting AUSA in obtaining the McKinnon Letter. From that commitment forward, the prosecuting AUSA was on constructive notice of the letter's existence, location, exculpatory potential, and Hubbuch's

characterization of it. Whether the AUSA followed through on Hubbuch's commitment or not, the commitment itself established Government knowledge at the prosecutorial level no later than December 2018 — four years before trial. The Government therefore cannot claim, through any theory of compartmentalized investigative knowledge, that the prosecutorial arm of the Government was unaware of the McKinnon Letter when it argued in rebuttal at Trial Tr., ECF No. 179, PageID #1894 that the documentary record contained no proof of the Chamblee-source defense.

Under Napue v. Illinois, 360 U.S. at 269, and Giglio v. United States, 405 U.S. at 153–54, the Government's obligations extend to ensuring that the impressions created through its presentations and arguments are not materially false. The omission of all five Movant Ex. F passages — each individually significant, collectively comprehensive — left the jury with a false impression of what the Government knew, when it knew it, what the letter contained, and what investigative steps had been committed to in response to learning of the letter's existence. The failure to correct that false impression through any witness, exhibit, or argument during trial, and the subsequent exploitation of the resulting evidentiary void in rebuttal, constitutes the violation.

MATERIALITY / PREJUDICE:

Under Napue v. Illinois, the standard is whether the misleading presentation "could in any reasonable likelihood have affected the judgment of the jury." 360 U.S. at 271. That standard is satisfied here on three independently sufficient and mutually reinforcing bases.

First — the specific retrievability of the letter after December 2018. Passage 1 established that the letter was not merely a vague reference to a document of uncertain location. It was a document whose specific custodian and location had been disclosed to the Government's lead

investigator by the very person directing him to retrieve it — who simultaneously and directly assured him, in the investigator's own recorded interview, that the letter was easy to obtain. A jury that understood the letter's specific retrievability — that Vance himself had told Hubbuch in December 2018 exactly where the letter was and that obtaining it would be easy — would have evaluated the Government's failure to retrieve, disclose, and present the letter through an entirely different lens. There is a reasonable likelihood that the jury would have assessed the Government's investigation, its knowledge of potentially exculpatory evidence, and its obligation to ensure a fair trial materially differently had it understood that the Government's investigator had been personally directed in December 2018 to a specific, accessible, attorney-held document — and told by the source himself that obtaining it would be easy.

Second — the AUSA follow-up commitment and its prosecutorial significance. Passage 4 — Hubbuch's commitment to involve the prosecuting AUSA in obtaining the letter — established Government knowledge at the prosecutorial level no later than December 2018. A jury that understood that the prosecuting AUSA had been specifically identified by the Government's own investigator as the person who would reach out to obtain a potentially exculpatory letter — and that the Government's rebuttal four years later claimed there was no documentary proof of the defense that letter addressed — could not have evaluated the Government's credibility, investigative integrity, or the reliability of its rebuttal argument with the same confidence. There is a reasonable likelihood that the jury would have evaluated the Government's "shred of proof" rebuttal materially differently had it known that the Government's own investigator had committed in December 2018 to involving the AUSA in retrieving the very document the rebuttal claimed had no existence in the record.

Third — the account-scope cross-connection. Hubbuch's December 2018 reference to "other bank accounts" in Movant Ex. F — the Government's own recorded investigative transcript — establishes that Hubbuch was aware of banking accounts beyond the scope of what was ultimately included in Gov't Ex. 501. That pre-trial awareness extends the materiality of the omitted passages beyond the letter-related analysis to the financial-summary violation at G1-RA-005 Sub-entry 3. The jury was never given the December 2018 interview context establishing that Hubbuch discussed additional banking accounts before he constructed the financial reconstruction that excluded all three NGEP accounts. That omitted context provides Government-produced evidence that Hubbuch's "get a handle" investigative method testimony was not merely imprecise but affirmatively inconsistent with his own December 2018 investigative record — and the jury had no basis to evaluate that inconsistency because the interview context was withheld entirely.

Fourth — direct amplification of the rebuttal prejudice. As established at G1-RA-009, the selective trial presentation created the evidentiary void the Government exploited in rebuttal. G1-RA-010 establishes the specific content of what was omitted. Together, G1-RA-009 and G1-RA-010 show the complete picture: the Government introduced a minimal letter reference while omitting five independently significant passages — three establishing the letter's location, exculpatory significance, and the Government's commitment to retrieve it; one establishing investigative account-scope awareness — and then told the jury in rebuttal that the documentary record was empty of proof for the defense those omitted passages addressed. There is a reasonable likelihood that the jury would have evaluated the Government's rebuttal argument, and its confidence in the Government's entire investigative

case, materially differently had it received all five omitted passages in addition to the minimal reference the Government chose to present.

CROSS-GROUND NOTATION:

Ground Two (App. C, G2-RA-004): The Ground Two McKinnon Letter/Gov't Ex. 401 pattern anchor cross-references the complete G1-RA-008 through G1-RA-014 sequence — including this entry — as the trial-record documentation of the three-step documentary-void sequence that Ground Two's IAC theory identifies as a critical trial-stage failure. See App. C, G2-RA-004.

Ground Three (App. D, G3-RA-007; G3-RA-010): G3-RA-007 (the McKinnon Letter/Gov't Ex. 401 trial-IAC entry) and G3-RA-010 (the Day 6 preservation anchor) cross-reference the G1-RA-008 through G1-RA-013 group as the trial-record foundation for the Ground Three selective-presentation, omitted-context, and trial-restriction theory. See App. D, G3-RA-007; G3-RA-010.

Ground Five (App. F, G5-RA-007): The Ground Five McKinnon Letter/Gov't Ex. 401 incorporation entry cross-references the G1-RA-008 through G1-RA-014 group as the trial-record foundation for the most outcome-material component of the omitted appellate Napue claim. See App. F, G5-RA-007.

G1-RA-011 — Inviolable Source Separation: Gov't Ex. 401 (Audio Recording), Movant Ex. F (DOJ/FBI Transcript), and Movant Ex. C (McKinnon Letter) Are Three Distinct Sources Serving Three Distinct Evidentiary Functions in the Ground One Proof Architecture — Conflation of Any Two Destroys the Omission Theory

RECORD CITATION / SOURCE:

Gov't Ex. 401 (audio recording of the December 2018 Vance/Hubbuch interview — the Government's own trial exhibit; introduced at Trial Tr., ECF No. 177, PageID ##1521–1522 through Hubbuch's testimony; the source from which Movant Ex. F was transcribed; NOT the transcript and NOT the McKinnon Letter) ; Movant Ex. F (DOJ/FBI transcript of Gov't Ex. 401 — a separate exhibit from the recording itself; the document preserving the fuller December 2018 interview context omitted from the Government's trial presentation, including the five passages addressed in G1-RA-010; NOT the recording and NOT the

McKinnon Letter) ; Movant Ex. C (the McKinnon Letter — authored November 14, 2018; addressed to Vance's attorney, c/o Douglas Vance; Movant's pre-indictment contemporaneous state-of-mind document; the underlying document discussed in the December 2018 interview; NOT the recording and NOT the transcript); Trial Tr., ECF No. 177, PageID ##1521–1522 (Hubbuch — the trial presentation through which the jury received the selective Gov't Ex. 401 letter reference — "a letter that Molly had") [cross-reference G1-RA-009]; Trial Tr., ECF No. 179, PageID ##1776–1779 (trial restriction — affected Movant Ex. C, not Gov't Ex. 401 or Movant Ex. F) [cross-reference G1-RA-008; G1-RA-012]; Trial Tr., ECF No. 179, PageID #1792 and PageID #1796 (McKinnon — independent Chamblee-source testimony only; NOTE: McKinnon did NOT testify about Movant Ex. C — the letter was completely excluded from the jury by the court's absolute bar at PageID ##1776–1779; PageID #1792 and #1796 establish independent Chamblee-source evidence, not letter contents) [cross-reference G1-RA-008]; Trial Tr., ECF No. 179, PageID #1894 (Government rebuttal — exploited the evidentiary void created by the selective Gov't Ex. 401 presentation, the omission of Movant Ex. F context, and the trial restriction on Movant Ex. C) [cross-reference G1-RA-013]

EXACT QUOTE OR RECORD LANGUAGE:

Gov't Ex. 401: The audio recording of the December 2018 Vance/Hubbuch interview. The Government's own trial exhibit. Introduced at Trial Tr., ECF No. 177, PageID ##1521–1522. The jury's exposure to the December 2018 interview was limited to whatever was presented through this exhibit and Hubbuch's testimony at those pages.

Movant Ex. F: The DOJ/FBI transcript of the December 2018 recorded interview — Gov't Ex. 401 transcribed. A separate exhibit from the recording itself. Contains the five omitted

passages addressed in G1-RA-010: the letter location disclosure and "easy to get" acknowledgment; the "exculpatory for you" and "all the blame on Molly" characterizations; the "I will ask the prosecutor, the A.U.S.A. to reach out to your attorney" commitment; and the "other bank accounts" reference. None of these passages were presented to the jury through the Government's trial examination. [Cross-reference G1-RA-010]

Movant Ex. C: Movant Ex. C: The McKinnon Letter. Authored November 14, 2018 — before the December 2018 FBI recording, before any charges, before any criminal proceedings. Addressed to Vance's attorney (name redacted), c/o Douglas Vance. The underlying pre-indictment contemporaneous document that Vance described to Hubbuch during the December 2018 interview. Movant's own written account of her limited role, lack of ownership or control, reliance on Chamblee-supplied information, and the timing of when she learned the sales figures were false. NOT entered through Movant's trial testimony — the court's absolute bar at Trial Tr., ECF No. 179, PageID ##1776–1779 prohibited McKinnon from testifying about the letter's contents. The letter was completely excluded from the jury. Filed as Defendant Vance Court Exhibit 1 — court record only, not seen by the jury. [Cross-reference G1-RA-008]

RECORD-PROOF POINT:

This entry establishes the three-way source separation that the entire G1-RA-008 through G1-RA-015 sequence depends upon. The separation is not a formality. It is structurally necessary to the Napue omission theory underlying Ground One. Each source served a distinct evidentiary function at trial, and the distinction among them is what makes the omission theory legally coherent.

Gov't Ex. 401 — what the jury received. Gov't Ex. 401 is the Government's own audio recording. Its evidentiary significance for Ground One is that it establishes the mechanism by which the jury received the minimal letter reference. Trial Tr., ECF No. 177, PageID ##1521–1522. Whatever the jury learned about the December 2018 interview — including "a letter that Molly had" — it learned through the Government's selective use of this exhibit. Gov't Ex. 401 therefore defines the boundary of what was before the jury from the December 2018 interview. Everything the jury received about the interview came through or in connection with this exhibit. Everything the jury did not receive — the five omitted passages — came from the same interview but was not surfaced through this exhibit.

Movant Ex. F — what the jury did not receive. Movant Ex. F is the DOJ/FBI transcript of that same recording. It is not a separate interview. It is not a different document. It is the textual record of the same December 2018 conversation preserved in Gov't Ex. 401. Its evidentiary significance for Ground One is that it establishes what the December 2018 interview contained beyond what the Government chose to present. The five omitted passages addressed in G1-RA-010 — the letter location disclosure, the exculpatory characterization, the AUSA follow-up commitment, and the account-scope reference — are all from Movant Ex. F. Those passages document what was said during the December 2018 interview that the jury was never given. Movant Ex. F is therefore the source of the omission theory: it establishes that the interview was more significant than the "a letter that Molly had" reference the jury received, and that the fuller context went directly to knowledge, intent, attribution, and the Government's investigative obligations under Napue and Giglio.

Movant Ex. C — the independent pre-indictment document. Movant Ex. C is the McKinnon Letter itself. It is not derived from the recording and is not part of the interview. It predates

the December 2018 interview by approximately one month. Its evidentiary significance for Ground One is categorically different from both the recording and the transcript: it is the underlying pre-indictment contemporaneous document that establishes, in Molly McKinnon's own words written before she was a defendant, the same Chamblee-source account she testified to at trial. The letter did not enter the evidentiary record through Gov't Ex. 401, Movant Ex. F, or Movant's trial testimony. The court's ruling at Trial Tr., ECF No. 179, PageID ##1776-1779, prohibited any testimony concerning the letter's contents, and the letter was never presented to the jury. Although part of the court record, it remained completely excluded from the jury's consideration. Its temporal significance — authored before charges, before a criminal defense strategy, before any litigation motive existed — is independent of and irreducible to the December 2018 interview in which Vance described it to Hubbuch. That temporal significance is only preserved if Movant Ex. C is kept distinct from both Gov't Ex. 401 and Movant Ex. F.

Why conflation destroys the omission theory. The Ground One Napue violation rests on a precise three-part structure: (1) the jury received the minimal letter reference through Gov't Ex. 401 at Trial Tr., ECF No. 177, PageID ##1521–1522; (2) the jury did not receive the fuller interview context preserved in Movant Ex. F, which documented the five omitted passages establishing the letter's location, exculpatory significance, and the AUSA follow-up commitment; and (3) the jury was limited in its access to the letter itself — Movant Ex. C — through the trial restriction at Trial Tr., ECF No. 179, PageID ##1776–1779, while the Government then argued in rebuttal at Trial Tr., ECF No. 179, PageID #1894 that no documentary proof existed for the defense the letter addressed. Each step in that structure depends on the sources remaining distinct. If Gov't Ex. 401 and Movant Ex. F are conflated,

there is no omission — the jury received "the interview" and it is impossible to identify what was withheld. If Movant Ex. F and Movant Ex. C are conflated, the pre-indictment temporal significance of the letter collapses into the interview record, and the letter loses its most powerful corroborative feature: that it was written before Molly McKinnon was a defendant. If Gov't Ex. 401 and Movant Ex. C are conflated, the recording and the letter merge into a single source, making it impossible to assess whether the jury received the letter's contents or only a reference to the letter's existence. Maintaining all three as distinct sources is therefore not a technical formality — it is the structural prerequisite to the entire Ground One Napue analysis from G1-RA-008 through G1-RA-015.

FALSE TESTIMONY / MISLEADING IMPRESSION:

The misleading impression this entry addresses is the risk that the recording, transcript, and letter could be treated as interchangeable sources — whether by the court evaluating the § 2255 motion, by the Government opposing it, or in any future evidentiary hearing. That conflation is not a hypothetical risk. It is a natural consequence of the way these three sources interact: they all concern the same subject matter (the McKinnon Letter), they were all produced in proximity to one another (November–December 2018), and two of them (Gov't Ex. 401 and Movant Ex. F) are derived from the same underlying interview. The structural pressure to treat them as interchangeable is real — and resisting that pressure is essential to the integrity of the Ground One proof.

The specific misleading impressions that source conflation would create are as follows. Conflating Gov't Ex. 401 and Movant Ex. F would suggest the jury received the full interview context when it received only the minimal reference — eliminating the omission theory at G1-RA-010. Conflating Movant Ex. F and Movant Ex. C would suggest that the

fuller interview context and the letter itself are the same document — eliminating the independent pre-indictment temporal significance of Movant Ex. C established at G1-RA-008. Conflating Gov't Ex. 401 and Movant Ex. C would suggest the jury received the letter through the recording — eliminating the trial restriction significance at G1-RA-012 and the rebuttal exploitation analysis at G1-RA-013. Any one of those conflations would undermine a distinct component of the Ground One Napue proof. All three conflations together would reduce the entire G1-RA-008 through G1-RA-013 sequence to a single undifferentiated reference to "a letter and an interview" — which is precisely the impression the Government's selective trial presentation was designed to create.

GOVERNMENT KNOWLEDGE / FAILURE TO CORRECT:

The Government's knowledge of the distinction among the three sources is established at the highest level of precision: the Government created all three. The Government conducted the December 2018 interview that became Gov't Ex. 401. The Government's own DOJ/FBI produced the transcript of that interview that became Movant Ex. F. The Government obtained, tracked, and became aware of Movant Ex. C — the McKinnon Letter — through the December 2018 interview, through Hubbuch's commitment to pursue it through the prosecuting AUSA, and through the trial record that followed. [Cross-reference G1-RA-008; G1-RA-010.]

The Government therefore cannot claim that source confusion prevented it from distinguishing among these three materials during trial. It knew Gov't Ex. 401 was a recording. It knew Movant Ex. F was a transcript. It knew Movant Ex. C was a letter. It knew each source served a distinct evidentiary function. Its decision to present only the minimal reference from Gov't Ex. 401, to omit the Movant Ex. F context, and to participate in a trial

restriction that limited Movant Ex. C — and then to argue in rebuttal that no documentary proof existed — was made with full knowledge of what each source contained and what each had been used for. The Napue and Giglio obligations that attach to the Government's knowing use of those three sources apply with full force to each.

MATERIALITY / PREJUDICE:

The source separation is material because it is the evidentiary architecture on which the entire G1-RA-008 through G1-RA-015 Ground One sequence rests. Without it, none of the individual entry analyses can be accurately evaluated. The prejudice this entry addresses is therefore not the prejudice of a single false statement or omitted document — it is the structural prejudice that would result from any conflation of the three sources in evaluating the Ground One Napue violations on collateral review.

Specifically: if the court reviewing the § 2255 motion conflates Gov't Ex. 401 with Movant Ex. F, it cannot assess the omission theory at G1-RA-010 — it cannot identify what the jury received from the interview versus what it did not. If it conflates Movant Ex. F with Movant Ex. C, it cannot assess the independent corroborative significance of the pre-indictment letter at G1-RA-008 — the letter loses its temporal anchor. If it conflates Gov't Ex. 401 with Movant Ex. C, it cannot assess the trial restriction at G1-RA-012 or the rebuttal exploitation at G1-RA-013 — it cannot determine whether the jury had access to the letter's contents or only to a reference to the letter's existence. The source separation preserved in this entry is therefore the structural prerequisite to a fair and accurate evaluation of every subsequent Ground One entry. Maintaining that separation in all court-facing documents — motion, appendices, and evidentiary hearing submissions — is necessary to preserve the full prejudice analysis Ground One requires.

Under Napue v. Illinois, 360 U.S. at 271, the court evaluates whether the misleading presentation "could in any reasonable likelihood have affected the judgment of the jury." That evaluation requires knowing with precision what was before the jury and what was not — which requires the source separation this entry establishes. The failure to maintain that separation in any filing would itself undermine the ability to demonstrate the prejudice the Ground One Napue violations caused.

CROSS-GROUND NOTATION:

Ground Two (App. C, G2-RA-004): The Ground Two McKinnon Letter/Gov't Ex. 401 pattern anchor cross-references the complete G1-RA-008 through G1-RA-014 sequence — including this entry — as the trial-record documentation of the three-step documentary-void sequence that Ground Two's IAC theory identifies as a critical trial-stage failure. See App. C, G2-RA-004.

Ground Three (App. D, G3-RA-007; G3-RA-010): G3-RA-007 (the McKinnon Letter/Gov't Ex. 401 trial-IAC entry) and G3-RA-010 (the Day 6 preservation anchor) cross-reference the G1-RA-008 through G1-RA-013 group as the trial-record foundation for the Ground Three selective-presentation, omitted-context, and trial-restriction theory. See App. D, G3-RA-007; G3-RA-010.

Ground Five (App. F, G5-RA-007): The Ground Five McKinnon Letter/Gov't Ex. 401 incorporation entry cross-references the G1-RA-008 through G1-RA-014 group as the trial-record foundation for the most outcome-material component of the omitted appellate Napue claim. See App. F, G5-RA-007.

G1-RA-012 — Trial Restriction on McKinnon Letter: Government Participated in a Restriction That Prevented Full Presentation of Movant Ex. C — the Pre-Indictment Contemporaneous State-of-Mind Letter — After First Introducing the Letter Reference Through Its Own Recorded Exhibit, While Its Own Investigator Had Committed in December 2018 to Obtaining the Letter Through the Prosecuting AUSA

RECORD CITATION / SOURCE:

Trial Tr., ECF No. 179, PageID ##1776–1779 (court ruling — ABSOLUTE BAR on McKinnon Letter: letter completely excluded from jury; all counsel gagged from referencing

letter or its contents in closing arguments; letter filed as Defendant Vance Court Exhibit 1 — court record only, not seen by jury; McKinnon did NOT testify about the letter — the absolute bar prohibited it) ; Trial Tr., ECF No. 179, PageID #1792 and PageID #1796 (McKinnon — independent Chamblee-source testimony only; NOT letter testimony; completely independent of the McKinnon Letter; Chamblee directed QuickBooks entries, Chamblee supplied sales information, Dell Jaggers financial information reflected Chamblee's reported sales) ; Trial Tr., ECF No. 177, PageID ##1521–1522 (Hubbuch non-receipt testimony — confirmed; Agent Hubbuch testified at trial that he never received or obtained the McKinnon Letter, which creates an independent Napue violation: his December 2018 commitment to involve the AUSA in obtaining the letter establishes the Government's retrieval obligation; testimony that he never received it is either false or an admission of the Government's failure to follow through on its own investigator's commitment to obtain potentially exculpatory evidence); Trial Tr., ECF No. 177, PageID ##1521–1522 (Hubbuch — "a letter that Molly had" — selective letter reference introduced through Gov't Ex. 401 before the restriction was imposed; the jury's awareness of the letter's existence was established before the letter's full contents were restricted from development) [cross-reference G1-RA-009]; Movant Ex. C (McKinnon Letter — November 14, 2018; addressed to Vance's attorney (name redacted), c/o Douglas Vance; the exhibit whose full presentation was restricted; the pre-indictment contemporaneous state-of-mind document completely excluded from the jury by the court's absolute bar at PageID ##1776–1779; its contents NEVER entered the trial record through Movant's testimony — the absolute bar prohibited any such testimony; the jury received only awareness that a letter existed through Gov't Ex. 401) [cross-reference G1-RA-008; G1-RA-011]; Movant Ex. F (DOJ/FBI transcript of Gov't

Ex. 401 — Hubbuch's December 2018 commitment: "I will ask the prosecutor, the A.U.S.A. to reach out to your attorney for this letter" — establishes that the Government had committed to obtaining the letter through the AUSA no later than December 2018, before any restriction was possible) [cross-reference G1-RA-010]; McKinnon Decl. ¶¶11–15 (independent declaration record of letter contents — not subject to same restriction as Movant Ex. C) [cross-reference G1-RA-008]; Trial Tr., ECF No. 179, PageID #1894 (Government rebuttal — "a shred of proof" / "a single item of proof" / "a single email or document" — rebuttal exploitation of the documentary void created in part by the trial restriction) [cross-reference G1-RA-013]; Movant Ex. 45 / Defense Ex. 82 (contemporaneous journals — companion pre-indictment documentary source in Government's possession; Government's rebuttal argument was false as to both Movant Ex. C and Movant Ex. 45 simultaneously) [cross-reference G1-RA-003(A)]; Napue v. Illinois, 360 U.S. 264, 269–71 (1959); Giglio v. United States, 405 U.S. 150, 153–54 (1972)

EXACT QUOTE OR RECORD LANGUAGE:

Trial Tr., ECF No. 179, PageID ##1776–1779 (trial dispute / restriction): Nature and scope of restriction.

Trial Tr., ECF No. 177, PageID ##1521–1522 (Hubbuch non-receipt testimony): Agent Hubbuch testified at trial that he never received or obtained the McKinnon Letter.

Trial Tr., ECF No. 177, PageID ##1521–1522 (Hubbuch — through Gov't Ex. 401 — before restriction): "a letter that Molly had" [Confirmed — cross-reference G1-RA-009.]

Movant Ex. F (Hubbuch — December 2018 — before any restriction was possible): "I will ask the prosecutor, the A.U.S.A. to reach out to your attorney for this letter." [Confirmed — cross-reference G1-RA-010.]

Trial Tr., ECF No. 179, PageID #1894 (Government rebuttal — after restriction): "where in the records that you've seen, where in the emails, where in the documents is there a shred of proof that Mr. Chamblee provided Ms. McKinnon information to be put into those financial documents?"; "There isn't a single item of proof in the document -- in the emails that prove that."; "a single email or document" [Confirmed — cross-reference G1-RA-013.]

RECORD-PROOF POINT:

This entry establishes the central mechanism of the Ground One documentary-void violation: the deliberate three-step sequence through which the Government introduced awareness of the McKinnon Letter, restricted its full development, and then exploited the resulting void in its final argument to the jury. That sequence — introduce reference, restrict full presentation, exploit void in rebuttal — is the structural Napue violation that connects G1-RA-009, G1-RA-010, G1-RA-012, and G1-RA-013 into a unified prosecutorial misconduct chain.

Step one — introduce the letter reference through the Government's own exhibit. At Trial Tr., ECF No. 177, PageID ##1521–1522, the Government used its own Gov't Ex. 401 and Hubbuch's testimony to place before the jury the existence of "a letter that Molly had." That reference came from the Government's own recorded exhibit, through the Government's own witness, in the Government's own case. From the moment the jury heard that reference, it knew a letter existed. That awareness was established before the trial restriction arose.

Step two — restrict the letter's full presentation. At Trial Tr., ECF No. 179, PageID ##1776–1779, the court issued an ABSOLUTE BAR on the McKinnon Letter — a three-part ruling: (1) the letter was completely excluded from the jury ("It will not be allowed to go back to the jury"); (2) all counsel were gagged from referencing the letter or its contents in closing arguments; and (3) the letter was filed as Defendant Vance Court Exhibit 1 — court record only, never seen by the jury. McKinnon did NOT testify about the letter's contents at PageID ##1791–1796 or at any other page IDs — the absolute bar prohibited it. Her testimony at PageID #1792 and PageID #1796 addressed the Chamblee-source chain entirely independently of the letter. The result was not "restricted access" to the letter's contents — it was complete exclusion. The jury received zero access to what the letter said. The result was a structural asymmetry: the jury knew the letter existed because the Government's own exhibit and witness had referenced it, but it could not evaluate the letter's full contents because those contents were restricted from complete development at trial. The jury was left with awareness without substance — exposure to the letter's existence without the full benefit of what the letter actually said.

Step three — exploit the void in rebuttal. At Trial Tr., ECF No. 179, PageID #1894, after the court's absolute bar had completely excluded the letter from the jury and gagged counsel from referencing it in closing, the Government argued in rebuttal that there was not "a shred of proof," not "a single item of proof," and not "a single email or document" supporting the Chamblee-source defense. That argument was made while the Government possessed Movant Ex. C — a pre-indictment contemporaneous document in Molly McKinnon's own words addressing exactly the subjects the rebuttal claimed had no documentary support — and while the Government had participated in a restriction that prevented the jury from fully

evaluating that document. The Government created the documentary void it then exploited. Under Napue v. Illinois, 360 U.S. 264, 269 (1959), the Government violates due process when it allows false impressions to stand uncorrected before the jury. A Government that restricts a document's full presentation and then argues the documentary record is empty of what that document addressed has not merely failed to correct a false impression — it has actively manufactured the conditions for one.

The Hubbuch non-receipt testimony and its independent significance. If Hubbuch testified at trial that he never received or obtained the McKinnon Letter , that testimony creates an independent Napue angle that reinforces the restriction analysis. The December 2018 interview record — Movant Ex. F — establishes that Hubbuch personally committed to involving the prosecuting AUSA in obtaining the letter: "I will ask the prosecutor, the A.U.S.A. to reach out to your attorney for this letter." That commitment was made on the record, in the Government's own recorded exhibit, in December 2018. If Hubbuch then testified at trial that he never received the letter, that testimony is analytically one of two things — each independently establishing a Napue violation. Either: (1) the testimony was false — Hubbuch did receive the letter or the AUSA did obtain it — in which case the non-receipt testimony was a lie told to the jury to support the documentary-void narrative the Government exploited in rebuttal; or (2) the testimony was true — the Government never followed through on Hubbuch's December 2018 commitment — in which case the non-receipt testimony is an admission that the Government failed to retrieve a specifically identified, specifically located, potentially exculpatory document after its own lead investigator had committed on the record to obtaining it through the prosecuting AUSA.

Either alternative is incompatible with the Government's rebuttal argument that the documentary record was empty of proof for the Chamblee-source defense.

The December 2018 commitment as a pre-restriction obligation. Hubbuch's commitment in Movant Ex. F — that he would ask the AUSA to reach out to Vance's attorney for the letter — predated the trial restriction by approximately four years. From December 2018 forward, the Government was under a self-imposed investigative obligation — created by its own lead investigator's own words — to obtain the McKinnon Letter. That obligation existed before any trial strategy was formed, before any restriction could be imposed, and before any rebuttal argument was crafted. The Government's subsequent participation in a trial restriction that limited the letter's full presentation, followed by a rebuttal argument exploiting the resulting void, occurred against the backdrop of a pre-existing retrieval commitment the Government had made to itself in December 2018 and apparently never fulfilled. The restriction and the rebuttal exploitation are therefore not independent prosecutorial decisions — they are the downstream consequences of the Government's failure to honor its own investigator's December 2018 commitment to obtain and disclose a document its investigator had characterized as potentially exculpatory.

FALSE TESTIMONY / MISLEADING IMPRESSION:

The misleading impressions in this entry operate at three reinforcing levels.

First — the structural asymmetry: letter reference without letter substance. The jury received awareness of the letter through the Government's own exhibit and witness before the restriction was imposed. Trial Tr., ECF No. 177, PageID ##1521–1522. It received an absolute bar on the letter's contents through the court's ruling at Trial Tr., ECF No. 179, PageID ##1776–1779 — complete exclusion, not restricted access. McKinnon never testified

about the letter's contents; the absolute bar prohibited it. The resulting presentation created a specific false impression: the jury knew a letter existed but received zero access to what the letter said. That structural asymmetry — awareness without substance — was not a neutral evidentiary outcome. It was the product of the Government's own prior decision to introduce the letter reference through its own exhibit, followed by a restriction that prevented the corrective substance from fully reaching the jury. A jury that hears about a letter it cannot fully evaluate is not in a position to weigh that letter against the Government's "no documentary proof" rebuttal argument — which is precisely the position the Government's sequential choices created.

Second — the Hubbuch non-receipt testimony. If Hubbuch testified at trial that he never received the McKinnon Letter , that testimony placed before the jury a representation directly relevant to the letter's significance — that the Government had investigated the case, followed all relevant leads, and the letter simply had not come into its possession. That impression was false or misleading on its face: Hubbuch had personally committed in December 2018 to involving the AUSA in obtaining the letter from a known custodian at a known location. A jury that heard Hubbuch testify he never received the letter, without knowing of his December 2018 retrieval commitment, received a false impression of the Government's investigative follow-through on a specific, identified, potentially exculpatory document. That false impression directly supported the rebuttal argument that the documentary record was empty — by suggesting the Government had not found anything because there was nothing to find, rather than because the Government had failed to follow through on its own investigator's retrieval commitment.

Third — the rebuttal exploitation as the culmination. The rebuttal argument at Trial Tr., ECF No. 179, PageID #1894 was the culmination of the three-step sequence this entry documents. The Government introduced the letter reference, restricted its full presentation, and then told the jury the documentary record was empty of exactly what the letter addressed. That argument could only succeed — only appear credible to the jury — because the letter had been restricted from full presentation. Without the restriction, the jury would have had the letter itself to weigh against the "no documentary proof" claim. With the court's absolute bar completely excluding the letter and McKinnon never testifying about its contents, the jury had only the awareness that a letter existed — zero access to what it said — and the Government's flat assertion that no documentary proof existed. The restriction was the necessary precondition for the rebuttal misrepresentation. Under Napue, a Government that creates the conditions for a false impression and then exploits those conditions in its final argument has committed the same violation as a Government that elicits false testimony and fails to correct it.

GOVERNMENT KNOWLEDGE / FAILURE TO CORRECT:

Government knowledge is established at three independently sufficient levels.

First — the December 2018 retrieval commitment. Hubbuch committed in December 2018 — on the record, in the Government's own recorded exhibit — to involving the prosecuting AUSA in obtaining the McKinnon Letter from Vance's attorney. That commitment established Government knowledge at the prosecutorial level no later than December 2018: the AUSA was the person Hubbuch committed to involving. Whether the AUSA followed through on that commitment or not, the commitment itself placed the McKinnon Letter on the prosecutorial radar four years before trial. The Government cannot claim ignorance of the

letter's existence, location, or potential significance when its own investigator's recorded December 2018 commitment establishes the contrary.

Second — the trial record at the time of the restriction. By the time the trial dispute arose at Trial Tr., ECF No. 179, PageID ##1776–1779, the Government had been on notice of the McKinnon Letter through: (a) Hubbuch's December 2018 interview record; (b) the Government's own Gov't Ex. 401 and its use at Trial Tr., ECF No. 177, PageID ##1521–1522; and (c) whatever Hubbuch's non-receipt testimony had placed before the trial record at that point. The Government therefore participated in the trial restriction — whatever its role — with full knowledge of the letter's existence, its December 2018 characterization as potentially exculpatory, and its relevance to the knowledge-and-intent issues that were then actively disputed at trial.

Third — the rebuttal argument as deliberate exploitation. At Trial Tr., ECF No. 179, PageID #1894, the Government's rebuttal argument was made by the same prosecution team that had participated in the trial restriction at PageID ##1776–1779, had used Gov't Ex. 401 at Trial Tr., ECF No. 177, PageID ##1521–1522, and had access to the December 2018 investigative record in Movant Ex. F. The rebuttal claim — that no documentary proof existed for the Chamblee-source defense — was made with full knowledge of everything the restriction had prevented the jury from evaluating. Under Napue v. Illinois, 360 U.S. at 269, and Giglio v. United States, 405 U.S. at 153–54, the Government's obligation extends to its own closing and rebuttal arguments, not merely to witness testimony. A Government that restricts a document's full development and then argues in rebuttal that the documentary record is empty of what that document addressed has both allowed a false impression to stand and

affirmatively created the conditions for a false one — the dual violation Napue and Giglio prohibit.

MATERIALITY / PREJUDICE:

Under Napue v. Illinois, the standard is whether the misleading presentation "could in any reasonable likelihood have affected the judgment of the jury." 360 U.S. at 271. That standard is satisfied here on three independently sufficient and mutually reinforcing bases.

First — the restriction's direct effect on the jury's knowledge-and-intent analysis. The McKinnon Letter was Molly McKinnon's pre-indictment contemporaneous account of her limited role, lack of ownership or control, reliance on Chamblee-supplied information, and the timing of when she learned the sales figures were false. Those subjects went directly to the central elements the Government was required to prove: knowledge and intent. The court's absolute bar completely excluded the letter from the jury's consideration — McKinnon never testified about its contents, and all counsel were gagged from referencing it in closing — denying the jury any access whatsoever to a pre-indictment contemporaneous document that addressed both elements directly. A jury that received the letter's full contents — as a document written before Movant was a defendant, before any criminal defense strategy existed, and before any litigation motive was present — would have been required to evaluate knowledge and intent against a corroborative record of the highest probative quality. The court's ruling did not merely limit that evaluation — it eliminated it entirely. The jury received zero access to the letter's contents. There is a reasonable likelihood that the jury would have assessed Movant's knowledge and intent materially differently had it received the full benefit of the McKinnon Letter's pre-indictment contemporaneous corroboration.

Second — the Hubbuch non-receipt testimony as independent prejudice. If Hubbuch testified at trial that he never received the McKinnon Letter , the jury received a false impression of the Government's investigative follow-through. A jury that believed the Government had investigated the case thoroughly and simply never obtained the letter had no basis to evaluate the Government's retrieval obligation — arising from Hubbuch's December 2018 commitment — against the "no documentary proof" rebuttal argument. Had the jury known that Hubbuch had personally committed in December 2018 to involving the AUSA in obtaining a specifically located, potentially exculpatory letter, and that the Government had apparently never followed through on that commitment, there is a reasonable likelihood that the jury would have evaluated the credibility of the Government's investigation, the integrity of its rebuttal argument, and the reliability of Hubbuch's trial testimony materially differently.

Third — cumulative connection to the broader G1-RA-008 through G1-RA-015 chain. The trial restriction does not stand alone. It is the pivotal middle step in the three-step sequence that begins with the selective Gov't Ex. 401 presentation at G1-RA-009, runs through the omitted Movant Ex. F context at G1-RA-010, is structured by the source separation at G1-RA-011, operates through the restriction at this entry, and culminates in the rebuttal exploitation at G1-RA-013. Each step compounded the prejudice of the preceding one. The selective presentation ensured the jury had no framework to evaluate the letter's significance. The omitted Movant Ex. F context ensured the jury did not know of the Government's December 2018 retrieval commitment. The source separation clarified what was before the jury and what was not. The restriction prevented the letter itself from fully reaching the jury. And the rebuttal exploited everything that had been withheld, omitted, or restricted — in the

final moments before the jury deliberated. Evaluated cumulatively, the restriction was not a discrete evidentiary ruling with limited consequences; it was the capstone of a prosecutorial sequence that systematically deprived the jury of the documentary evidence necessary to evaluate Movant's knowledge-and-intent defense — and that was then used affirmatively to argue the documentary record was empty.

The prejudice is further amplified by trial counsel's failure to use Movant Ex. F to challenge the restriction and to establish, through Hubbuch's December 2018 commitment, why the letter's full presentation was not merely permissible but required by the Government's own prior investigative conduct. See Ground Three, Appendix D.

CROSS-GROUND NOTATION:

Ground Two (App. C, G2-RA-004): The Ground Two McKinnon Letter/Gov't Ex. 401 pattern anchor cross-references the complete G1-RA-008 through G1-RA-014 sequence — including this entry — as the trial-record documentation of the three-step documentary-void sequence that Ground Two's IAC theory identifies as a critical trial-stage failure. See App. C, G2-RA-004.

Ground Three (App. D, G3-RA-007; G3-RA-010): G3-RA-007 (the McKinnon Letter/Gov't Ex. 401 trial-IAC entry) and G3-RA-010 (the Day 6 preservation anchor) cross-reference the G1-RA-008 through G1-RA-013 group as the trial-record foundation for the Ground Three selective-presentation, omitted-context, and trial-restriction theory. See App. D, G3-RA-007; G3-RA-010.

Ground Five (App. F, G5-RA-007): The Ground Five McKinnon Letter/Gov't Ex. 401 incorporation entry cross-references the G1-RA-008 through G1-RA-014 group as the trial-record foundation for the most outcome-material component of the omitted appellate Napue claim. See App. F, G5-RA-007.

G1-RA-013 — Rebuttal Exploitation — Three Successive "No Proof" Formulations at Trial Tr., ECF No. 179, PageID #1894: Government Argued in Final Argument That No Shred of Proof, No Single Item of Proof, and No Single Email or Document Supported the Chamblee-Source Defense — an Argument the Government Made Possible by Selectively

Presenting Gov't Ex. 401, Omitting the Five Movant Ex. F Passages, and Participating in the Trial Restriction on Movant Ex. C

RECORD CITATION / SOURCE:

Trial Tr., ECF No. 179, PageID #1894 (Government rebuttal — three successive "no proof" formulations delivered in the same rebuttal argument; the culminating Step Four in the three-step documentary-void sequence documented across G1-RA-009, G1-RA-010, G1-RA-011, and G1-RA-012: (1) introduce minimal letter reference through Gov't Ex. 401; (2) omit five Movant Ex. F passages bearing on the letter's exculpatory significance; (3) participate in trial restriction on Movant Ex. C; (4) argue in final argument that no documentary proof existed for the defense those documents addressed) [cross-reference G1-RA-009; G1-RA-010; G1-RA-011; G1-RA-012]; Movant Ex. C (McKinnon Letter — November 14, 2018; addressed to Vance's attorney; pre-indictment contemporaneous document addressing Chamblee-source reliance, limited role, lack of ownership and control, and the timing of when Movant learned the sales figures were false; subject to the trial restriction at Trial Tr., ECF No. 179, PageID ##1776–1779; the documentary source whose absence the rebuttal exploited — which was not absent: it was in the record, restricted from full presentation, and possessed by the Government at the time the "no proof" argument was made) ; Movant Ex. 45 / Defense Ex. 82 (Movant's own contemporaneous journals and notebooks — beginning as daytimer/planner entries and developing into dedicated journals in which Movant recorded information relevant to NGI/NGEP operations as those operations occurred; written in Movant's own hand before any investigation; in the Government's possession in discovery; directly documented Chamblee-source reliance contemporaneously; a second independent documentary source, simultaneously and independently falsified by the rebuttal's "no proof"

claim) [cross-reference G1-RA-003(A)]; Movant Ex. F (DOJ/FBI transcript of Gov't Ex. 401 — December 2018; contains the five omitted passages including the "exculpatory for you" characterization, the "all the blame on Molly" framing, the "I will ask the prosecutor, the A.U.S.A. to reach out to your attorney for this letter" retrieval commitment, and the "other bank accounts" reference; none presented to the jury; the Government's own investigative transcript in which its own investigator characterized the McKinnon Letter as exculpatory for the defense the rebuttal then claimed had no proof) ; Trial Tr., ECF No. 179, PageID ##1776–1779 (court ruling — ABSOLUTE BAR: letter completely excluded from jury; all counsel gagged from referencing letter or its contents in closing arguments; McKinnon did NOT testify about the letter — the absolute bar prohibited it; the ruling that prevented the letter from reaching the jury and from being referenced in closing, creating the documentary void the rebuttal then exploited) ; Trial Tr., ECF No. 179, PageID #1792 and PageID #1796 (McKinnon — independent Chamblee-source testimony only; NOT letter testimony; the court's absolute bar prohibited any testimony about the letter's contents; PageID #1792 and #1796 establish the Chamblee-source chain independently — Chamblee directed QuickBooks entries, supplied sales information, Dell Jaggers financial information reflected Chamblee's reported sales) ; Trial Tr., ECF No. 177, PageID ##1521–1522 (Hubbuch — through Gov't Ex. 401 — "a letter that Molly had" — the selective letter reference through which the jury first learned the letter existed, before the restriction prevented its full development, and before the rebuttal argued no documentary proof existed for the defense that letter addressed) [cross-reference G1-RA-009; G1-RA-011]; Trial Tr., ECF No. 175, PageID ##1055–1056 (Chamblee — $5,600 intercompany transfer — Government's own witness confirmed before closing that the Count 2 transaction was not a personal payment;

part of the documentary record the rebuttal's "no proof" framing swept past) [cross-reference G1-RA-004]; Trial Tr., ECF No. 176, PageID ##1168–1169, 1172 (Hogan — $5,600 intercompany transfer — second Government witness confirming intercompany-transfer characterization before closing; dual-witness confirmation available in the record before the rebuttal was made) [cross-reference G1-RA-004]; Trial Tr., ECF No. 177, PageID ##1521–1522 (Hubbuch non-receipt testimony — confirmed: independently establishes that the Government amplified the "no proof" impression by placing before the jury testimony that it had investigated thoroughly and simply never obtained the letter, while possessing Movant Ex. F establishing that its investigator had personally committed to obtaining the letter through the AUSA in December 2018); Napue v. Illinois, 360 U.S. 264, 269–71 (1959); Giglio v. United States, 405 U.S. 150, 153–54 (1972)

EXACT QUOTE OR RECORD LANGUAGE:

Trial Tr., ECF No. 179, PageID #1894 (Government rebuttal — three successive formulations, same continuous argument): Formulation 1 — "shred of proof": "where in the records that you've seen, where in the emails, where in the documents is there a shred of proof that Mr. Chamblee provided Ms. McKinnon information to be put into those financial documents?" [Confirmed.] Formulation 2 — "single item of proof": "There isn't a single item of proof in the document -- in the emails that prove that." [Confirmed.] Formulation 3 — "single email or document": "a single email or document" [Confirmed.] The three formulations are part of a single continuous rebuttal argument. Together they constitute the Government's explicit final-argument claim — directed at the jury before deliberation — that the entire evidentiary record was empty of documentary proof supporting Movant's assertion that Chamblee supplied the information used in the financial documents.

RECORD-PROOF POINT:

The rebuttal argument at Trial Tr., ECF No. 179, PageID #1894 is the culminating step in the three-step documentary-void sequence documented across G1-RA-009 through G1-RA-012. It is the moment the Government converted the incomplete evidentiary picture it had systematically created — through selective presentation, omitted context, and trial restriction — into an affirmative misrepresentation delivered to the jury in its final argument. The rebuttal argument was false, or materially misleading in a manner equivalent to falsity, on three independent and reinforcing grounds. Sub-section A — Movant Ex. C existed. At the time the Government argued there was "not a shred of proof," "not a single item of proof," and "not a single email or document" supporting the Chamblee-source defense, Movant Ex. C was in the record. The McKinnon Letter was Molly McKinnon's own pre-indictment contemporaneous document — written before she was a defendant, before any criminal defense strategy existed, and before any litigation motive was present — addressing in her own words her limited role, lack of ownership or control, reliance on Chamblee-supplied information, and the timing of when she learned the sales figures were false. The court's absolute bar at Trial Tr., ECF No. 179, PageID ##1776–1779 completely excluded the letter from the jury and gagged all counsel from referencing it in closing arguments. McKinnon never testified about the letter — the absolute bar prohibited it. The absolute bar did not merely prevent "full presentation" — it eliminated the letter entirely from the jury's consideration. The Government's rebuttal argument did not acknowledge that distinction. It claimed no proof existed while the prosecution team had used its own exhibit to first introduce the letter reference (Gov't Ex. 401 at Trial Tr., ECF No. 177, PageID ##1521–1522), had participated in a restriction limiting the jury's access to the letter completely

excluded from the jury by the court's absolute bar — McKinnon's testimony at PageID #1792 and #1796 established the Chamblee-source chain independently, not letter contents; the letter's contents never entered the trial record through any testimony. The Government argued the documentary record was empty while the very document that filled it remained restricted, possessed, and partially introduced through its own exhibit. Sub-section B — Movant Ex. 45 / Defense Ex. 82 existed. The Government's "no proof" claim also swept past Movant's own contemporaneous journals and notebooks — Movant Ex. 45 / Defense Ex. 82 — which were in the Government's discovery file. These were not third-party records. They were Movant's own first-person contemporaneous writings, beginning as daytimer/planner entries and developing into dedicated notebooks in which she recorded information relevant to NGI/NGEP operations as those operations occurred — before any investigation, before any charges, and before any litigation motive existed. They directly documented Chamblee-source reliance in Movant's own hand. [Cross-reference G1-RA-003(A).] The rebuttal argument at PageID #1894 was therefore false as to Movant Ex. 45 and Defense Ex. 82 simultaneously with, and independently of, its falsity as to Movant Ex. C. Two independent pre-existing documentary sources bearing on exactly the subject the rebuttal claimed had no proof were in the Government's possession at the time the "shred of proof" argument was made.

Sub-section C — Movant Ex. F's five omitted passages existed. The Government's own investigative transcript — Movant Ex. F — contained the Government's own investigator's December 2018 assessment that the McKinnon Letter was "exculpatory for you" and that it placed "all the blame on Molly" — the Government's own characterization of the letter's significance, in the Government's own recorded investigative file, four years before the

rebuttal argument that claimed no proof for the Chamblee-source defense existed. None of those five passages were before the jury. The Government argued no documentary proof existed for the Chamblee-source defense while possessing its own investigative transcript in which its own lead investigator had characterized the exact documentary source the rebuttal was attacking as exculpatory. The three-step sequence made the rebuttal argument possible. The rebuttal argument at PageID #1894 could not have appeared credible to the jury — could not have seemed to accurately characterize the evidentiary record — without the three preceding steps. Step One (G1-RA-009): the Government introduced only the minimal "a letter that Molly had" reference through its own Gov't Ex. 401, establishing jury awareness of the letter's existence while withholding the fuller interview context that established its exculpatory significance. Step Two (G1-RA-010): the Government omitted from its trial presentation the five Movant Ex. F passages — including its own investigator's contemporaneous exculpatory characterization — that would have given the jury a basis to evaluate the letter's significance in the Government's own words. Step Three (G1-RA-012): the Government sought and obtained an absolute court bar completely excluding the letter from the jury, obtained a gag order on all counsel prohibiting any reference to the letter or its contents in closing arguments, resulting in the structural outcome that the jury was aware the letter existed (through Gov't Ex. 401) but had zero access to its contents or significance — McKinnon never testified about the letter; the absolute bar prohibited it. Against that backdrop, the Government's final-argument claim that the documentary record was empty was not a legitimate characterization of a genuinely incomplete record; it was the intended culmination of a sequence designed to make the record appear empty by withholding, omitting, and restricting the documents that filled it.

FALSE TESTIMONY / MISLEADING IMPRESSION:

The Government's rebuttal argument at Trial Tr., ECF No. 179, PageID #1894 created a false impression of a specifically compounded and sequentially manufactured kind. It was not merely aggressive advocacy. It was a representation to the jury — in the Government's final opportunity to address it before deliberation — that the entire documentary record had been examined and was empty of proof bearing on the central question of the case: whether Movant relied on information supplied by Chamblee or instead knowingly participated in fraud. That representation was false. The documentary record contained Movant Ex. C, Movant Ex. 45 / Defense Ex. 82, and the five omitted Movant Ex. F passages. It also contained the two-witness confirmation — from the Government's own witnesses Chamblee and Hogan — that the Count 2 $5,600 transaction was an intercompany transfer and not a personal payment. Trial Tr., ECF No. 175, PageID ##1055–1056; Trial Tr., ECF No. 176, PageID ##1168–1169, 1172. The false impression was operationalized through three escalating rhetorical formulations — "not a shred of proof," "not a single item of proof," "not a single email or document" — that progressively narrowed the Government's claim while resting on the same manufactured foundation of incompleteness. Each formulation invited the jury to assess the record as empty; none acknowledged the documents that existed. The cumulative effect of the three formulations was to foreclose any residual evaluation of the Chamblee-source defense — to tell the jury not that the evidence was weak, but that it did not exist. That foreclosure operated directly on two independent documentary sources — Movant Ex. C and Movant Ex. 45 / Defense Ex. 82 — that contradicted it. Had the jury known those sources existed and had been in the Government's possession — including Movant's own contemporaneous journals written before any investigation began — there is a

reasonable likelihood it would have evaluated both the Government's credibility and the strength of the "no proof" argument materially differently, and would have reassessed its overall evaluation of the Government's trial presentation and prosecutorial integrity.

Under Napue v. Illinois, 360 U.S. at 269, the Government violates due process when it allows false testimony to go uncorrected before the jury. The obligation extends to the Government's own closing and rebuttal arguments: a Government that restricts a document from full development and then argues to the jury that no document bearing on that issue exists has both allowed a false impression to stand and affirmatively created a new one in its final argument. Both forms of the Napue violation are present here. If Hubbuch's non-receipt testimony is confirmed , the misleading impression has an additional layer: the jury received testimony from the Government's own witness that the Government had investigated thoroughly and simply never obtained the letter — which created a false impression that the documentary void was the result of the Government's investigation finding nothing, rather than the result of the Government's failure to follow through on its own investigator's December 2018 commitment to obtain a specifically located, potentially exculpatory document through the prosecuting AUSA. The rebuttal then compounded that impression by claiming the record was entirely empty of what the letter addressed.

GOVERNMENT KNOWLEDGE / FAILURE TO CORRECT:

Government knowledge of the falsity of the rebuttal argument is established at the most direct level possible: the same prosecution team that delivered the rebuttal argument at Trial Tr., ECF No. 179, PageID #1894 had: (1) used Gov't Ex. 401 at Trial Tr., ECF No. 177, PageID ##1521–1522 to introduce the minimal "a letter that Molly had" reference — establishing that the prosecution was affirmatively aware, before rebuttal, that the jury knew

a letter existed and knew it had been introduced through the Government's own exhibit; (2) participated in the trial restriction at Trial Tr., ECF No. 179, PageID ##1776–1779 that prevented the letter's full presentation — establishing that the prosecution was affirmatively aware, at the time of rebuttal, that the jury's access to the letter's contents had been limited by a restriction the prosecution had a role in creating ; (3) possessed Movant Ex. F — the Government's own DOJ/FBI investigative transcript — containing the Government's own investigator's December 2018 characterization of the letter as "exculpatory for you" and the AUSA follow-up commitment establishing the retrieval obligation — materials the same prosecution team possessed and had access to at the time of the "no proof" argument; (4) possessed Movant Ex. C — the McKinnon Letter itself — which addressed in Movant's own pre-indictment words the exact subjects the rebuttal claimed had no documentary support; (5) possessed Movant Ex. 45 / Defense Ex. 82 — Movant's own contemporaneous journals and notebooks, written in her own hand before any investigation began, documenting NGI/NGEP operations as they occurred — which had been in the Government's discovery file and which the same rebuttal argument simultaneously misrepresented along with Movant Ex. C [cross-reference G1-RA-003(A)]; and (6) received, through its own witnesses Chamblee and Hogan before closing, trial testimony confirming that the Count 2 $5,600 transaction was an intercompany transfer — testimony that, standing alone, refuted the "no proof" characterization as to that attribution point before the rebuttal was ever made [cross-reference G1-RA-004]. The Government's knowledge of the letter's significance is further established by the context in which Agent Hubbuch first learned of it. Vance contacted Hubbuch directly and voluntarily — not in response to a subpoena, a formal interview request, or any Government outreach. Vance reached out because friends and business associates had

informed him the FBI was asking questions about his business, and he knew he had done nothing wrong. Hubbuch himself noted in the recorded interview that it was highly unusual for a potential target of an investigation to contact an agent directly. In that voluntary interview, Vance repeatedly directed Hubbuch to the McKinnon Letter as the document that explained everything Hubbuch was concerned about. Critically, Hubbuch had not yet seen the letter at the time of the interview. His assessment that the letter was "exculpatory for you" — and that it placed "all the blame on Molly" — was formed entirely on the basis of Vance's description of its contents. A Government investigator who assessed a document as exculpatory, based only on a description of what it contained, without having read it, and who then personally committed to involving the prosecuting AUSA in obtaining it, cannot be heard to claim at trial that the documentary record contained no proof of the very defense that document addressed. The Government's failure to correct this false impression at the moment it was delivered — through its own rebuttal argument, by its own prosecution team, with full knowledge of the documentary record — satisfies the Napue/Giglio obligation at the most stringent level. The Government did not merely fail to correct a witness's false testimony; it authored and delivered the false impression itself, in its final argument before deliberation, with knowledge of every document that made the impression false. If Hubbuch's non-receipt testimony is confirmed , the Government knowledge analysis strengthens further: the prosecution made the rebuttal argument knowing that the jury had received testimony — from the prosecution's own witness — creating a false impression about the Government's investigative follow-through on a document its investigator had personally committed to pursuing through the AUSA. The prosecution then compounded that existing false impression with the "no proof" rebuttal argument. Both acts — eliciting

Hubbuch's non-receipt testimony and making the rebuttal argument — were performed with full knowledge of Movant Ex. F establishing the December 2018 retrieval commitment, Movant Ex. C establishing the letter's contents, and Movant Ex. 45 / Defense Ex. 82 establishing the contemporaneous Chamblee-source documentary record.

MATERIALITY / PREJUDICE:

Under Napue v. Illinois, 360 U.S. at 271, the standard is whether the misleading presentation "could in any reasonable likelihood have affected the judgment of the jury." The rebuttal argument at Trial Tr., ECF No. 179, PageID #1894 satisfies this standard at the highest possible threshold, on three independently sufficient and mutually reinforcing grounds. First — timing. The rebuttal argument was the last substantive representation the Government made to the jury before deliberation. A false impression delivered in final argument carries maximum prejudicial effect: there is no corrective moment, no opportunity for the defense to re-address it, and no subsequent instruction targeting this precise misrepresentation. The jury carried the Government's three-part "no proof" argument into deliberation with no means of correcting it against the documentary record the Government had withheld, omitted, and restricted. A false impression planted at the last moment before deliberation is, by definition, the impression that shapes the deliberative process from its inception. Under Napue, there is a reasonable likelihood — rising to near-certainty at this stage — that the argument affected the jury's evaluation of the central knowledge-and-intent issue. Second — rhetorical framing. The Government's use of three escalating formulations — "not a shred of proof," "not a single item of proof," "not a single email or document" — was precisely calibrated to zero out the probative weight of any documentary evidence the jury might otherwise have assigned to the Chamblee-source defense. Each formulation narrowed the claim: first

denying any evidence existed ("shred"), then denying even a single item existed ("single item"), then denying any email or document existed ("single email or document"). The escalating framing was designed to foreclose residual doubt — not to characterize the evidence as weak but to eliminate it as a category. That framing operated directly on Movant Ex. C and Movant Ex. 45 / Defense Ex. 82 — two independent documentary sources that contradicted each successive formulation. Had the jury known those sources existed and had been in the Government's possession, there is a reasonable likelihood it would have evaluated both the Government's credibility and the strength of the "no proof" argument materially differently — and would have reassessed its overall evaluation of the Government's trial presentation and prosecutorial integrity. Third — convergence with the three-step sequence. The prejudice of the rebuttal argument cannot be evaluated in isolation. It is the culmination of the three-step sequence: the selective letter reference (G1-RA-009) ensured the jury knew a letter existed but had no basis to evaluate its significance; the omitted Movant Ex. F context (G1-RA-010) ensured the jury did not know the Government's own investigator had characterized the letter as exculpatory; the absolute bar (G1-RA-012) completely excluded the letter from the jury's consideration — McKinnon never testified about it, all counsel were gagged from referencing it in closing, and the jury received zero access to its contents. Against that sequentially constructed backdrop — awareness without substance, omitted exculpatory context from the Government's own file, and complete exclusion of the letter from the jury's consideration — the rebuttal argument was the payoff: it converted the incomplete evidentiary picture the Government had manufactured into an affirmative misrepresentation that the documentary record was empty of what those withheld, omitted, and restricted documents addressed. The cumulative prejudice of the entire sequence,

measured at the moment of the rebuttal argument, is the prejudice that Ground One requires the Court to evaluate under Napue. It substantially undermines confidence in the verdict on the central issue of knowledge and intent. The prejudice is further amplified by trial counsel's failure to use Movant Ex. F and Movant Ex. C to challenge the rebuttal's "no proof" framing directly — establishing through the Government's own investigative transcript that the Government knew the letter existed, knew its location, assessed it as exculpatory, and committed to obtaining it through the AUSA — four years before the rebuttal argument that claimed no such proof existed. See Ground Three, Appendix D.

Under Napue v. Illinois, 360 U.S. at 271, the standard is whether the misleading presentation "could in any reasonable likelihood have affected the judgment of the jury." The rebuttal argument at Trial Tr., ECF No. 179, PageID #1894 satisfies this standard at the highest possible threshold, on three independently sufficient and mutually reinforcing grounds. First — timing. The rebuttal argument was the last substantive representation the Government made to the jury before deliberation. A false impression delivered in final argument carries maximum prejudicial effect: there is no corrective moment, no opportunity for the defense to re-address it, and no subsequent instruction targeting this precise misrepresentation. The jury carried the Government's three-part "no proof" argument into deliberation with no means of correcting it against the documentary record the Government had withheld, omitted, and restricted. A false impression planted at the last moment before deliberation is, by definition, the impression that shapes the deliberative process from its inception. Under Napue, there is a reasonable likelihood — rising to near-certainty at this stage — that the argument affected the jury's evaluation of the central knowledge-and-intent issue. Second — rhetorical framing. The Government's use of three escalating formulations — "not a shred of proof," "not a

single item of proof," "not a single email or document" — was precisely calibrated to zero out the probative weight of any documentary evidence the jury might otherwise have assigned to the Chamblee-source defense. Each formulation narrowed the claim: first denying any evidence existed ("shred"), then denying even a single item existed ("single item"), then denying any email or document existed ("single email or document"). The escalating framing was designed to foreclose residual doubt — not to characterize the evidence as weak but to eliminate it as a category. That framing operated directly on Movant Ex. C and Movant Ex. 45 / Defense Ex. 82 — two independent documentary sources that contradicted each successive formulation. Had the jury known those sources existed and had been in the Government's possession, there is a reasonable likelihood it would have evaluated both the Government's credibility and the strength of the "no proof" argument materially differently — and would have reassessed its overall evaluation of the Government's trial presentation and prosecutorial integrity. Third — convergence with the three-step sequence. The prejudice of the rebuttal argument cannot be evaluated in isolation. It is the culmination of the three-step sequence: the selective letter reference (G1-RA-009) ensured the jury knew a letter existed but had no basis to evaluate its significance; the omitted Movant Ex. F context (G1-RA-010) ensured the jury did not know the Government's own investigator had characterized the letter as exculpatory; the absolute bar (G1-RA-012) completely excluded the letter from the jury's consideration — McKinnon never testified about it, all counsel were gagged from referencing it in closing, and the jury received zero access to its contents. Against that sequentially constructed backdrop — awareness without substance, omitted exculpatory context from the Government's own file, and complete exclusion of the letter from the jury's consideration — the rebuttal argument was the payoff: it converted the

incomplete evidentiary picture the Government had manufactured into an affirmative misrepresentation that the documentary record was empty of what those withheld, omitted, and restricted documents addressed. The cumulative prejudice of the entire sequence, measured at the moment of the rebuttal argument, is the prejudice that Ground One requires the Court to evaluate under Napue. It substantially undermines confidence in the verdict on the central issue of knowledge and intent. The prejudice is further amplified by trial counsel's failure to use Movant Ex. F and Movant Ex. C to challenge the rebuttal's "no proof" framing directly — establishing through the Government's own investigative transcript that the Government knew the letter existed, knew its location, assessed it as exculpatory, and committed to obtaining it through the AUSA — four years before the rebuttal argument that claimed no such proof existed. See Ground Three, Appendix D.

CROSS-GROUND NOTATION:

Ground Two (App. C, G2-RA-003; G2-RA-004; G2-RA-005): Three Ground Two entries cross-reference this entry — G2-RA-003 (Chamblee-source/QuickBooks entry), G2-RA-004 (McKinnon Letter/Gov't Ex. 401 pattern anchor), and G2-RA-005 (Chamblee-source and attribution entry) — each establishing that the Government's "shred of proof" rebuttal argument was false as to the Chamblee-source evidence documented in those entries and that the rebuttal exploitation is the culminating step of the IAC failure each entry addresses. See App. C, G2-RA-003; G2-RA-004; G2-RA-005.

Ground Three (App. D, G3-RA-001; G3-RA-007; G3-RA-008; G3-RA-010): Four Ground Three entries cross-reference this entry — G3-RA-001 (the sentencing-framework anchor), G3-RA-007 (the McKinnon Letter trial-IAC entry), G3-RA-008 (the cross-examination evidence entry), and G3-RA-010 (the Day 6 preservation anchor) — each incorporating the rebuttal exploitation documented here as a component of the trial-record basis for the Ground Three IAC prejudice analysis. See App. D, G3-RA-001; G3-RA-007; G3-RA-008; G3-RA-010.

Ground Five (App. F, G5-RA-007): The Ground Five McKinnon Letter/Gov't Ex. 401 incorporation entry specifically identifies the rebuttal exploitation documented in this entry — the three-part "shred of proof," "single item of proof," and "single email or document" formulations — as a key component of the broader Napue omission theory. See App. F, G5-RA-007.

G1-RA-014 — Cumulative Prejudice: The Complete G1-RA-008 Through G1-RA-013 Sequence Evaluated Together Demonstrates That the Government Systematically Deprived the Jury of the Documentary and Testimonial Context Necessary to Evaluate Movant's Knowledge-and-Intent Defense — and Then Argued in Final Argument That No Such Context Existed

RECORD CITATION / SOURCE:

Trial Tr., ECF No. 179, PageID #1894 (Government rebuttal — "not a shred of proof" / "not a single item of proof" / "not a single email or document" — the culminating step of the G1-RA-008 through G1-RA-013 sequence, evaluated here in its cumulative effect rather than as an isolated argument) [cross-reference G1-RA-013]; Trial Tr., ECF No. 177, PageID ##1521–1522 (Hubbuch — "a letter that Molly had" — selective letter reference through Gov't Ex. 401; Step One of the three-step sequence) [cross-reference G1-RA-009]; Trial Tr., ECF No. 179, PageID ##1776–1779 (court ruling — ABSOLUTE BAR: Step Two of the three-step sequence; letter completely excluded from jury; all counsel gagged from referencing letter or its contents in closing arguments; McKinnon did NOT testify about the letter) ; Trial Tr., ECF No. 179, PageID #1792 and PageID #1796 (McKinnon — independent Chamblee-source testimony only; NOT letter testimony; the court's absolute bar prohibited any testimony about the letter's contents) ; Trial Tr., ECF No. 177, PageID ##1521–1522 (Hubbuch non-receipt testimony — confirmed; independently compounds cumulative prejudice by adding a false investigative-completeness impression to the documentary-void narrative the rebuttal exploited); Movant Ex. C (McKinnon Letter — November 14, 2018; addressed to Vance's attorney; pre-indictment contemporaneous state-of-mind document; restricted from full development at trial; its contents NEVER entered the

record through McKinnon's testimony — the court's absolute bar at PageID ##1776–1779 prohibited any testimony about the letter's contents; the jury received only awareness that a letter existed through Gov't Ex. 401, with zero access to the letter's contents); [cross-reference G1-RA-008; G1-RA-011; G1-RA-012]; Movant Ex. F (DOJ/FBI transcript of Gov't Ex. 401 — five omitted passages: letter location and "easy to get" acknowledgment; "exculpatory for you" and "all the blame on Molly" characterizations; "I will ask the prosecutor, the A.U.S.A. to reach out to your attorney for this letter" commitment; "other bank accounts" reference; none presented to the jury; contains the Vance-initiated contact context — Vance contacted Hubbuch voluntarily, Hubbuch acknowledged this was highly unusual, Vance repeatedly directed Hubbuch to the letter, and Hubbuch's exculpatory assessment was formed without having read the letter) ; Gov't Ex. 401 (audio recording of December 2018 Vance/Hubbuch interview — the Government's own trial exhibit; the source from which Movant Ex. F was transcribed; the mechanism by which the selective letter reference reached the jury) ; Movant Ex. 45 / Defense Ex. 82 (Movant's own contemporaneous journals and notebooks — daytimer/planner entries developing into dedicated NGI/NGEP operational journals written in Movant's own hand before any investigation; in the Government's discovery file; independently falsified by the rebuttal's "no proof" claim) [cross-reference G1-RA-003(A); G1-RA-013]; McKinnon Decl. ¶¶11–15 (declaration record of letter contents — independent from trial restriction; confirms the same Chamblee-source account the rebuttal claimed had no proof); Trial Tr., ECF No. 175, PageID ##1055–1056 (Chamblee — $5,600 intercompany transfer — confirmed before closing) [cross-reference G1-RA-004]; Trial Tr., ECF No. 176, PageID ##1168–1169, 1172 (Hogan — $5,600 intercompany transfer — dual-witness confirmation before closing) [cross-

reference G1-RA-004]; Napue v. Illinois, 360 U.S. 264, 269–71 (1959); Giglio v. United States, 405 U.S. 150, 153–54 (1972)

EXACT QUOTE OR RECORD LANGUAGE:

Trial Tr., ECF No. 179, PageID #1894 (Government rebuttal — three successive formulations): "where in the records that you've seen, where in the emails, where in the documents is there a shred of proof that Mr. Chamblee provided Ms. McKinnon information to be put into those financial documents?"; "There isn't a single item of proof in the document -- in the emails that prove that."; "a single email or document" [Confirmed — cross-reference G1-RA-013.]

Trial Tr., ECF No. 177, PageID ##1521–1522 (Hubbuch — through Gov't Ex. 401 — before restriction): "a letter that Molly had" [Confirmed — cross-reference G1-RA-009.]

Movant Ex. F (Hubbuch — December 2018 — before any restriction was possible): "exculpatory for you"; "all the blame on Molly"; "I will ask the prosecutor, the A.U.S.A. to reach out to your attorney for this letter" [Confirmed — cross-reference G1-RA-010.]

RECORD-PROOF POINT:

This entry does not introduce a new, independent Napue violation. It establishes the cumulative proof point: that when the G1-RA-008 through G1-RA-013 sequence is evaluated as a whole rather than entry-by-entry, the record demonstrates a unified and systematic pattern of prosecutorial conduct that deprived the jury of the documentary and testimonial context necessary to evaluate Movant's knowledge-and-intent defense on the central issue of the case — and then affirmatively misrepresented the state of that record to the jury in final argument.

The individual entries in the sequence each document a distinct component of the Ground One Napue violation:

G1-RA-008 established that the McKinnon Letter — Movant Ex. C — was a pre-indictment contemporaneous state-of-mind document authored before Movant was a defendant, addressing her limited role, lack of ownership and control, Chamblee-source reliance, and the timing of when she learned the sales figures were false; that it was known to the Government's own investigator no later than December 2018 through the voluntary interview Vance himself had initiated; and that Hubbuch assessed it as exculpatory for Vance without having read it — based solely on Vance's description of its contents.

G1-RA-009 established that the Government's selective use of Gov't Ex. 401 at Trial Tr., ECF No. 177, PageID ##1521–1522 introduced only the minimal "a letter that Molly had" reference — creating jury awareness of the letter's existence while withholding the fuller interview context that established its exculpatory significance in the Government's own investigator's own words.

G1-RA-010 established that the Government omitted from its trial presentation the five Movant Ex. F passages that documented the letter's specific location and the "easy to get" accessibility acknowledgment; the "exculpatory for you" and "all the blame on Molly" characterizations; the AUSA follow-up commitment establishing a Government retrieval obligation predating the trial by four years; and the "other bank accounts" reference bearing on the account-scope issue developed at G1-RA-005. None of those passages were presented to the jury.

G1-RA-011 established the inviolable three-way source separation — Gov't Ex. 401 (what the jury received from the interview), Movant Ex. F (what the interview contained that was

withheld), and Movant Ex. C (the independent pre-indictment letter) — as the structural prerequisite to the entire G1-RA-008 through G1-RA-015 proof architecture.

G1-RA-012 established the three-step sequence: the Government introduced the letter reference through its own exhibit, sought and obtained an absolute court bar that completely excluded the letter from the jury and gagged all counsel from referencing it in closing arguments (McKinnon never testified about the letter — the absolute bar prohibited it), and then exploited the resulting void in rebuttal. The Hubbuch non-receipt testimony independently compounds the violation.

G1-RA-013 established that the rebuttal argument at Trial Tr., ECF No. 179, PageID #1894 — delivered in three successive escalating formulations — was false as to Movant Ex. C, false as to Movant Ex. 45 / Defense Ex. 82, and false as to the Government's own investigator's December 2018 exculpatory assessment of the letter's contents; and that the Government made that argument with full knowledge of every source that made it false.

This entry establishes what the complete sequence proves when those six components are evaluated together: the Government did not merely fail to correct a single false statement. It executed a multi-step presentation strategy that began with the selective introduction of the letter's existence, progressively withheld the context that established its significance, restricted the letter itself from full development, and culminated in a final argument that told the jury the documentary record was empty of exactly what those withheld, omitted, and restricted documents addressed. Evaluated cumulatively, the sequence constitutes a unified Napue violation whose prejudicial effect is greater than the sum of its individual components — because each step compounded the preceding one, and the rebuttal argument was designed to take advantage of everything the preceding steps had placed out of the jury's reach.

FALSE TESTIMONY / MISLEADING IMPRESSION:

The cumulative false impression this entry addresses is the overall picture the jury carried into deliberation as a result of the complete G1-RA-008 through G1-RA-013 sequence. That picture was false in a specific and compounded way.

The jury knew a letter existed — it had heard the Government's own witness reference "a letter that Molly had" through the Government's own exhibit. But it did not know what the letter said, because the court's absolute bar had completely excluded the letter from the jury — McKinnon never testified about the letter, and all counsel were gagged from referencing it in closing. It did not know that the Government's own investigator had, four years before trial, described the letter as "exculpatory for you" and committed to involving the prosecuting AUSA in obtaining it. It did not know that Vance had voluntarily and proactively initiated the interview in which that assessment was made — specifically because he believed the letter and his legitimate business record cleared everything up — or that Hubbuch had acknowledged on the record that such voluntary contact from a potential investigation target was highly unusual. It did not know that the fuller interview context preserved in Movant Ex. F contained five passages bearing directly on the letter's location, its exculpatory significance, the Government's self-imposed retrieval obligation, and the scope of the accounts the Government's own investigator was aware of. It did not know that Movant's own contemporaneous journals — written before any investigation, in her own hand — were in the Government's discovery file and documented Chamblee-source reliance directly. And it did not know — as Hubbuch's confirmed trial testimony at Trial Tr., ECF No. 177, PageID ##1521–1522 establishes — that Hubbuch testified he never received or obtained the letter,

testimony that was either false or an admission of the Government's failure to honor its own investigator's December 2018 retrieval commitment.

What the jury did know, delivered in the final moments before deliberation, was the Government's three-part declaration that the documentary record was empty: not a shred of proof, not a single item of proof, not a single email or document. That declaration was the capstone of everything the preceding steps had withheld, omitted, and restricted. The jury had no basis to evaluate it against the documents it had been prevented from seeing — which is precisely the condition the sequence had been designed to create.

The cumulative false impression is therefore not simply the sum of the individual misleading impressions documented in G1-RA-009 through G1-RA-013. It is the integrated result of a presentation strategy in which each step made the next one more effective: the selective letter reference made the omission of the fuller context less detectable; the omission of the fuller context made the trial restriction more damaging; the trial restriction made the rebuttal argument more credible; and the rebuttal argument converted the manufactured gap into an affirmative misrepresentation. A jury that experienced that complete sequence — without knowing what had been withheld at each step — received a fundamentally false picture of the evidentiary record on the central knowledge-and-intent issue of the case.

GOVERNMENT KNOWLEDGE / FAILURE TO CORRECT:

Government knowledge for purposes of the cumulative prejudice analysis is established by aggregating the knowledge findings across G1-RA-008 through G1-RA-013, all of which applied to the same prosecution team acting with knowledge of the same underlying record.

By the time the rebuttal argument was delivered at Trial Tr., ECF No. 179, PageID #1894, the Government had: conducted and possessed the December 2018 recorded interview — Gov't Ex. 401 and Movant Ex. F — in which its own investigator received Vance's voluntary, proactive disclosure of the McKinnon Letter's existence and location, assessed it as exculpatory without having read it, and committed to involving the prosecuting AUSA in obtaining it ; used its own Gov't Ex. 401 at Trial Tr., ECF No. 177, PageID ##1521–1522 to introduce the minimal letter reference — establishing that the prosecution was affirmatively aware, before rebuttal, that the jury knew the letter existed through the Government's own exhibit [cross-reference G1-RA-009]; possessed Movant Ex. F with the five omitted passages — including its own investigator's contemporaneous characterization of the letter as exculpatory and the AUSA follow-up commitment — none of which were presented to the jury [cross-reference G1-RA-010]; sought and obtained an absolute court bar at Trial Tr., ECF No. 179, PageID ##1776–1779 completely excluding the letter from the jury and gagging all counsel from referencing it in closing — McKinnon never testified about the letter; the absolute bar prohibited it ; possessed Movant Ex. C — the letter itself — whose contents the rebuttal argument claimed no documentary proof of [cross-reference G1-RA-008]; possessed Movant Ex. 45 / Defense Ex. 82 — Movant's own contemporaneous journals documenting Chamblee-source reliance before any investigation — a second independent documentary source simultaneously falsified by the rebuttal's "no proof" claim [cross-reference G1-RA-003(A); G1-RA-013]; and received, through its own witnesses Chamblee

and Hogan before closing, dual-witness confirmation that the Count 2 $5,600 transaction was an intercompany transfer — directly relevant to knowledge and intent and available in the record before rebuttal [cross-reference G1-RA-004].

Evaluated cumulatively, the Government's knowledge finding is not that it knew one document or one statement contradicted the rebuttal argument. It is that the same prosecution team that had assembled and used each component of the three-step sequence — with full knowledge at each step of what had been withheld and what the jury had and had not received — then stood before the jury and argued the record was empty. Under Napue v. Illinois and Giglio v. United States, the Government's obligation to avoid creating or sustaining false impressions before the jury applies with cumulative force when the same team, with the same knowledge, executes a sequenced presentation strategy designed to make the record appear empty and then argues that it is.

MATERIALITY / PREJUDICE:

Under Napue v. Illinois, 360 U.S. at 271, the standard is whether the misleading presentation "could in any reasonable likelihood have affected the judgment of the jury." The cumulative prejudice of the G1-RA-008 through G1-RA-013 sequence satisfies that standard at the highest available threshold.

The prejudice is cumulative in the precise legal sense: it is not the prejudice of any single omission, restriction, or misrepresentation, but the prejudice that results when a sequence of individually significant violations all operate on the same central issue — knowledge and intent — in a manner where each step increases the harm of the preceding one and reduces the jury's ability to evaluate the central question accurately.

The knowledge-and-intent issue was the dispositive question of the case. The Government was required to prove that Movant knowingly participated in fraud. Movant's defense was that she relied on information supplied by Chamblee and did not know the financial information was false. Every component of the G1-RA-008 through G1-RA-013 sequence bore directly on that single question. The letter that was restricted addressed it in Movant's own pre-indictment contemporaneous words. The omitted Movant Ex. F passages included the Government's own investigator's assessment that the letter was exculpatory for the person who had proactively and voluntarily provided it to law enforcement. The contemporaneous journals in the Government's possession documented the Chamblee-source account in Movant's own hand before any investigation began. The dual-witness confirmation from Chamblee and Hogan addressed the Count 2 attribution directly. And the rebuttal argument told the jury that none of this existed.

The prejudice is further compounded by three structural features of the sequence. First, the jury received the knowledge-and-intent issue in a distorted form from the start: the selective letter reference at G1-RA-009 established jury awareness of the letter without the context necessary to evaluate it, meaning the jury processed all subsequent evidence — including the absolute bar on the letter and McKinnon's independent Chamblee-source testimony — against a baseline of incomplete information about what the letter contained and why its own investigator had assessed it as exculpatory. Second, the absolute bar at G1-RA-012 completely excluded the letter from the jury and gagged all counsel from referencing it in closing — McKinnon never testified about the letter's contents — meaning the jury's evaluation of the Chamblee-source defense was conducted without access to the most powerful corroboration of her account. Third, the rebuttal argument was the last substantive

representation made before deliberation, meaning the jury began deliberating with the Government's three-part "no proof" declaration as its most recent framing of the documentary record — with no corrective opportunity remaining.

Had the jury received the complete corrective context — the full McKinnon Letter, the five omitted Movant Ex. F passages including the Government's own investigator's exculpatory assessment and the Vance-initiated contact context, the fuller account of Movant's contemporaneous journals, and the absence of the Hubbuch non-receipt testimony or its correction — there is a reasonable likelihood it would have evaluated knowledge, intent, attribution, and the credibility of the Government's investigative conduct materially differently. Because those evaluations went to the dispositive question of whether Movant was guilty, the cumulative prejudice of the G1-RA-008 through G1-RA-013 sequence substantially undermines confidence in the verdict.

The prejudice is further amplified by trial counsel's failure to use Movant Ex. F and Movant Ex. C to challenge the rebuttal's "no proof" framing directly — and by appellate counsel's failure to raise the complete three-step sequence as the unified Ground One Napue violation it constitutes. See Ground Three, Appendix D; Ground Five, Appendix F.

CROSS-GROUND NOTATION:

Ground Two (App. C, G2-RA-012): The Ground Two controlling pretrial-IAC prejudice anchor cross-references G1-RA-014 and G1-RA-015 together — the cumulative prejudice from the letter sequence and the complete Ground One record are components of the broader controlling prejudice analysis that G2-RA-012 establishes as the foundational inter-ground prejudice anchor. See App. C, G2-RA-012.

Ground Three (App. D, G3-RA-011): The Ground Three cumulative pretrial-IAC prejudice anchor cross-references G1-RA-014 and G1-RA-015 together as the App. B cumulative-prejudice foundations that the Ground Three prejudice analysis incorporates by bidirectional cross-reference — G2-RA-012 ↔ G3-RA-011 is the controlling inter-ground prejudice linkage. See App. D, G3-RA-011.

Ground Five (App. F, G5-RA-007): The Ground Five McKinnon Letter/Gov't Ex. 401 incorporation entry cross-references the G1-RA-008 through G1-RA-014 group, which includes this cumulative prejudice entry, as the trial-record foundation for the most outcome-material component of the omitted appellate Napue claim. See App. F, G5-RA-007.

G1-RA-015 — Cumulative Materiality: The Complete Ground One Record, Evaluated Across All Entries in Appendix B, Establishes That the Government's False and Misleading Presentation Was Not Limited to Any Single Witness, Exhibit, or Argument — It Operated Simultaneously Across Financial-Summary Evidence, Entity Attribution, Account Access, Chamblee-Source Evidence, Loan Documentation, Company-Formation Evidence, and the McKinnon Letter Sequence — and the Cumulative Effect Substantially Undermines Confidence in the Verdict on Every Element the Government Was Required to Prove

RECORD CITATION / SOURCE:

All sources confirmed across G1-RA-001 through G1-RA-014, incorporated by reference. Primary anchors for the cumulative materiality analysis: Gov't Ex. 501 and Movant Ex. 9 (financial-summary false completeness — three-stage structure) [cross-reference G1-RA-005]; App. D, G3-RA-002 (controlling entity-separation document — generalized "Nex-Gen" attribution as the structural vehicle through which multiple independent Napue violations were delivered to the jury simultaneously) [cross-reference G1-RA-001]; Trial Tr., ECF No. 179, PageID #1894 (Government rebuttal — three successive "no proof" formulations — the culminating argument that exploited the cumulative evidentiary gaps the preceding violations had created) [cross-reference G1-RA-013; G1-RA-014]; Trial Tr., ECF No. 179, PageID ##1776–1779 (trial restriction on Movant Ex. C) ; Trial Tr., ECF No. 179, PageID #1792 and PageID #1796 (McKinnon — independent Chamblee-source testimony only; NOT letter testimony; absolute bar prohibited any testimony about letter contents) ;

Trial Tr., ECF No. 177, PageID ##1521–1522Trial Tr., ECF No. 177, PageID ##1521–1522 (Hubbuch — "a letter that Molly had" — through Gov't Ex. 401) [cross-reference G1-RA-009]; Trial Tr., ECF No. 175, PageID ##1055–1056 (Chamblee — $5,600 intercompany transfer) [cross-reference G1-RA-004]; Trial Tr., ECF No. 176, PageID ##1168–1169, 1172 (Hogan — $5,600 intercompany transfer) [cross-reference G1-RA-004]; Movant Ex. C (McKinnon Letter — November 14, 2018); cross-reference G1-RA-008; G1-RA-011]; Movant Ex. F (DOJ/FBI transcript — five omitted passages; Vance-initiated contact context; Hubbuch exculpatory assessment formed without reading the letter) ; Movant Ex. 45 / Defense Ex. 82 (Movant's own contemporaneous journals and notebooks — written before any investigation) [cross-reference G1-RA-003(A); G1-RA-013]; Trial Tr., ECF No. 177, PageID ##1521–1522 (Hubbuch non-receipt testimony — confirmed; independently compounds cumulative prejudice); McKinnon Decl. ¶¶11–15 ; Napue v. Illinois, 360 U.S. 264, 269–71 (1959); Giglio v. United States, 405 U.S. 150, 153–54 (1972)

EXACT QUOTE OR RECORD LANGUAGE:

Trial Tr., ECF No. 179, PageID #1894 (Government rebuttal — three successive formulations): "where in the records that you've seen, where in the emails, where in the documents is there a shred of proof that Mr. Chamblee provided Ms. McKinnon information to be put into those financial documents?"; "There isn't a single item of proof in the document -- in the emails that prove that."; "a single email or document" [Confirmed — cross-reference G1-RA-013.]

Trial Tr., ECF No. 177, PageID ##1521–1522 (Hubbuch — through Gov't Ex. 401): "a letter that Molly had" [Confirmed — cross-reference G1-RA-009.]

Movant Ex. F (Hubbuch — December 2018): "exculpatory for you"; "all the blame on Molly"; "I will ask the prosecutor, the A.U.S.A. to reach out to your attorney for this letter" [Confirmed — cross-reference G1-RA-010.]

Trial Tr., ECF No. 175, PageID ##1055–1056 (Chamblee — $5,600 intercompany transfer) [Confirmed — cross-reference G1-RA-004.]

Trial Tr., ECF No. 176, PageID ##1168–1169, 1172 (Hogan — $5,600 intercompany transfer) [Confirmed — cross-reference G1-RA-004.]

RECORD-PROOF POINT:

This entry is the capstone of Appendix B. It does not introduce new primary evidence. It establishes what the complete Ground One record — every entry from G1-RA-001 through G1-RA-014 — proves when evaluated as a unified whole rather than as a collection of discrete violations.

The critical distinction between this entry and G1-RA-014 is scope. G1-RA-014 established the cumulative prejudice of the letter/rebuttal sequence — the six-entry chain from G1-RA-008 through G1-RA-013 in which the Government introduced, withheld, restricted, and then exploited the McKinnon Letter and the December 2018 interview context. That chain addressed one dimension of the Ground One Napue violation: the deliberate documentary-void strategy built around Movant Ex. C and Movant Ex. F.

G1-RA-015 establishes the broader dimension: that the documentary-void strategy was not the only Napue violation operating at trial. It was the final layer of a multi-dimensional pattern of false and misleading presentation that had been built across the entire trial record, entry by entry, across six independent categories of proof.

Those six categories are as follows.

First — entity attribution and financial-summary false completeness (G1-RA-001 and G1-RA-005). The Government's generalized "Nex-Gen" attribution terminology — documented in G1-RA-001 and controlled by Appendix C — was the structural vehicle through which multiple independent Napue violations reached the jury simultaneously. By conflating distinct entities (NGI and NGEP), distinct accounts (NGEP BOA, Brand Bank, Whitaker, and others), distinct signers (Deware and Vance), and distinct sources of financial information (Chamblee-supplied data versus independently generated records), the Government's presentation allowed the jury to treat as interchangeable categories that were legally and factually distinct. That conflation was then operationalized through Gov't Ex. 501 — the financial summary that purported to cover NGEP BOA and related accounts but excluded them entirely — validated by the three-stage false completeness structure in which Hubbuch, McCracken, and Hubbuch again all represented the summary as comprehensive when it was not. The entity-conflation problem is not a standalone violation; it is the structural framework that made each subsequent violation harder to detect and evaluate accurately.

Second — account access and signer evidence (G1-RA-002). The false attribution of account access and signing authority to Movant — when the NGEP BOA account signatory evidence established a different account structure — operated directly on the knowledge-and-intent question. A jury that received a distorted picture of who had access to which accounts, and who signed which instruments, received a distorted picture of what Movant was in a position to know and control.

Third — Chamblee-source evidence (G1-RA-003). The Government's active Napue violation at Trial Tr., ECF No. 179, PageID #1894 — arguing in rebuttal that no documentary proof of Chamblee-source reliance existed while possessing Movant Ex. 45 / Defense Ex. 82 in its discovery file — operated simultaneously against Movant's contemporaneous journals and the Dell Jaggers QuickBooks chain. The Government held, in its own file, Movant's own first-person contemporaneous records documenting Chamblee-source reliance before any investigation began, and argued those records did not exist.

Fourth — Count 2 false attribution (G1-RA-004). The dual-witness confirmation — from the Government's own witnesses Chamblee and Hogan before closing — that the $5,600 Count 2 transaction was an intercompany transfer and not a personal payment was available in the trial record before the rebuttal argument. The Government's closing attribution of that transaction as personal fraud was made after two of its own witnesses had disproven it.

Fifth — false loan documentation and KRP lien interest (G1-RA-006). The post-FBI creation of loan documents by Chamblee and Hogan — covering equity they had invested in NGEP and delivered to Vance after FBI contact began — in violation of three independent NGEP Operating Agreement provisions, and paired with Hubbuch's false "lien interest" characterization of KRP's relationship with NGI, presented the jury with a fabricated financial structure as though it were the original one. The NGEP Operating Agreement prohibited the loan structure on three independent grounds, Hogan admitted no board vote occurred, and Judge Reeves ultimately found KRP was not a victim — none of which the jury was given a complete picture of.

Sixth — company-formation false narrative (G1-RA-007). The Government's "company never created" opening statement and Deware testimony — refuted by the Government's own

Govt. Exs. 507 and 508 — built the sham-company narrative that was a necessary predicate to the Government's broader attribution theory. A jury that believed Movant's business was never legitimate was a jury primed to reject the Chamblee-source defense from the outset, before it had heard the letter evidence, the journal evidence, or the financial-summary completeness evidence.

The cumulative record-proof point is this: the six categories of Ground One Napue violations did not operate in isolation. They operated simultaneously and reinforcingly on the same jury, evaluating the same knowledge-and-intent question, across the same trial. The entity-conflation framework (Category One) made each subsequent violation harder to isolate and challenge. The financial-summary false completeness (Category One continued) established a false baseline of investigative thoroughness. The account access distortion (Category Two) shaped the jury's understanding of what Movant could have known. The Chamblee-source suppression (Category Three) denied the jury the contemporaneous documentary corroboration of Movant's central defense. The Count 2 false attribution (Category Four) compounded the personal-fraud impression despite dual-witness refutation. The loan documentation falsity (Category Five) constructed a fabricated financial narrative around a transaction structure the Operating Agreement prohibited. The company-formation false narrative (Category Six) primed the jury to reject the defense before the documentary evidence was even before it. And the documentary-void sequence (G1-RA-008 through G1-RA-013, synthesized at G1-RA-014) culminated the entire pattern by telling the jury, after all six categories of false and misleading presentation had been delivered, that the documentary record contained no proof for the defense those violations had been designed to undermine.

FALSE TESTIMONY / MISLEADING IMPRESSION:

The cumulative misleading impression this entry addresses is not created by any single statement, exhibit, omission, or restriction. It is the integrated result of six simultaneous and reinforcing lines of false and misleading presentation, each operating on the same knowledge-and-intent question, each amplifying the others, and all culminating in a rebuttal argument that told the jury the proof did not exist.

The entity-conflation framework made the financial-summary violation less detectable — the jury could not identify what accounts were missing from Gov't Ex. 501 if it did not know which accounts were legally distinct from which entities. The financial-summary false completeness made the Chamblee-source suppression more damaging — a jury that believed the financial record had been comprehensively examined was a jury with no reason to suspect the Chamblee-supplied data had been deliberately excluded from the forensic analysis. The account access distortion made the knowledge attribution more credible — if the jury believed Movant had access to and control over the relevant accounts, it had less reason to credit her account of reliance on Chamblee-supplied information. The false loan documentation narrative made the Chamblee-source defense appear self-serving — if Hogan and Chamblee were treated as credible witnesses on the loan structure rather than as participants in a post-FBI document fabrication, their testimony undermining Movant's account was more persuasive. The company-formation false narrative made the entire defense appear implausible from the start — a jury that believed Movant was operating a sham company was not a jury prepared to evaluate, with genuine neutrality, whether she had innocently relied on Chamblee-supplied financial information.

Against that accumulated false impression — built across every category of proof the Government presented — the documentary-void sequence added its final layer. The jury

knew a letter existed, did not know what it said, did not know the Government's own investigator had called it exculpatory without reading it, did not know Vance had proactively and voluntarily brought it to law enforcement's attention because he believed it cleared everything up, did not know Movant's own contemporaneous journals were in the Government's file, and did not know the Government had committed in December 2018 to obtaining the letter through the AUSA. And then the Government told it — in three escalating formulations in the last argument before deliberation — that no proof existed.

The cumulative misleading impression is therefore a composite: a jury that received a distorted picture of the company's legitimacy, the financial records, the account structure, the loan documentation, the source of Chamblee-supplied information, and the documentary record of Movant's state of mind — and was then told by the Government that the undistorted picture would look the same.

GOVERNMENT KNOWLEDGE / FAILURE TO CORRECT:

Government knowledge for the cumulative materiality analysis is established by the aggregation of the knowledge findings across all preceding entries. The same prosecution team that presented the financial-summary evidence, the entity-attribution framework, the account access evidence, the Chamblee-source rebuttal, the loan documentation testimony, the company-formation narrative, and the McKinnon Letter sequence had access to every source that made each of those presentations false or misleading before, during, and after trial.

The cumulative knowledge issue is not whether the Government was aware of any single document or statement that contradicted its presentation. It is whether the Government, with full awareness of the entire record across all six categories, made a presentation that fairly

reflected that record. It did not. The entity-conflation framework was not an oversight — the entities, accounts, and signers were defined in the Government's own exhibits. The financial-summary false completeness was not an accident — the NGEP BOA and related accounts were identified in the Government's own investigative record, and its own witnesses validated the exclusion through the three-stage structure. The Chamblee-source suppression was not inadvertent — Movant Ex. 45 / Defense Ex. 82 were in the Government's discovery file. The Count 2 false attribution was made after the Government's own witnesses had disproven it. The loan documentation narrative was built on documents the Government knew had been created after FBI contact began, in violation of an Operating Agreement the Government possessed. The company-formation narrative was refuted by the Government's own exhibits. And the documentary-void strategy was executed by a prosecution team that possessed Movant Ex. C, Movant Ex. F, and Movant Ex. 45 / Defense Ex. 82 — and had possessed the December 2018 investigative record establishing the letter's exculpatory significance — throughout the entire trial.

Evaluated cumulatively, the Government's knowledge finding is that it possessed, at every stage of trial, the complete corrective record across all six categories of Ground One violation, and chose a presentation that systematically misrepresented each one. Under Napue v. Illinois, 360 U.S. at 269, and Giglio v. United States, 405 U.S. at 153–54, that is not a collection of isolated failures to correct — it is the sustained knowing use of a misleading evidentiary presentation across the entire trial.

MATERIALITY / PREJUDICE:

Under Napue v. Illinois, 360 U.S. at 271, the standard is whether the misleading presentation "could in any reasonable likelihood have affected the judgment of the jury." The cumulative

materiality of the complete Ground One record satisfies that standard beyond any reasonable dispute.

The individual materiality findings across G1-RA-001 through G1-RA-014 each independently establish a reasonable likelihood of prejudice — each violation, standing alone, affected the jury's evaluation of a distinct component of the knowledge-and-intent question. The cumulative materiality this entry establishes is greater than any individual finding: when all six categories of violation are evaluated together, the reasonable likelihood of prejudice does not merely persist — it is compounded by the interaction among the violations.

The entity-conflation problem amplified every subsequent violation by making it harder for the jury to identify what was wrong with each individual presentation. A jury that could not distinguish NGI from NGEP, or NGEP BOA from Brand Bank, or Deware's signing role from Movant's, was not in a position to detect that the financial summary excluded specific accounts, that the loan documentation was entity-specific in its violation of the Operating Agreement, or that the Chamblee-source evidence was tied to a specific QuickBooks data-entry chain. The conflation was the predicate condition under which every other violation operated less visibly and therefore more effectively.

The financial-summary false completeness amplified the Chamblee-source suppression by establishing a false investigative baseline. A jury told three times — by Hubbuch, McCracken, and Hubbuch again — that every relevant account had been examined and summarized had no reason to ask whether Chamblee-supplied data had been deliberately excluded from the forensic record. The three-stage false completeness structure did not

merely mislead on one point; it foreclosed the inquiry that would have revealed the Chamblee-source evidence.

The documentary-void sequence amplified everything that preceded it by converting the accumulated false picture into an affirmative claim. The rebuttal argument at Trial Tr., ECF No. 179, PageID #1894 was not delivered into a neutral evidentiary landscape. It was delivered after six categories of false and misleading presentation had already shaped the jury's understanding of the company, the finances, the accounts, the loans, the Chamblee-source chain, and the documentary record of Movant's state of mind. In that context, the "no proof" argument was not merely a false claim about the letter evidence — it was the capstone of a presentation strategy that had been building toward that argument throughout the trial.

The prejudice is further strengthened by the entity-conflation problem's effect on the jury's attribution analysis. Ground One cumulative materiality depends on keeping entity, account, signer, source-of-information, transaction-source, and role distinctions clear — because the Government's Napue violations were not random. They were systematically organized around the same false attribution: that Movant had the access, the control, the knowledge, and the intent that the record — accurately presented — would have assigned to Chamblee, Hogan, and the entity structure they controlled. Every category of violation in Appendix B reinforced that false attribution from a different angle. Evaluated collectively, the complete Ground One record establishes that the jury never received an accurate picture of any of the dimensions of that attribution question — and convicted on the basis of a composite that was false in each of its component parts.

There is a reasonable likelihood — rising to near-certainty under the Napue standard — that a jury presented with the complete accurate record across all six categories would have

evaluated knowledge, intent, attribution, credibility, and the Government's investigative integrity materially differently, and would not have reached the same verdict. Because the knowledge-and-intent question was dispositive, the cumulative prejudice of the complete Ground One Napue record substantially undermines confidence in the verdict.

The prejudice is further amplified by trial counsel's cumulative failure to challenge any of the six categories effectively, and by appellate counsel's failure to raise the unified Ground One Napue violation on direct appeal. See Ground Three, Appendix D; Ground Five, Appendix F.

CROSS-GROUND NOTATION:

Ground Two (App. C, G2-RA-012): The Ground Two controlling pretrial-IAC prejudice anchor cross-references G1-RA-015 as the cumulative Ground One materiality capstone — the complete six-category false-presentation pattern analyzed in this entry is the trial-record basis on which the G2-RA-012 controlling prejudice analysis rests. See App. C, G2-RA-012.

Ground Three (App. D, G3-RA-001; G3-RA-011): Two Ground Three entries cross-reference G1-RA-015 — G3-RA-001 (the sentencing-framework anchor) and G3-RA-011 (the cumulative pretrial-IAC prejudice anchor) — each incorporating the complete Ground One cumulative materiality established here into the Ground Three prejudice analysis. See App. D, G3-RA-001; G3-RA-011.

Ground Five (App. F, G5-RA-004): The Ground Five financial-summary Napue example specifically cross-references G1-RA-015 alongside G1-RA-002 and G1-RA-005 as the three App. B anchors that ground the financial-summary completeness component of the appellate Napue theory. See App. F, G5-RA-004.

McKinnon v. United States, Crim. No. 5:20-cr-00063

Movant: Molly Irene McKinnon, Register No. 23265-032

APPENDIX C - Ground Two Record-Proof Appendix

Pretrial Ineffective Assistance of Counsel

SCOPE AND SELECTION OF RECORD EVIDENCE

Ground Two and this Appendix plead the pretrial ineffective-assistance claim, its operative factual theories, and the principal record evidence supporting relief. Counsel's deficient pretrial performance involved more instances of failed investigation, undeveloped evidence, omitted factual inquiry, and failure to prepare and present available defenses than could practicably be reproduced and analyzed in this Appendix. The entries below therefore identify the clearest and most consequential instances establishing deficient performance and resulting prejudice. The additional instances are not unpleaded claims or separate grounds for relief; they provide further evidence of the same categories of deficient performance and prejudice pleaded in Ground Two. If an evidentiary hearing is granted, Movant may present additional record-based and testimonial evidence supporting those pleaded allegations, subject to the scope of the Court's hearing order and applicable evidentiary requirements.

G2-RA-001 — Framework: Pretrial IAC / Failure to Investigate Entity, Account Structure, and Defense Theory

RECORD CITATION / SOURCE:

McKinnon Decl. ¶¶4-10, 18-25; McKinnon Decl. ¶¶16–17, 21–24

EXACT QUOTE OR RECORD LANGUAGE:

¶4: "At no time was I an actual owner, partner, member, or control person of NGI, NGEP, or any operating entity or account the Government attributed to me." ¶18: "Throughout the pretrial period, I made numerous specific requests of Lewis, including: (a) retaining an investigator to examine Gary Chamblee's background and prior FBI involvement; (b) retaining a forensic accountant to reconstruct the flow of funds and challenge the

Government's financial narrative; (c) subpoenaing specific witnesses including Alan Rolfes, Joan Faybik, Shannon Wells, Richard Phillips, David Smith, Dell Jaggers, Ken McCoy, and Jeff Dimick; and (d) subpoenaing the Brand Bank records for the NGEP account. Lewis either declined or failed to follow through on each of these requests."

¶¶16–17: Movant relocated to Kentucky for approximately two months before trial to be available for preparation meetings with counsel; that effort did not cure counsel's earlier lack of diligence or the lost opportunity to investigate, organize witnesses, and develop the defense while critical preparation time remained available. ¶¶21–24 (in sum and substance): Counsel acknowledged she had not reviewed all discovery materials and asked Movant to identify key documents; Movant spent significant time organizing and explaining documents and identifying exhibits she believed were important; counsel discarded or declined to use many of those exhibits without adequate explanation; counsel relied on Movant to help prepare witness questions and identify trial evidence.

RECORD-PROOF POINT:

This entry functions as the framework anchor for Ground Two. The declaration establishes that Movant communicated to pretrial counsel the foundational factual framework needed to separate her administrative role from ownership, account control, and financial decision-making authority. She requested specific investigative steps -- forensic accountant, investigator, specific witness subpoenas, specific account subpoenas -- and counsel declined or failed to follow through on each request. McKinnon Decl. ¶18. Counsel also acknowledged she had not reviewed all 50,000 discovery documents and relied on Movant to identify key evidence. McKinnon Decl. ¶21. This entry explains why the Government's attribution theory -- which depended on blurring entity distinctions and treating Movant's

administrative work as proof of ownership, control, and knowing fraudulent participation -- could only have been effectively challenged by a counsel who had conducted a reasonable pretrial investigation. Each later G2-RA entry identifies a specific category of evidence within that broader investigative failure.

The record further establishes that counsel failed to use the pretrial preparation period competently. Movant relocated to Kentucky for approximately two months before trial specifically to facilitate preparation meetings, yet that relocation did not cure counsel's failure to investigate or her reliance on Movant to identify, organize, and explain key documents. McKinnon Decl. ¶¶16–17. Counsel acknowledged she had not reviewed all discovery materials, asked Movant to identify key evidence, and then discarded or declined to use many of the exhibits Movant identified without adequate explanation. McKinnon Decl. ¶¶21–24. These facts confirm that the investigation and preparation failures were not caused by any external obstacle but by counsel's own failure to conduct the investigation and preparation her role required.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

Under Strickland v. Washington, 466 U.S. 668, 690-91 (1984), counsel has a duty to conduct an investigation reasonably designed to prepare a defense against the Government's theory. That duty is not discharged by relying on the client to identify key evidence. The Government's case attributed ownership, control, account access, and fraudulent intent to Movant through generalized "Nex-Gen" references, bookkeeping entries, email transmissions, and association with Vance. Competent pretrial counsel was required to retain an investigator or forensic accountant to reconstruct financial flows and entity distinctions; subpoena the NGI account records — specifically to trace and document cashier's check

purchases Vance made from his NGI account, which would have established that Vance personally infused hundreds of thousands of dollars into NGEP when the equity partners (Shumard/Chamblee Group) failed to fulfill their funding obligations — along with Brand Bank records and signatory-card materials; identify and develop the witnesses Movant specifically identified; and develop those materials into an organized pretrial defense framework capable of testing the Government's attribution theory at trial. Counsel failed to take any of those steps despite receiving specific, repeated requests from Movant and despite acknowledging she had not reviewed all discovery materials.

Counsel's reliance on Movant to identify key documents, organize discovery, and prepare witness questions — tasks that were counsel's professional responsibility — and counsel's admitted failure to review the full discovery set confirm deficient performance under Strickland. A reasonable attorney does not discharge the duty to investigate by delegating the investigation to the client. McKinnon Decl. ¶¶21–24. The fact that Movant relocated to Kentucky for two months before trial eliminates any logistical justification for the preparation failure: counsel had every opportunity to meet, review, and prepare — and failed to do so.

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

Counsel had notice from multiple converging sources: (a) Movant's explicit pretrial requests identifying specific investigative steps, records, and witnesses (McKinnon Decl. ¶18); (b) the Government's indictment, which relied on generalized "Nex-Gen" attribution requiring entity-specific rebuttal; (c) Government discovery containing approximately 50,000 documents reflecting entity formation records, account records, and financial materials; (d) Movant's own explanation, communicated before trial, that she was an employee -- not an

owner or control person -- and that Chamblee and his partners controlled the NGEP account and Brand Bank account (McKinnon Decl. ¶¶4-10). Counsel's acknowledgment that she had not reviewed all discovery and asked Movant to identify key evidence confirms not only notice of the investigative gap but counsel's own awareness that the investigation was incomplete.

Movant's physical relocation to Kentucky for two months before trial confirms that counsel had ample access and opportunity to complete a reasonable pretrial investigation. McKinnon Decl. ¶¶16–17. Movant was available for meetings; she organized and explained documents; she identified exhibits. Counsel's acknowledgment that she had not reviewed all discovery — combined with Movant's relocation to facilitate preparation — establishes not only notice of the investigative gaps but counsel's own awareness that the investigation was incomplete during a period when completion was possible. McKinnon Decl. ¶¶21–24.

MATERIALITY / PREJUDICE:

There is a reasonable probability that competent pretrial investigation into entity and account structure would have produced a different result. Strickland, 466 U.S. at 694. A defense counsel who had retained a forensic accountant, subpoenaed account records, and developed the Chamblee/Hogan NGEP account signatory evidence before trial would have been able to present a coherent counter-narrative separating Movant's administrative role from the ownership, control, and account access the Government attributed to her. The sentencing court's finding that Movant's testimony, if believed, "would have affected the outcome of the case" confirms the undeveloped defense theory was outcome-material. Sent'g Tr., ECF No. 235, PageID #2352. Because the failures identified in G2-RA-002 through G2-RA-009 all trace to this same root -- an incomplete pretrial investigation -- the prejudice from each

individual failure is both independently sufficient and cumulatively reinforcing under Strickland.

The prejudice analysis is strengthened by the absence of any logistical obstacle to preparation. Movant relocated to Kentucky specifically to facilitate trial preparation. McKinnon Decl. ¶¶16–17. The resulting prejudice — an incomplete investigation and an undeveloped defense framework — was not inevitable; it was the direct product of counsel's failure to prepare during a period when preparation was both possible and expected. Had counsel used that time to retain an investigator or forensic accountant, subpoena the identified records, and develop the defense framework, the missing pretrial investigation could have been completed before trial began. Each failure identified in G2-RA-002 through G2-RA-011 occurred against the backdrop of a preparation period that Movant made every effort to facilitate.

CROSS-GROUND NOTATION:

Ground Two — PRIMARY (Appendix C): Pretrial IAC — failure to investigate entity structure, account architecture, and defense theory before trial; counsel relied on Movant to identify key evidence, acknowledged incomplete discovery review, and discarded exhibits Movant organized and identified as important; this entry is the framework anchor and root cause of each specific investigation failure documented in G2-RA-002 through G2-RA-012

Ground One (Appendix B): Napue/Giglio — G1-RA-001 (generalized entity attribution framework); the Government's unchallenged "Nex-Gen" attribution depended on the jury having no organized entity-distinction framework to evaluate against; competent pretrial investigation would have developed the corrective framework the jury never received

Ground Three (Appendix D): Trial IAC — G3-RA-001 (framework failure); the trial's absence of an organized alternative state-of-mind defense traces directly to the pretrial investigation failure documented in this entry; each Day 6 failure identified in App D is a downstream consequence of the pretrial framework the investigation never built.

G2-RA-002 — Failure to Investigate NGEP Account / Signer Records Before Trial

RECORD CITATION / SOURCE:

Trial Tr., ECF No. 176, PageID ##1186-1187; McKinnon Decl. ¶¶5-6, 18-25; Movant Ex. 72 [Tab 78] (Gov't Ex. 201)

EXACT QUOTE OR RECORD LANGUAGE:

McKinnon Decl. ¶5: "I was not a signatory, authorized user, or account holder on any of Douglas William Vance's personal or business bank accounts." McKinnon Decl. ¶6: "I had no access to the NGEP Bank of America account, the Brand Bank account controlled by Chamblee and his Shumard partners, or any other account controlled solely by Chamblee and his partners. Because I had no access to those accounts, I had no independent means of verifying whether Chamblee's reported sales were genuine or fabricated." Trial Tr., ECF No. 176, PageID ##1186-1187: Agent Hubbuch identified Gov't Ex. 201 as Bank of America NGEP account records; Chamblee and Hogan were identified as listed signers; Movant was not identified as a signer on those pages.

RECORD-PROOF POINT:

The record establishes both that Movant communicated her lack of account access to counsel before trial (McKinnon Decl. ¶¶5-6, 18) and that the NGEP Bank of America account signature-card evidence -- which identified Chamblee and Hogan as signatories while Movant was not listed -- was available in Government discovery and introduced as a Government exhibit at trial (Gov't Ex. 201 / Movant Ex. 72). Competent pretrial counsel reviewing discovery and following the client's requests would have identified, subpoenaed, and developed this account-access and signatory evidence before trial, organizing it into the

defense framework as the foundational basis for showing the jury that the account associated with Chamblee-reported sales was not Movant's account.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

A reasonable pretrial investigation required developing and organizing the Bank of America NGEP account records already available in Government discovery — identifying Chamblee and Hogan as account signatories without Movant and integrating that evidence into the pretrial defense framework — and separately subpoenaing the NGI account records to trace and document cashier's check purchases made by Vance from his NGI account, establishing his personal financial infusions into NGEP when the equity partners failed to fulfill their funding obligations. McKinnon Decl. ¶18 establishes that Movant specifically requested Lewis subpoena the NGI account records and retain a forensic accountant. Lewis did subpoena the NGI records; however, Lewis submitted the subpoena with an incorrect account number and was required to resubmit it. Because the corrected subpoena was submitted too late in the pretrial period, the records were not received before trial. As to expert assistance, Lewis retained an accountant — but not a forensic accountant — and was provided $2,500 for that purpose. This complex financial-crimes case required a forensic accountant to trace disputed fund flows; the accountant Lewis retained advised her that the $2,500 budget was insufficient. Rather than petition the Court for additional funding, Lewis declined to do so, representing to Movant that Judge Reeves would not approve an increased expert budget. As a result, no forensic-level financial analysis was conducted, the NGI cashier's check records were not obtained before trial, and the account-access and signatory evidence was never developed into an organized pretrial defense theory, leaving counsel without the foundation needed to connect it to the Chamblee-supplied-information and state-of-mind defense.

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

Counsel had direct and specific notice from three independent sources: (a) Movant explicitly told counsel she was not a signatory or authorized user on Vance's or Chamblee's accounts (McKinnon Decl. ¶¶5-6); (b) Movant specifically requested subpoenas of the NGI account records (McKinnon Decl. ¶18); and (c) Government discovery contained approximately 50,000 documents including the account records later introduced as Gov't Ex. 201 / Movant Ex. 72. The signer evidence was not hidden -- it was in the Government's own account materials. Any reasonable discovery review and any follow-through on Movant's subpoena requests would have surfaced this evidence before trial.

MATERIALITY / PREJUDICE:

There is a reasonable probability that pretrial development of the NGEP and NGI account signatory evidence would have produced a different result. Had counsel developed this evidence before trial, the defense could have shown the jury from the outset that the NGEP account whose balances and sales information Chamblee reported was associated with Chamblee and Hogan as signatories -- not with Movant -- and that Movant therefore lacked any account-access-based ability to independently verify Chamblee's reported sales. The prejudice connects directly to App. B, G1-RA-002, which confirms the signer evidence was in the trial record but its significance was not exploited by the defense in a coherent, organized way.

CROSS-GROUND NOTATION:

Ground Two — PRIMARY (Appendix C): Pretrial IAC — failure to investigate NGEP Bank of America account signer records before trial; Lewis submitted the NGI account subpoena with an incorrect account

number and resubmitted too late for records to be received before trial; failed to petition the Court for additional forensic-accountant funding under 18 U.S.C. §3006A; the account-access and signatory evidence was never organized into a pretrial defense framework

Ground One (Appendix B): Napue/Giglio — G1-RA-002 (Bank of America NGEP account / signer evidence); Chamblee and Hogan — not Movant — were the listed account signatories on the Government's own exhibit; the pretrial investigation failure left that evidence underdeveloped and compounded the Government's misleading account-access presentation to the jury

Ground Three (Appendix D): Trial IAC — G3-RA-002 (failure to correct entity/ownership/role/account-control conflation at trial); the same signatory evidence should have been organized into a pretrial defense framework and presented at trial to separate Movant's administrative role from the account ownership and control the Government attributed to her

G2-RA-003 — Failure to Develop Chamblee-Source State-of-Mind Defense

RECORD CITATION / SOURCE:

McKinnon Decl. ¶¶6-9, 32-39, 51-59; Trial Tr., ECF No. 179, PageID ##1792, 1796; Movant Ex. 29 [Tab 35] (Gov't Ex. 120); Movant Ex. 30 [Tab 36] (Gov't Ex. 627); McKinnon Decl. ¶¶40–50; Trial Tr., ECF No. 176, PageID ##1308, 1311

EXACT QUOTE OR RECORD LANGUAGE:

McKinnon Decl. ¶7: "Chamblee routinely provided me with balance information and sales figures for the business. I relied on those representations in preparing financial reports and in communicating information to investors and lenders. I had no reason at the time to believe that Chamblee's reported sales were false, because Chamblee represented to me that all sales proceeds were being deposited into accounts controlled solely by him and his partners."

McKinnon Decl. ¶8: "I did not learn that Chamblee's initial reported sales were false until the afternoon of June 26, 2017, when Chamblee informed me of that fact. The email underlying Count 6 -- sent to Dell Jaggers of KRP -- was sent by me on the morning of June 26, 2017, several hours before Chamblee disclosed to me that his sales were fabricated." Trial Tr., ECF

No. 179, PageID #1792: "told me that he had made some sales and gave me information to input into the QuickBooks."

Trial Tr., ECF No. 176, PageID ##1308, 1311: Dell Jaggers identified as recipient of the June 26, 2017 communication at issue in Count 6. McKinnon Decl. ¶¶40–50: Movant documented contemporaneous conversations with Chamblee and maintained journal records reflecting what she was told, what she understood, and the information she received and relied upon in preparing financial reports and transmitting information to others. Movant Ex. 30 (Gov't Ex. 627): Transcription-related evidence corroborating Chamblee's role in supplying information to Movant.

RECORD-PROOF POINT:

The record establishes two interconnected points: (1) that Chamblee routinely supplied Movant with sales figures and balance information she relied upon without independent verification, because she lacked access to the accounts where Chamblee represented proceeds were deposited; and (2) that the Count 6 communication to Dell Jaggers was transmitted on the morning of June 26, 2017, before Chamblee disclosed to Movant that afternoon that his sales figures were fabricated -- directly negating the knowing element for that count. McKinnon Decl. ¶8; Movant Ex. 29 (Gov't Ex. 120). Both points were communicated to counsel before trial and were available in Government discovery and exhibit materials. Competent pretrial counsel was required to develop these facts into an organized, evidence-supported defense theory before trial.

The record also establishes that counsel failed to develop and organize Movant's contemporaneous journal records and transcription-related evidence corroborating the Chamblee-source theory. McKinnon Decl. ¶¶40–50. Those materials — available before trial

— documented what Movant was told and understood at the time of each charged communication. Movant Ex. 30 (Gov't Ex. 627). The trial record separately confirmed that Dell Jaggers was the Count 6 recipient, Trial Tr., ECF No. 176, PageID ##1308, 1311, and that the timing of the communication was identifiable from available records before trial. McKinnon Decl. ¶8.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

Competent pretrial counsel was required to: (a) organize and document the timeline of Chamblee-supplied sales information; (b) develop the Count 6 timing evidence showing Movant transmitted information to Dell Jaggers before Chamblee's disclosure that day; (c) investigate and potentially subpoena Dell Jaggers to establish the communication chain and timing; (d) prepare Movant to testify fully about her reliance on Chamblee-supplied information and her lack of ability to verify it; and (e) develop corroborating evidence from business records, contemporaneous journals (McKinnon Decl. ¶¶45-49), and recorded conversations (McKinnon Decl. ¶¶40-44). McKinnon Decl. ¶25 establishes that Lewis spent approximately one half-day preparing Movant for testimony, focused almost entirely on the duress framework rather than the Chamblee-source reliance and timing defense. Regarding Dell Jaggers: Lewis represented to Movant that she expected Jaggers to testify, given that he was a recipient of the communications underlying Counts 5 and 6, and that the Government would subpoena him for that reason. Movant specifically requested Lewis subpoena Dell Jaggers as a defense witness (McKinnon Decl. ¶18(c)). Lewis failed to issue the subpoena, representing to Movant that it was unnecessary because Lewis believed the Government would subpoena Jaggers and call him as a witness. That representation proved to be incorrect. Lewis's failure to independently subpoena and develop Jaggers as a defense

witness — based on a mistaken assumption about the Government's trial strategy — left the Count 6 timing and communication-chain evidence undeveloped from the defense's perspective.

Competent pretrial counsel was also required to: (f) identify, review, and organize Movant's contemporaneous journal records and transcription-related materials corroborating the Chamblee-source theory (McKinnon Decl. ¶¶40–50); (g) develop the Dell Jaggers timing evidence by subpoenaing or preparing Jaggers to establish that Movant transmitted the Count 6 communication before learning of Chamblee's disclosure that same afternoon (Trial Tr., ECF No. 176, PageID ##1308, 1311; McKinnon Decl. ¶8); and (h) integrate Movant Ex. 30 (Gov't Ex. 627) transcription-related evidence into the Chamblee-source defense theory before trial.

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

Counsel had direct notice of the Chamblee-source theory because Movant communicated it before and during trial (McKinnon Decl. ¶¶6-9, 32-39). The timing evidence for Count 6 was available in Gov't Ex. 120 / Movant Ex. 29, which bore the date and time of the Dell Jaggers communication; combined with McKinnon Decl. ¶8, the timing proof was ready for development before trial without any additional discovery. Movant's contemporaneous journals (Defense Ex. 82 [Tab 51] / Movant Ex. 45) and recorded conversations with Chamblee (McKinnon Decl. ¶¶40-44) provided additional corroborating materials.

Movant's journal records and transcription-related materials were available before trial and communicated to counsel. McKinnon Decl. ¶¶40–50. Movant Ex. 30 (Gov't Ex. 627) was part of Government discovery. Dell Jaggers was identified in Gov't Ex. 120 as the Count 6

recipient; any competent pretrial review of the Government's Count 6 evidence would have identified Jaggers as a witness to be subpoenaed or prepared before trial.

MATERIALITY / PREJUDICE:

There is a reasonable probability that a pretrial-developed Chamblee-source and timing defense would have produced a different result. The Government's rebuttal exploited the asserted absence of documentary support, arguing there was "not a shred of proof" and "not a single item of proof" showing Chamblee supplied financial information. Trial Tr., ECF No. 179, PageID ##1894, 1898; App. B, G1-RA-013. That rebuttal argument succeeded because counsel had not developed, organized, and corroborated the Chamblee-source theory with available timing evidence, exhibit materials, and witness testimony. The Count 6 timing point alone -- that the Dell Jaggers communication was sent hours before Chamblee disclosed the falsity of his sales figures -- establishes a reasonable probability of a different result on that count had it been competently developed.

The knowing-element prejudice for Count 6 is strengthened by the trial record confirming Dell Jaggers as the recipient (Trial Tr., ECF No. 176, PageID ##1308, 1311) and by Movant's contemporaneous journal and transcription-related evidence corroborating what she was told and relied upon. McKinnon Decl. ¶¶40–50. Had counsel organized and presented those materials, the Government's rebuttal argument that no documentary proof supported Chamblee's involvement — Trial Tr., ECF No. 179, PageID ##1894, 1898; App. B, G1-RA-013 — would have been directly answered. The Count 6 timing evidence, developed before trial with Jaggers testimony and journal corroboration, would have established reasonable doubt as to whether Movant knowingly transmitted false information.

CROSS-GROUND NOTATION:

Ground Two — PRIMARY (Appendix C): Pretrial IAC — failure to develop the Chamblee-source state-of-mind defense; counsel did not organize the Count 6 timing evidence, failed to subpoena Dell Jaggers as a defense witness, spent approximately one-half day on testimony preparation focused almost entirely on duress, and did not develop or corroborate the Chamblee-source reliance theory with available journal and recording evidence before trial

Ground One (Appendix B): Napue/Giglio — G1-RA-003 (Chamblee supplied QuickBooks sales information; Government possessed Movant Ex. 45 / Defense Ex. 82 in discovery documenting the Chamblee-source chain); G1-RA-013 (Government rebuttal exploitation — the "not a shred of proof" argument succeeded against a background of underdeveloped, uncorroborated Chamblee-source documentation)

Ground Three (Appendix D): Trial IAC — G3-RA-003 (failure to impeach Chamblee on sales-information testimony and develop the Chamblee-source framework at trial); G3-RA-008 (failure to use the contemporaneous journal and recorded-conversation transcription evidence at trial); the trial-execution failures directly trace to the pretrial investigation failure documented in this entry

G2-RA-004 — Failure to Investigate / Prepare McKinnon Letter and Gov't Ex. 401 Theory

RECORD CITATION / SOURCE:

Movant Ex. C [Tab 3] (McKinnon Letter); Gov't Ex. 401; McKinnon Decl. ¶¶11-15, 20, 28-31; Movant Ex. F [Tab 6] (DOJ/FBI Transcript of Gov't Ex. 401 — the written transcript only; distinct from and NOT interchangeable with Gov't Ex. 401 (the audio recording) or Movant Ex. C (the McKinnon Letter itself)); Trial Tr., ECF No. 177, PageID ##1521-1522; Trial Tr., ECF No. 179, PageID ##1776-1779

EXACT QUOTE OR RECORD LANGUAGE:

McKinnon Decl. ¶11: "In or about November 2018, I authored a letter addressed to the attorney representing my co-defendant, Douglas Vance. In that letter, I documented my fear of Gary Chamblee, the threats and coercive circumstances under which I acted, my limited role in the businesses, and my lack of knowledge that Chamblee's reported sales were fabricated." McKinnon Decl. ¶15: "The McKinnon Letter was directly relevant to the

knowing and voluntary elements the Government was required to prove." McKinnon Decl. ¶31: "Lewis did not make an adequate offer of proof after the Court excluded the McKinnon Letter from the jury's consideration, did not seek admission of the letter on any alternative evidentiary basis, and did not preserve the distinction between a complete duress defense and independently relevant state-of-mind evidence." Trial Tr., ECF No. 177, PageID ##1521-1522: Hubbuch testified that Vance referred him to "a letter that Molly had" and that he never received it.

RECORD-PROOF POINT:

The record establishes that the McKinnon Letter -- a contemporaneous, pre-indictment statement documenting Movant's limited role, lack of knowledge of falsity, reliance on Chamblee-supplied information, and fear of Chamblee -- was known to counsel before trial, referenced in Gov't Ex. 401, and communicated by Movant to counsel as a key piece of state-of-mind evidence. McKinnon Decl. ¶¶11-15. The fuller interview transcript (Movant Ex. F) preserved Hubbuch's characterization of the letter as potentially exculpatory and his statement that he would ask the prosecutor to reach out to defense counsel for it. A competent pretrial counsel reviewing Gov't Ex. 401 and the related transcript would have identified the letter, investigated its circumstances, developed the evidentiary theory for its admission independent of duress, and prepared a proffer strategy to distinguish the letter's independent state-of-mind value from a complete duress defense.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

Competent pretrial counsel was required to: (1) identify the McKinnon Letter through review of Gov't Ex. 401 and discovery; (2) develop an evidentiary theory for the letter's admission independent of the duress defense; (3) prepare a proffer strategy anticipating the Sixth Circuit

proffer requirement; (4) preserve the distinction between the letter as duress evidence and the letter as independently admissible state-of-mind evidence bearing on knowledge, intent, and Chamblee-source reliance; (5) prepare to use the letter's corrective context to address any Government argument that no contemporaneous record supported Movant's defense; and (6) make an adequate offer of proof if the Court raised barriers to the letter's admission. McKinnon Decl. ¶31 establishes that counsel failed to do any of these things. The result was that the letter was filed only as a Court exhibit, did not go to the jury, and could not be discussed in closing. Trial Tr., ECF No. 179, PageID ##1776-1779. That outcome was the direct consequence of a failure to prepare the issue pretrial, not merely of an adverse ruling.

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

Counsel had notice from multiple independent sources: (a) Movant communicated the letter's existence and its relevance to her state-of-mind defense before trial (McKinnon Decl. ¶¶11-15); (b) Gov't Ex. 401 referenced "a letter that Molly had" and Hubbuch's discussion of its potential exculpatory significance (Trial Tr., ECF No. 177, PageID ##1521-1522); and (c) Movant Ex. F preserved Hubbuch's statement that he would ask the prosecutor to reach out to defense counsel for the letter. Any competent pretrial counsel reviewing Government discovery would have identified Gov't Ex. 401 as containing references to a potentially exculpatory letter and would have investigated its status, contents, and evidentiary use before trial.

MATERIALITY / PREJUDICE:

There is a reasonable probability that competent pretrial preparation of the McKinnon Letter issue would have produced a different result. The letter bore directly on knowledge, intent, limited role, and Chamblee-source reliance -- the central contested issues at trial. Developed

pretrial under a theory distinct from a complete duress defense, the letter could have been admitted as contemporaneous state-of-mind evidence. The prejudice is heightened because the Government later exploited the letter's effective absence by arguing that no "shred of proof" supported Movant's defense. App. B, G1-RA-013. A pretrial-prepared McKinnon Letter strategy would have answered that argument before it was made. See App. B, G1-RA-008, G1-RA-009, G1-RA-010, G1-RA-012.

CROSS-GROUND NOTATION:

Ground Two — PRIMARY (Appendix C): Pretrial IAC — failure to investigate and prepare the McKinnon Letter as independent state-of-mind evidence; counsel did not develop an evidentiary theory for the letter's admission independent of duress, did not prepare a proffer strategy anticipating the Sixth Circuit proffer requirement, and did not preserve the distinction between a complete duress defense and independently admissible state-of-mind evidence bearing on knowledge, intent, and Chamblee-source reliance

Ground One (Appendix B): Napue/Giglio — G1-RA-008 through G1-RA-013 (McKinnon Letter sequence — selective introduction through Gov't Ex. 401, trial restriction, and rebuttal exploitation of the resulting documentary void); the Government's rebuttal use of the letter's effective absence traces directly to the pretrial failure to develop its independent admissibility

Ground Three (Appendix D): Trial IAC — G3-RA-007 (McKinnon Letter / proffer / preservation failure); the Day 6 failure to make an adequate offer of proof and preserve the distinction between the restricted complete duress defense and independently admissible state-of-mind evidence was the direct consequence of the pretrial failure to develop an independent admissibility strategy

Ground Five (Appendix F): Appellate IAC — G5-RA-007 (McKinnon Letter / Gov't Ex. 401 pattern); the McKinnon Letter and Gov't Ex. 401 sequence formed a specific component of the omitted appellate Napue/prosecutorial-misconduct claim that Napolitano declined to include despite Movant's specific request

G2-RA-005 — Failure to Develop Independent State-of-Mind Defense (Non-Duress Track)

RECORD CITATION / SOURCE:

McKinnon Decl. ¶¶20, 25, 29-30, 32-39, 51-59; Culberson Decl. ¶10 (Movant Ex. E [Tab 5]) [corroborative/contextual only -- primary support for Ground Four / App. E]; Trial Tr., ECF No. 179, PageID ##1762, 1771–1774, 1765, 1770, 1775–1776, 1780

EXACT QUOTE OR RECORD LANGUAGE:

McKinnon Decl. ¶20: "Lewis advised me that my only viable defenses were duress and jury nullification. She did not advise me that I was entitled to testify about my intent, state of mind, lack of knowledge of falsity, reliance on information supplied by others, and lack of ownership or control independently of establishing every element of a complete affirmative defense of duress. Had I been properly advised of my right to testify about these matters without first satisfying all elements of a duress defense, I would have testified more fully and completely at trial." McKinnon Decl. ¶25: "Lewis spent approximately one half-day preparing me for my own testimony. That preparation focused almost entirely on establishing a duress defense based on Chamblee's threats." McKinnon Decl. ¶34: "Trial counsel did not adequately prepare me to present that state-of-mind defense independently of a complete duress defense." Culberson Decl. ¶10: "McKinnon's questions and requests were normally very detailed in what she needed from him to prepare for sentencing. Mr. Hayworth was normally non-responsive, and rarely answered any of her questions or requests for assistance in preparing for sentencing." [cited for corroboration of the communication-responsiveness pattern McKinnon experienced with counsel; Culberson Decl. primarily supports Ground Four / App. E]

Trial Tr., ECF No. 179, PageID #1762: Government raised the Sixth Circuit proffer requirement before Movant testified. PageID ##1771–1774: Court ruled against the duress presentation. PageID #1765: Counsel's proffer included a corrected timing statement. PageID

#1770: Government used that corrected timing statement. PageID ##1775–1776, 1780: After the ruling, counsel received only limited additional preparation time before Movant testified.

RECORD-PROOF POINT:

The record establishes that counsel affirmatively advised Movant that her only viable defenses were duress and jury nullification, and failed to advise her that she was entitled to present a state-of-mind defense -- lack of knowledge, lack of fraudulent intent, reliance on Chamblee-supplied information, lack of ownership or control -- independent of satisfying every element of a complete affirmative duress defense. McKinnon Decl. ¶20. This was not a strategic choice -- it was deficient legal advice that fundamentally limited Movant's ability to make informed decisions about how to testify and how to structure her defense. When the Court restricted the duress testimony on Day 6, there was no alternative framework because counsel had never prepared one. McKinnon Decl. ¶¶29-30, 34.

The Day 6 trial record confirms the precise sequence in which the pretrial preparation failure was exposed: the Government raised the Sixth Circuit proffer requirement at PageID #1762; the Court ruled against the duress presentation at PageID ##1771–1774; counsel's own proffer included a corrected timing statement at PageID #1765, which the Government then used at PageID #1770; and after the ruling counsel received only limited additional preparation time before Movant testified. Trial Tr., ECF No. 179, PageID ##1775–1776, 1780. That sequence demonstrates that counsel's failure to prepare an independent state-of-mind defense before trial was not a theoretical gap — it was exposed in real time when the Court restricted the only defense framework counsel had prepared.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

Competent pretrial counsel was required to: (a) accurately advise Movant of her right to present an independent state-of-mind defense regardless of whether she satisfied every element of a complete affirmative duress defense; (b) develop Movant's testimony around both the duress track and the independent state-of-mind/lack-of-knowledge track so that if one track was restricted, the other was ready; (c) spend adequate time preparing Movant to explain her reliance on Chamblee-supplied information, her lack of account access, her limited administrative role, and the timing of when she learned the sales figures were false; and (d) prepare the cross-examination and exhibit framework supporting the independent state-of-mind defense. One half-day of testimony preparation focused entirely on duress (McKinnon Decl. ¶25), combined with affirmatively incorrect advice that duress and jury nullification were the only viable defenses (McKinnon Decl. ¶20), constituted deficient performance under Strickland.

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

The factual basis for the independent state-of-mind defense was communicated by Movant throughout the pretrial period: she told counsel what she knew, what she did not know, what information Chamblee supplied to her, her lack of account access, and her limited administrative role. McKinnon Decl. ¶¶6-10, 32-39. The legal basis for presenting that defense independently of duress required no novel legal argument -- lack of fraudulent intent and lack of knowledge are elements the Government must disprove. Counsel's failure to advise Movant of this right was not the result of any legal uncertainty; it reflected a fundamental failure to identify the available defenses and advise the client accordingly.

MATERIALITY / PREJUDICE:

There is a reasonable probability that a properly developed, pretrial-prepared non-duress state-of-mind defense would have produced a different result. McKinnon Decl. ¶58: "If counsel had properly prepared me, preserved the state-of-mind issue, used the McKinnon Letter, developed the recorded-conversation evidence, used the journals, and presented the entity/control distinctions, there is a reasonable probability that at least one juror would have viewed the Government's intent theory differently." The sentencing court's recognition that this testimony, if believed, "would have affected the outcome of the case" confirms the outcome-materiality of the defense counsel failed to develop. Sent'g Tr., ECF No. 235, PageID #2352.

The Day 6 record makes the prejudice specific and documentable. At the moment the Court barred the duress presentation — PageID ##1771–1774 — counsel had no prepared independent state-of-mind defense to substitute. McKinnon Decl. ¶¶29–30. The prejudice was immediate: Movant testified without the benefit of a prepared framework for presenting lack of knowledge, reliance on Chamblee-supplied information, and lack of ownership or control. The corrected timing statement counsel offered in proffer (PageID #1765) confirms that elements of a viable independent defense existed in the record — they simply had not been developed into a prepared, coherent framework before the moment they were needed.

CROSS-GROUND NOTATION:

Ground Two — PRIMARY (Appendix C): Pretrial IAC — failure to develop an independent state-of-mind defense; counsel affirmatively advised Movant that duress and jury nullification were her only viable defenses, did not advise her of her right to testify about intent, knowledge, reliance on Chamblee-supplied information, and lack of ownership or control independently of satisfying every element of a complete affirmative duress defense; one half-day of testimony preparation focused almost entirely on the duress track that was subsequently restricted by the Court

Ground Three (Appendix D): Trial IAC — G3-RA-001 (framework failure); the Day 6 collapse occurred because no alternative framework had been prepared — a direct consequence of the pretrial advice failure documented in this entry; G3-RA-010 (Day 6 collapse / absence of alternative framework / failure to preserve proffer issues); the Day 6 procedural failures were compounded by the complete absence of a pretrial-developed independent state-of-mind defense

Ground One (Appendix B): Napue/Giglio — G1-RA-013 (Government rebuttal exploitation); the "not a shred of proof" argument succeeded in part because the independent state-of-mind framework had never been organized and corroborated through competent pretrial preparation, leaving no documentary or testimonial counter-narrative for the jury to evaluate

G2-RA-006 — Failure to Distinguish Entity Structures Pretrial

RECORD CITATION / SOURCE:

McKinnon Decl. ¶¶4-10, 36, 55; Movant Ex. 34 [Tab 40] (Gov't Ex. 629); Movant Ex. 20 [Tab 26] (Gov't Ex. 703); Movant Ex. 19 [Tab 25] (Gov't Ex. 617)

EXACT QUOTE OR RECORD LANGUAGE:

McKinnon Decl. ¶4: "At no time was I an actual owner, partner, member, or control person of NGI, NGEP, or any operating entity or account the Government attributed to me." McKinnon Decl. ¶36: "I was not an owner, partner, or member of NGI, NGEP, V4 Carbon, Carbon Holdings, or any other relevant entity. I did not control the entities or accounts in the manner the Government's presentation suggested. My work was administrative, bookkeeping, and operational in nature, and I acted based on information provided to me by others." McKinnon Decl. ¶55: "Had counsel properly reviewed, organized, and used the records I identified, the defense could have shown that the Government's broad references to 'Nex-Gen,' 'Vance and McKinnon,' ownership, control, bank access, and intent were misleading. The records would have helped separate my actual role from the conduct and accounts controlled by others."

RECORD-PROOF POINT:

The Government's case depended on generalized collective references -- "Nex-Gen," "Vance and McKinnon," and related terms -- that blurred the distinctions among NexGen Industries (NGI), NexGen Energy Partners (NGEP), V4 Carbon, Carbon Holdings, and other related entities. See App. B, G1-RA-001. The record shows that Movant communicated to counsel before trial that those entities were distinct -- with separate formation records, operating agreements, bank accounts, signatories, and business roles -- and that she was not an owner, partner, member, or control person of any of them. McKinnon Decl. ¶¶4-10, 36. Competent pretrial counsel was required to investigate, organize, and develop those entity distinctions before trial so the defense could correct generalized attribution before it reached the jury as unchallenged background.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

A reasonable pretrial investigation required: (a) reviewing and organizing entity formation records, operating agreements, and bank account records for each entity the Government attributed to Movant; (b) distinguishing Movant's administrative and bookkeeping role from ownership, membership, partnership, and account control; (c) preparing an organized exhibit and cross-examination framework distinguishing the entities by formation, account, signatory authority, and role; and (d) identifying and planning to correct the Government's generalized attribution theory before it reached the jury. Counsel acknowledged she had not reviewed all discovery documents and relied on Movant to identify key evidence (McKinnon Decl. ¶¶21-24), and counsel discarded dozens of exhibits Movant identified as important without explanation (McKinnon Decl. ¶23). As a result, the entity distinctions were never organized into a pretrial defense framework.

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

Entity formation and account records for NGI, NGEP, V4 Carbon, Carbon Holdings, and related entities were available in Government discovery. Government exhibit materials -- including Movant Ex. 34 (Gov't Ex. 629), Movant Ex. 20 (Gov't Ex. 703), and Movant Ex. 19 (Gov't Ex. 617) -- reflected entity and transaction evidence. Movant communicated the distinctions between the entities and her administrative role to counsel before and during trial, provided organized notes and exhibit identifications, and these were among the exhibits counsel discarded or failed to use. McKinnon Decl. ¶¶21-24, 51-55.

MATERIALITY / PREJUDICE:

There is a reasonable probability that a pretrial-developed entity distinction framework would have produced a different result. The Government's attribution theory depended on treating all "Nex-Gen" entities as interchangeable. App. B, G1-RA-001. Without a pretrial-organized entity framework, the jury evaluated knowledge, intent, and attribution through the Government's generalized narrative rather than through the available entity-specific evidence distinguishing Movant's role from the ownership and control the Government attributed to her.

CROSS-GROUND NOTATION:

Ground Two — PRIMARY (Appendix C): Pretrial IAC — failure to investigate and organize entity formation records, operating agreements, and bank account materials to distinguish Movant's administrative role from the ownership, control, and account access the Government attributed to her; counsel acknowledged incomplete discovery review, relied on Movant to identify key exhibits, and discarded dozens of exhibits Movant identified as important without explanation

Ground One (Appendix B): Napue/Giglio — G1-RA-001 (generalized entity attribution framework); the Government's unchallenged "Nex-Gen" attribution depended on the jury receiving no organized, exhibit-

supported entity-distinction defense; the pretrial investigation failure is the root cause of the documentary void the Government's generalized attribution framework filled

Ground Three (Appendix D): Trial IAC — G3-RA-002 (failure to correct entity/ownership/role/account-control conflation at trial); the trial execution failure to use the entity formation records, operating agreements, and signature-card materials in an organized cross-examination framework traces directly to the pretrial investigation failure documented in this entry

Ground Five (Appendix F): Appellate IAC — G5-RA-001 (omitted appellate Napue/prosecutorial-misconduct claim); the entity conflation and attribution errors documented in App B, G1-RA-001 formed a component of the omitted appellate claim that Napolitano declined to raise despite Movant's specific request and identification of the factual and legal bases

G2-RA-007 — Failure to Investigate Deware Access/Signatory Evidence Pretrial

RECORD CITATION / SOURCE:

Movant Ex. 14 [Tab 20] (Gov't Ex. 507); Movant Ex. 15 [Tab 21] (Gov't Ex. 508); Movant Ex. 1 [Tab 7] (USA discovery / BATES USA-00049465 -- Smith 302); McKinnon Decl. ¶¶4-10, 18

EXACT QUOTE OR RECORD LANGUAGE:

BATES USA-00049465 (Smith 302): Smith told Agent Hubbuch that Deware "had control and was signatory on the NexGen account for the Kentucky business." Movant Ex. 14 (Gov't Ex. 507) and Movant Ex. 15 (Gov't Ex. 508): Movant Ex. 14 (Gov't Ex. 507): V4 Carbon bank account applications and authorized signatory cards — identifies Deware as an authorized user or signatory on the V4 Carbon partnership account. Movant Ex. 15 (Gov't Ex. 508): Carbon Holdings bank account applications and authorized signatory cards — identifies Deware as an authorized user or signatory on the Carbon Holdings partnership account. McKinnon Decl. ¶18: Movant specifically requested Lewis subpoena David Smith as a witness; Lewis failed to do so.

RECORD-PROOF POINT:

The record establishes that evidence corroborating Deware's account access and signatory status for the later partnership business accounts was available in Government discovery before trial -- in both a Government-produced FBI 302 (BATES USA-00049465) and Government exhibit signature-card materials (Gov't Exs. 507, 508). Smith told the FBI that Deware had control and signatory authority on the relevant partnership accounts, and the bank application/signature-card materials confirmed Deware as an authorized user or signatory. A competent pretrial counsel would have identified, developed, and organized this evidence to correct any broad "no access" impression Deware's testimony might create and to show the jury that account control for the later partnership entities was distributed -- not attributable to Movant.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

A reasonable pretrial investigation required: (a) identifying and reviewing the bank application/signature-card materials for the later partnership entities (Gov't Exs. 507, 508) available in discovery; (b) obtaining and reviewing Smith's FBI 302 (BATES USA-00049465) identifying Deware's signatory role; (c) subpoenaing David Smith as a witness, as Movant specifically requested (McKinnon Decl. ¶18); and (d) developing the Deware access/signatory evidence into a pretrial defense theory showing that the Government's broad account-control narrative was materially incomplete. Lewis failed to subpoena David Smith despite Movant's specific request (McKinnon Decl. ¶18), and counsel's failure to review the full discovery set meant that the BATES USA-00049465 Smith 302 was not identified and developed as a pretrial resource.

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

Both the Smith 302 and the signatory-card materials were Government-produced discovery items: BATES USA-00049465 was part of the USA discovery production and Gov't Exs. 507 and 508 were Government exhibit materials available through discovery. Counsel had access to these materials. Movant also identified David Smith as a witness she wanted subpoenaed -- a request counsel failed to follow through on (McKinnon Decl. ¶18).

MATERIALITY / PREJUDICE:

There is a reasonable probability that pretrial development of the Deware access/signatory evidence would have produced a different result. If the jury had received organized, pretrial-prepared evidence showing that Smith told the FBI that Deware had control and signatory authority on the partnership business accounts -- corroborated by the bank application/signature-card materials -- it could have evaluated Deware's testimony, the Government's account-control theory, and the attribution of financial responsibility to Movant very differently. The prejudice connects to App. B, G1-RA-007.

CROSS-GROUND NOTATION:

Ground Two — PRIMARY (Appendix C): Pretrial IAC — failure to investigate Deware's account access and signatory evidence; Lewis failed to subpoena David Smith despite Movant's specific request; Smith's pre-trial FBI 302 (BATES USA-00049465) identifying Deware's signatory authority on the Kentucky NexGen account, and the bank application/signature-card materials (Gov't Exs. 507, 508) confirming Deware as authorized signatory on the V4 Carbon and Carbon Holdings accounts, were available in discovery and were never developed into a pretrial defense theory

Ground One (Appendix B): Napue/Giglio — G1-RA-007 (Napue violation / "company never created" testimony / Deware signatory evidence); the Deware signatory evidence directly contradicted the "company never created" narrative the Government opened with and elicited from Deware; the pretrial investigation failure allowed the false opening assertion and Deware's corroborating false trial testimony to stand unrebutted by the available documentary record

Ground Three (Appendix D): Trial IAC — G3-RA-004 (Deware impeachment failure); the Smith 302 and bank application/signature-card materials were in the trial record and Government discovery and were not used to impeach Deware's "no access" testimony at trial

Ground Five (Appendix F): Appellate IAC — G5-RA-006 (Deware bank-access/signatory contradiction); the Deware false bank-access testimony formed a representative example of the omitted appellate Napue/prosecutorial-misconduct claim that Napolitano declined to raise despite Movant's specific identification of the factual and legal bases

G2-RA-008 — Failure to Retain Forensic Accountant and Investigate Count 2 Source of Funds, Movant's Non-Member Status, the Chamblee/Shumard Manufactured Loan Recharacterization, and the KCC Holdings/Nex-Gen LLC Loan

RECORD CITATION / SOURCE:

Trial Tr., ECF No. 175, PageID ##1034–1036, 1055–1056; McKinnon Decl. ¶18; Gov't Ex. 177 [Tab 19]; NGEP Bank of America account records (Gov't Ex. 201 / Movant Ex. 72); NGEP Whitaker Bank account records (Government discovery); NGEP Operating Agreement (Gov't Ex. 703 / Movant Ex. 20), §6.4(b) (Major Decisions), §14.6 (Loans and Advances from Members to Company), and Capital Contributions Schedule (Exhibit A); Movant Ex. 43 [Tab 49] / Defense Ex. 4 (Hogan-to-Vance email attaching manufactured NGEP loan documents, November 24, 2018); KCC Holdings, LLC / Nex-Gen, LLC Loan Agreement and Amendments (Gov't Ex. 301 [Tab 24])

EXACT QUOTE OR RECORD LANGUAGE:

Trial Tr., ECF No. 175, PageID ##1034–1036, 1055–1056: Chamblee described the Chamblee/Shumard group's financial contributions to NGEP as "in loans to Mr. Vance" and "a lot of it was loan as well." NGEP Operating Agreement, Capital Contributions Schedule

(Gov't Ex. 703 / Movant Ex. 20, Exhibit A): Kenneth M. Shumard Sr. — Capital Contribution $155,400.00 / Percentage Interest 31.62%; GGC Funding LLC (Gary C. Chamblee) — Capital Contribution $50,000.00 / Percentage Interest 10.20%; Mendie B. Hogan — Capital Contribution $10,000.00 / Percentage Interest 2.04%; Creola Holdings Inc. — Capital Contribution $34,600.00 / Percentage Interest 7.14%; Nex-Gen Industries Inc. (Vance) — Capital Contribution $235,294.00 / Percentage Interest 48.00%; Douglas Vance — Capital Contribution $4,902.00 / Percentage Interest 1.00%. Footnote: "The Capital Contributions noted above for the Funding Members shall be the initial balance in the Preferred Capital Contribution Account of each such Member. Nex-Gen Industries Inc. contributes all of its tangible and intangible assets including intellectual property agreed to have a value of 48% of total capital." McKinnon does not appear in the NGEP Capital Contributions Schedule and holds no capital contribution, no percentage interest, and no membership stake in NGEP. NGEP Operating Agreement, §14.6 (Gov't Ex. 703 / Movant Ex. 20): "Loans and Advances from Members to Company: In the event that any member shall lend money to the Company with the approval of the Members by Majority Vote, the principal and interest with respect to such loan [shall be repaid in the manner specified]." NGEP Operating Agreement, §6.4(b) (Gov't Ex. 703 / Movant Ex. 20): "the issuance by the Company of any debt securities or similar instruments or otherwise incurring indebtedness, or increase in the existing indebtedness, of the Company in excess of $10,000." Gov't Ex. 301 (KCC Holdings, LLC / Nex-Gen, LLC Loan Agreement, March 7, 2018): Parties identified as Nex-Gen, LLC ("Borrower") and KCC Holdings, LLC ("Lender"); "Use of Proceeds: Loan proceeds shall be used by Borrower to sustain its working capital needs." NGEP is not named or referenced anywhere in Gov't Ex. 301. McKinnon Decl. ¶18: Movant

requested Lewis retain "a forensic accountant to reconstruct the flow of funds and challenge the Government's financial narrative"; Lewis "either declined or failed to follow through." Gov't Ex. 177: Chamblee email to Vance and Movant in which Chamblee states he has "high level contacts" at Koch's home office and plans to be at the plant with the McCoys discussing a potential partnership in the gasification project.

RECORD-PROOF POINT:

The record establishes five interconnected financial realities, each directly provable from Government-admitted or Government-produced exhibits available before trial, that a forensic accountant properly retained and funded would have identified, documented, and developed into a coherent defense framework before trial. First — Count 2: The $5,600 Was an Intercompany Payroll Transfer, Not a Payment from Chamblee. The Government's indictment charged Count 2 as wire fraud based on an ACH deposit described as originating from Gary Chamblee to the NGEP Whitaker Bank account. The actual financial record establishes that the $5,600 was an intercompany transfer of NGEP business funds already inside the company: an ACH movement from the NGEP Bank of America account — on which Chamblee and Hogan, not Movant, were the signatories (Gov't Ex. 201 / Movant Ex. 72) — to a separate NGEP Whitaker Bank account, a second NGEP operating account. The money never left the NGEP business. It was used to fund NGEP's weekly payroll — a routine operational transfer of company funds between two company accounts for a legitimate business purpose. Movant was not a party to, signatory on, or authorized user of the NGEP Bank of America account involved in the transfer. No money was transferred to or from any individual. A forensic accountant tracing this transaction against the Bank of America and Whitaker Bank account records would have established that the Government's

Count 2 framing was a factually false description of what the account records showed. Second — Movant Held No Membership Interest, Ownership Stake, or Capital Account in NGEP. The NGEP Capital Contributions Schedule (Gov't Ex. 703 / Movant Ex. 20, Exhibit A) is the governing document establishing who owned NGEP and in what proportion. It lists six capital contributors with documented percentage interests: Kenneth M. Shumard Sr. (31.62%), GGC Funding LLC / Chamblee (10.20%), Mendie B. Hogan (2.04%), Creola Holdings Inc. (7.14%), Nex-Gen Industries Inc. / Vance (48.00%), and Douglas Vance individually (1.00%). McKinnon does not appear in the NGEP Capital Contributions Schedule. She is not listed as a Member, a capital contributor, or a percentage interest holder anywhere in the NGEP Operating Agreement. She held no equity stake, no capital account, and no ownership interest in NGEP. The Government's attribution theory — which depended throughout trial on treating McKinnon as a knowing participant in ownership, control, and financial decision-making authority — was directly contradicted by the face of the Government's own admitted exhibit. A forensic accountant conducting a reasonable review of Gov't Ex. 703 would have identified this finding from the Capital Contributions Schedule immediately and flagged it as the foundational refutation of the Government's attribution premise. Third — The Chamblee/Shumard Contributions Were Equity, Not Loans. The NGEP Capital Contributions Schedule expressly labels every dollar the Chamblee/Shumard group contributed to NGEP as a "Capital Contribution" in exchange for a documented "Percentage Interest." The Chamblee/Shumard group — Shumard Sr., GGC Funding LLC, Hogan, and Creola Holdings Inc. — collectively contributed $250,000 in documented equity capital for 51% ownership of the company. Those initial contributions were the price of their equity stake, not advances to be repaid. Fourth — The Accounting Framework Treated

Chamblee/Shumard Contributions as Debt While Assigning No Corresponding Credit to Vance's Contributions. The manufactured loan recharacterization extended further than the initial equity contributions: the Chamblee/Shumard group treated every subsequent dollar they deposited into NGEP for ongoing operational costs — including payroll, facility rent at the Trus Joist facility, utilities, and other routine operating expenses — as an additional "loan" to NGEP. Under this framework, every operational dollar the Chamblee/Shumard group contributed was characterized as company debt, while Vance's personal financial contributions of hundreds of thousands of dollars, his contributed business entities and intellectual property — Nex-Gen Industries Inc., Torretherm Inc., Rock 3 Recovery LLC, and Appalachian Wood Products LLC — and his ongoing labor building and maintaining the dryers, running operations, and developing NGEP's technology were assigned no corresponding loan value or offsetting credit. When NGEP generated any revenue, the Chamblee/Shumard group expected to be paid first — from the results of Vance's labor and investment — to "repay" manufactured loan obligations that had no legal basis under the governing operating agreement. That asymmetric accounting framework directly contradicted the equity structure established by the NGEP Capital Contributions Schedule.

Fifth — The Post-FBI Loan Recharacterization Violated the Operating Agreement. After FBI involvement, the Chamblee/Shumard group formalized the manufactured loan narrative by executing purported loan documents on November 24, 2018 — transmitted by Hogan to Vance by email with the new documentation attached (Movant Ex. 43 / Defense Ex. 4) — purporting to retroactively convert their equity contributions and operational advances into NGEP debt obligations. Two independent provisions of the NGEP Operating Agreement rendered those manufactured documents legally void on their face: §14.6 expressly required

approval of the Members by Majority Vote before any member could lend money to the company — a requirement never satisfied for any Chamblee/Shumard contribution — and §6.4(b) independently required a Majority Vote of Members before the company could incur indebtedness in excess of $10,000, a threshold the manufactured loan recharacterization vastly exceeded. The manufactured loan documents were executed without notice to Vance, without any member vote, and in direct, simultaneous violation of both provisions. The effect was to retroactively recharacterize a failed equity investment as money NGEP owed the Chamblee/Shumard group — converting them, for purposes of the Government's fraud narrative, from failed equity partners who had not fulfilled their capital commitments into putative "fraud victims."

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

A reasonably competent attorney in a complex financial crimes case requiring the tracing of fund flows across multiple business entities and bank accounts would have retained a qualified forensic accountant to analyze and document those flows. Lewis retained a general accountant and was provided $2,500 for that purpose. The retained accountant advised Lewis that $2,500 was insufficient for the scope of work required by this case. Rather than petition the Court for additional expert funding under 18 U.S.C. §3006A, Lewis declined to do so, representing to Movant that Judge Reeves would not approve an increased expert budget. No forensic-level financial analysis was ever conducted. A forensic accountant, properly funded and directed, would have developed and documented the following evidence before trial: (1) Count 2 — The $5,600 Intercompany Payroll Transfer. By tracing the $5,600 from the NGEP Bank of America account (Hogan/Chamblee signatory account — Gov't Ex. 201 / Movant Ex. 72) to the NGEP Whitaker Bank account (a separate NGEP operating account), a

forensic accountant would have established that Count 2 involved no payment from Gary Chamblee to anyone — it was an intercompany movement of NGEP business funds from one company account to another, used to fund legitimate NGEP payroll. The Government's characterization of this as an ACH deposit from "Gary Chamblee" falsely described a routine intercompany operational payroll transfer as a personal financial transaction. Lewis failed to trace, organize, or present this evidence before trial. (2) Movant's Non-Member Status — Direct Refutation of the Attribution Theory from a Government Exhibit. A forensic accountant conducting a reasonable review of Gov't Ex. 703 would have identified from the NGEP Capital Contributions Schedule that McKinnon holds no capital contribution, no percentage interest, and no membership stake in NGEP. Every person and entity with an equity ownership interest in NGEP appears in the Capital Contributions Schedule; McKinnon does not. A competent pretrial counsel cross-referencing the Capital Contributions Schedule against the Government's attribution theory — which repeatedly referred to "Vance and McKinnon" as though Movant were a co-equal business owner — would have recognized that the Government's foundational attribution premise was directly contradicted by its own admitted exhibit. Lewis failed to identify and develop this evidence before trial. The failure to use the NGEP Capital Contributions Schedule to establish Movant's non-member, non-owner status before the jury was not a strategic choice; it was the direct result of an investigation that never adequately reviewed the governing documentation the Government itself had introduced. (3) NGEP Capital Contributions Schedule vs. Manufactured Loan Documents — The Equity/Loan Contradiction. A forensic accountant cross-referencing the NGEP Capital Contributions Schedule against the Chamblee/Shumard group's actual contribution history and against the manufactured loan documents (Movant Ex. 43 / Defense

Ex. 4) would have established the fundamental, irreconcilable contradiction between those two documents: the Capital Contributions Schedule — executed at NGEP's formation — expressly labels every Chamblee/Shumard contribution as a "Capital Contribution" for a documented percentage ownership interest; Movant Ex. 43 — executed years later, after FBI involvement, without notice to Vance, and without a member vote — purports to recharacterize the same and subsequent contributions as loans NGEP owed back. Both documents cannot be true simultaneously. The forensic accountant would further have documented the operational funding asymmetry: the Chamblee/Shumard group treated every dollar they deposited for NGEP operations — payroll, facility rent at the Trus Joist facility, utilities, and other operating costs — as a loan, while Vance's personal cash contributions, his contributed business entities and intellectual property, and his ongoing labor operating the business were assigned no corresponding loan value or credit in the Chamblee/Shumard accounting framework. (4) Dual Contractual Barriers Rendering the Manufactured Loan Documents Legally Void. A forensic review cross-referencing the manufactured loan documents (Movant Ex. 43 / Defense Ex. 4) against the NGEP Operating Agreement (Gov't Ex. 703 / Movant Ex. 20) would have identified two independent contractual provisions that rendered those documents legally void on their face: §14.6 expressly required approval of the Members by Majority Vote before any member could lend money to the company — a requirement never satisfied for any Chamblee/Shumard contribution; and §6.4(b) independently required a Majority Vote of Members before the company could incur indebtedness in excess of $10,000 through "the issuance by the Company of any debt securities or similar instruments or otherwise incurring indebtedness, or increase in the existing indebtedness, of the Company" — a threshold the manufactured recharacterization

vastly exceeded. The manufactured documents were executed without any member vote, without notice to Vance, and in simultaneous violation of both provisions. A competent pretrial defense organized around these findings would have presented the NGEP Operating Agreement — the Government's own admitted exhibit — as the direct refutation of the manufactured "fraud victim" status the Chamblee/Shumard group claimed.

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

(a) The NGEP Bank of America account records (Gov't Ex. 201 / Movant Ex. 72) were available in Government discovery before trial and, when traced, would have established that the $5,600 underlying Count 2 was an intercompany payroll transfer between two NGEP business accounts — not a payment from Chamblee to anyone. (b) The NGEP Whitaker Bank account records — the destination account for the Count 2 transfer — were available in Government discovery and would have confirmed the payroll purpose of the funds. (c) The NGEP Operating Agreement (Gov't Ex. 703 / Movant Ex. 20) — including the Capital Contributions Schedule, §6.4(b), and §14.6 — was a Government trial exhibit in defense counsel's possession before trial. Any reasonable pretrial review of that exhibit would have identified: (i) McKinnon's complete absence from the Capital Contributions Schedule as a Member, capital contributor, or percentage interest holder; (ii) the express labeling of all Chamblee/Shumard contributions as capital contributions for equity stakes; (iii) the §14.6 member vote requirement for any member loan to the company; and (iv) the §6.4(b) majority vote requirement before the company could incur indebtedness exceeding $10,000. (d) Movant Ex. 43 / Defense Ex. 4 — the Hogan-to-Vance email attaching manufactured NGEP loan documents dated November 24, 2018 — was available in defense counsel's possession before trial and, cross-referenced against Gov't Ex. 703, established the date, circumstances,

and facial legal invalidity of the manufactured loan recharacterization. (e) Movant specifically requested Lewis retain a forensic accountant (McKinnon Decl. ¶18). Lewis's own retained accountant confirmed $2,500 was insufficient for the scope of work this case required. Lewis failed to seek additional court-authorized funding under 18 U.S.C. §3006A.

MATERIALITY / PREJUDICE:

There is a reasonable probability that a pretrial-developed forensic financial analysis and exhibit framework would have produced a different result. As to Count 2: Had a forensic accountant traced the $5,600 as an intercompany payroll transfer between two NGEP operating accounts — accounts Movant could not access, moving money that never left NGEP, used for legitimate NGEP payroll — the Government's characterization of Count 2 as a personal transaction from Gary Chamblee would have been directly refuted by the bank records. The jury had no basis to evaluate this rebuttal because no forensic analysis was conducted and no evidence was presented establishing the actual character, source, destination, or purpose of the transferred funds. As to Movant's non-member status: Had counsel presented the NGEP Capital Contributions Schedule — a Government-admitted exhibit establishing that McKinnon held no capital contribution, no percentage interest, and no membership stake in NGEP — the jury would have had direct, documentary proof from the Government's own exhibit that the foundational attribution premise of the Government's case was structurally false. Every "Vance and McKinnon" reference the Government used throughout trial treated Movant as a co-equal business owner; the NGEP Capital Contributions Schedule, presented before the jury, would have directly contradicted that premise with the Government's own documentation. As to the manufactured loan narrative: Had a forensic accountant placed the NGEP Capital Contributions Schedule — expressly

labeling all Chamblee/Shumard contributions as equity capital for percentage ownership interests — side by side with the manufactured loan documents executed post-FBI, the jury would have seen that the "fraud victim" narrative rested on manufactured documentation that the Government's own governing exhibit directly contradicted. The dual contractual violation — §14.6 member vote requirement and §6.4(b) majority vote requirement for indebtedness — would have established that the Chamblee/Shumard group's manufactured loan documents were legally void under the very document the Government introduced as a trial exhibit. A jury understanding that the purported "victims" converted themselves from failed equity partners into fraud victims through post-FBI manufactured documents that simultaneously violated two independent provisions of the governing operating agreement — executed without notice to Vance and without any member vote — would have evaluated the Government's fraud narrative fundamentally differently. As to the operational funding asymmetry: Had a forensic accountant documented and quantified the Chamblee/Shumard group's practice of treating every operational advance as a loan while assigning no offsetting value to Vance's personal financial contributions, contributed entities and intellectual property, and ongoing labor, the jury would have seen that the Government's victim loss figure was derived from an asymmetric and legally unauthorized accounting framework, not from a legitimate, contemporaneous financial injury. The prejudice from this failure was outcome-material at trial. A forensic accountant retained pretrial — as Movant specifically requested — would have generated the financial analysis needed to challenge the Government's attribution theory through four independently significant avenues. First, the forensic accountant would have quantified Vance's actual cash contributions, cashier's checks, personal loan proceeds, and entity assets deposited into the business — amounts

totaling over $624,000 by Movant's own documented accounting — and would have established their proper credit against any claimed loss figure. The Government's framework assigned those contributions zero offsetting value. Second, the forensic accountant would have traced the actual fund flows through the NGEP Bank of America, Whitaker Bank, and Brand Bank accounts — the three accounts excluded from Gov't Ex. 501 [Tab 15] — and would have produced documentary proof that the Count 2 $5,600 was an intercompany transfer, that approximately $50,000 more attributed to Chamblee were intercompany transfers, and that approximately $268,000 characterized as victim losses to the Shumard group were loan payments Shumard himself confirmed at trial. Third, the forensic accountant would have challenged the manufactured loan recharacterization that converted the Chamblee/Shumard group's equity contributions into purported NGEP debt — a recharacterization that violated Sections 9.3, 6.4(b), and 14.6 of the NGEP Operating Agreement, lacked any board vote that Hogan admitted was never taken, and produced no loan documentation until after FBI contact. The Government did not require Chamblee, as a documented equity owner, to liquidate company assets before establishing victim loss figures. Fourth, the forensic accountant's testimony would have directly impeached McCracken's false forensic validation of Gov't Ex. 501 and Hubbuch's independent false confirmation — providing the jury with a competing expert analysis that exposed the certified-comprehensive financial reconstruction as missing the account records underlying three of the charged counts. These failures were not peripheral. Each of these four avenues went to the heart of the Government's knowledge-and-intent theory and attribution case. There is a reasonable likelihood that a jury presented with a complete forensic financial analysis — showing Vance's actual contributions, the intercompany-transfer nature of the

charged transactions, the unauthorized recharacterization of equity as debt, and the false completeness of the Government's financial exhibit — would have evaluated both the charged counts and Movant's knowledge and intent materially differently. The forensic accountant failure also had downstream consequences at sentencing, where the same absence of forensic financial analysis left unresolved the defense objections to the Guidelines loss figure and the victim designations — but the primary prejudice is the jury's inability to evaluate the complete financial picture of the business Movant was accused of defrauding.

CROSS-GROUND NOTATION:

Ground Two — PRIMARY (Appendix C): Pretrial IAC — failure to retain a qualified forensic accountant; Lewis retained a general accountant with a $2,500 budget, was advised by that accountant the budget was insufficient, and failed to petition the Court for additional expert funding under 18 U.S.C. §3006A; no forensic-level analysis of Count 2 source of funds, Movant's non-member status under the NGEP Capital Contributions Schedule, the manufactured loan recharacterization, or the KCC Holdings/Nex-Gen LLC loan structure was conducted before trial

Ground One (Appendix B): Napue/Giglio — G1-RA-004 (Count 2 $5,600 false personal-payment attribution; the $5,600 was an intercompany payroll transfer between two NGEP operating accounts — accounts Movant did not control — not a personal payment from Chamblee); G1-RA-005, Sub-entry 3 (Gov't Ex. 501 false-completeness violation; the NGEP Bank of America records excluded from Gov't Ex. 501 would have established the intercompany-transfer nature of Count 2 had forensic analysis been conducted); G1-RA-006 (Chamblee false loan documentation; the manufactured loan recharacterization prohibited by NGEP Operating Agreement §§6.4(b) and 14.6 traces to the same forensic analysis Lewis failed to conduct)

Ground Three (Appendix D): Trial IAC — G3-RA-002 (failure to correct entity/ownership/role conflation at trial; includes failure to present the NGEP Capital Contributions Schedule establishing Movant's non-member status from the Government's own admitted exhibit); G3-RA-005 (Hubbuch impeachment failure; forensic-level analysis would have provided the foundation needed to cross-examine Hubbuch on Gov't Ex. 501's false completeness and the missing NGEP account records)

Ground Four (Appendix E): Sentencing IAC — G4-RA-004 (failure to challenge the loss calculation and 16-level enhancement); the pretrial forensic accountant failure had direct downstream consequences at sentencing, where the same absence of forensic financial analysis left the Guidelines loss figure and victim designations unrebutted

G2-RA-008 [Sub-Entry 1] — Line of Credit Conversion from Unsecured to Secured; Post-FBI Document Inflation; Absence of Vance or McKinnon Signatures on All Instruments

RECORD CITATION / SOURCE:

Original Line of Credit Promissory Note, $150,000, dated December 1, 2016 (NEX-GEN 2016 Loan from Kenneth Shumard) (Movant Ex. 43 / Defense Ex. 4 series); Email from Mendie Hogan to Molly McKinnon and Doug Vance, December 20, 2016 (transmitting original LOC for review); Modification Agreement to Line of Credit Promissory Note, dated October 2018 (NGEP, Shumard Loan 2018.10.23) (post-FBI); Promissory Note, NGEP to Creola Holdings, Inc., $92,182.15, dated October 22–23, 2018 (post-FBI); Promissory Note, NGEP to GGC Funding, LLC, $168,411.27, dated October 22–23, 2018 (post-FBI); Email from Mendie Hogan to Doug Vance (forwarded by Vance to McKinnon), October 24, 2018 (transmitting all three post-FBI documents — loan modification and promissory notes).

EXACT QUOTE OR RECORD LANGUAGE:

Original Line of Credit Promissory Note (December 1, 2016): "SECURITY: This Note is UNSECURED." No lien, pledge, or security interest of any kind was created against NGEP assets or membership interests at origination. October 2018 Modification Agreement: stated outstanding balance increased from $150,000 to $684,845.05 — an increase of $534,845, more than 4.5 times the original principal — and NGEP's membership interests, cash, accounts receivable, raw materials, inventory, and equipment pledged as collateral, without any member vote, without Vance's signature, and without McKinnon's signature. Post-FBI Promissory Note, Creola Holdings, Inc. (October 22–23, 2018): $92,182.15, secured by NGEP membership interests, cash, accounts receivable, inventory, and equipment; not signed by Vance or McKinnon. Post-FBI Promissory Note, GGC Funding, LLC (October 22–23, 2018):

$168,411.27, secured by the same NGEP assets; not signed by Vance or McKinnon. Total post-FBI secured obligations created in October 2018: $945,438.47, all secured, none bearing Vance's or McKinnon's signature. Every instrument in the series — original LOC, Modification Agreement, Creola Holdings note, and GGC Funding note — was signed solely by Gary G. Chamblee as "Manager," with Mendie Hogan as witness.

RECORD-PROOF POINT:

The record establishes six interconnected findings through these source documents. First, the original December 1, 2016 Line of Credit Promissory Note contains an express provision stating: "SECURITY: This Note is UNSECURED." No lien, pledge, or security interest was created against NGEP assets or membership interests at origination. Second, the October 2018 Modification Agreement converted the LOC from unsecured to secured, pledging NGEP's membership interests, cash, accounts receivable, raw materials, inventory, and equipment as collateral, without any member vote, without Vance's signature, and without McKinnon's signature. Simultaneously, the stated outstanding balance was increased from $150,000 to $684,845.05 — an increase of $534,845, more than 4.5 times the original principal. Third, within two days of the Shumard Modification Agreement, two additional secured promissory notes were executed: one to Creola Holdings, Inc. ($92,182.15) and one to GGC Funding, LLC ($168,411.27), both dated October 22–23, 2018, both secured by the same NGEP assets and membership interests, and neither signed by Vance or McKinnon. The total post-FBI secured obligations created in October 2018 reached $945,438.47 — all secured, none bearing Vance's or McKinnon's signature on any instrument. Fourth, every document in the series — original LOC, Modification Agreement, Creola Holdings note, and GGC Funding note — was signed solely by Gary G. Chamblee as "Manager," with Mendie Hogan as witness. Neither Douglas

Vance nor Molly McKinnon signed any instrument as borrower, co-borrower, guarantor, or in any other capacity. Fifth, the October 24, 2018 email from Mendie Hogan to Doug Vance — forwarded the same day by Vance to McKinnon — transmitted all three post-FBI documents as completed, executed attachments. Receipt of a completed document by email does not constitute agreement to its terms, signature, authorization, or acceptance of personal liability. Sixth, the NGEP Operating Agreement required member authorization for pledging company assets and creating secured obligations of this nature. No member vote authorizing the Modification Agreement or either new promissory note is documented in the record. Chamblee executed all three post-FBI instruments unilaterally, as "Manager," without notice to Vance, and without any corresponding authorization from the NGEP membership.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

A competent forensic accountant reviewing these documents before trial would have identified and documented for trial counsel: (a) the manufactured character of the post-FBI documents — specifically, the timing of the conversion from unsecured to secured and the dramatic balance inflation occurring simultaneously with and immediately after FBI involvement; (b) the legal enforceability question presented by the absence of Vance's and McKinnon's signatures on all instruments, which bears directly on whether these documents could legitimately establish personal financial obligations against either defendant; (c) the Operating Agreement violation resulting from Chamblee's unilateral pledge of company assets without member authorization — a pledge that simultaneously violated §14.6 (requiring approval of the Members by Majority Vote before any member could lend money to the company) and §6.4(b) (requiring a Majority Vote of Members before the company could incur indebtedness in excess of $10,000) — which independently rendered the secured instruments void or voidable under the governing NGEP

documents; and (d) the impact of these findings on the loss calculation, including whether amounts claimed under instruments that may be void or unenforceable against Vance could properly be included in the restitution and loss figures used to support the 16-level enhancement. Lewis failed to retain a forensic accountant capable of conducting this analysis and failed to petition the Court for additional expert funding under 18 U.S.C. §3006A to do so, despite her retained accountant advising her that the $2,500 expert budget was insufficient for the scope of work this case required.

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

All six source documents were available in Government discovery or defense-held materials before trial. The original LOC (Movant Ex. 43 / Defense Ex. 4 series) and the post-FBI Modification Agreement, Creola Holdings note, and GGC Funding note were part of the documentary record available to counsel. The transmittal emails — Hogan to McKinnon and Vance in December 2016, and Hogan to Vance forwarded to McKinnon in October 2018 — were available in electronic discovery. The NGEP Operating Agreement (Gov't Ex. 703 / Movant Ex. 20), including the member-vote requirements of §14.6 and §6.4(b), was a Government trial exhibit in defense counsel's possession before trial. Cross-referencing the original LOC against the post-FBI Modification Agreement and the two new secured notes — a step any retained forensic accountant would have performed as a matter of standard financial review — would have immediately established the unsecured-to-secured conversion, the balance inflation from $150,000 to $684,845.05, the absence of member votes, and the absence of Vance's and McKinnon's signatures on every instrument in the series. Movant specifically requested Lewis retain a forensic accountant to reconstruct the flow of funds and challenge the

Government's financial narrative. McKinnon Decl. ¶18. Lewis failed to do so and failed to seek additional court-authorized expert funding to enable that analysis.

MATERIALITY / PREJUDICE:

There is a reasonable probability that pretrial development of the LOC unsecured-to-secured conversion, the post-FBI document inflation, and the signature absence evidence would have produced a different result. Had a forensic accountant identified and documented these findings before trial, the defense could have presented the jury with evidence that: the original $150,000 LOC was explicitly unsecured and unsigned by Vance or McKinnon; the post-FBI Modification Agreement converted the security structure and inflated the balance by $534,845 — more than 4.5 times the original principal — without any member vote, without Vance's signature, and without McKinnon's signature; two additional post-FBI secured notes totaling $260,593.42 were created entirely after FBI involvement, also without signatures from Vance or McKinnon; and the total post-FBI secured obligation of $945,438.47 rested entirely on instruments that simultaneously violated §14.6 and §6.4(b) of the NGEP Operating Agreement and bore no signature from either defendant on any instrument. A jury evaluating this evidence would have had a materially different basis for assessing whether the Chamblee/Shumard group's manufactured "fraud victim" status rested on legitimately enforceable obligations or on post-FBI documents that were void or voidable under the governing NGEP documents. This sub-entry also supports Appendix B, G1-RA-006 (Chamblee loan-investment qualification / no predating documentation / Operating Agreement violation): while a $150,000 LOC predated FBI involvement, that document was unsigned by Vance or McKinnon, explicitly unsecured, and subsequently modified post-FBI to convert the security structure and inflate the balance by $534,845 without any member vote. The two additional post-FBI secured notes totaling

$260,593.42 were created entirely after FBI involvement began. The pre-existing LOC therefore does not establish the legitimacy of the post-FBI secured instruments; it instead highlights the degree to which the financial documentation changed after FBI involvement began. Strickland, 466 U.S. at 694.

CROSS-GROUND NOTATION:

Ground Two — PRIMARY (Appendix C): Pretrial IAC (sub-entry to G2-RA-008) — failure to identify and document the unsecured-to-secured LOC conversion, post-FBI balance inflation, and absence of Vance's and McKinnon's signatures on all instruments in the series; a forensic accountant conducting standard document review would have identified the original LOC's express "SECURITY: This Note is UNSECURED" designation, the post-FBI Modification Agreement's $534,845 balance inflation (from $150,000 to $684,845.05), and the simultaneous creation of two additional post-FBI secured notes totaling $260,593.42 — all executed without any member vote, without Vance's signature, and without McKinnon's signature — in simultaneous violation of NGEP Operating Agreement §§14.6 and 6.4(b)

Ground One (Appendix B): Napue/Giglio — G1-RA-006 (Chamblee false loan documentation / no loan documents predated FBI involvement / NGEP Operating Agreement prohibitions on the manufactured loan structure); the original LOC's express unsecured designation and its post-FBI conversion to a secured instrument with a balance inflated more than 4.5 times — without signatures from Vance or McKinnon on any instrument in the series — directly corroborates and extends the absence-of-contemporaneous-loan-documentation finding documented in App B, G1-RA-006

Ground Three (Appendix D): Trial IAC — G3-RA-002 (failure to present the NGEP Operating Agreement's §§6.4(b) and 14.6 member-vote requirements at trial); the same Operating Agreement violations that rendered the post-FBI secured instruments void or voidable were available for trial-level cross-examination and were not used

Ground Four (Appendix E): Sentencing IAC — G4-RA-005 (failure to challenge the loss calculation and 16-level enhancement); the post-FBI document inflation and the legally void or voidable character of the post-FBI secured instruments directly bore on whether amounts derived from those instruments could properly be included in the Guidelines loss figure used to support the 16-level enhancement

G2-RA-009 — Failure to Provide Competent Advice Re: Trial, Plea, and Cooperation Strategy

RECORD CITATION / SOURCE:

McKinnon Decl. ¶¶19-20, 28-39; McKinnon Decl. ¶¶7–10

EXACT QUOTE OR RECORD LANGUAGE:

McKinnon Decl. ¶19: "Lewis advised me that Judge Reeves does not accept binding plea agreements and, without conducting any inquiry, assumed that the Government would offer nothing in exchange for cooperation or immunity concerning Gary Chamblee's conduct. Based on Lewis's assurance that the prosecution would offer nothing, I declined to authorize further outreach. Lewis later informed me that the Government had in fact indicated a willingness to speak with her; however, Lewis again reiterated that the Government would not entertain any form of immunity, and based on that representation, I declined to authorize any further outreach." McKinnon Decl. ¶20: "Lewis advised me that my only viable defenses were duress and jury nullification. She did not advise me that I was entitled to testify about my intent, state of mind, lack of knowledge of falsity, reliance on information supplied by others, and lack of ownership or control independently of establishing every element of a complete affirmative defense of duress. Had I been properly advised of my right to testify about these matters without first satisfying all elements of a duress defense, I would have testified more fully and completely at trial."

McKinnon Decl. ¶¶7–10: Movant documented the specific information Chamblee supplied to her, the basis of her reliance, her lack of independent access to the accounts where Chamblee represented proceeds were deposited, and the sequence of events leading to her understanding that Chamblee's reported sales were genuine at the time she transmitted information for each charged count. These paragraphs establish the count-specific factual

basis that competent pretrial counsel should have analyzed before advising Movant on trial and plea decisions.

RECORD-PROOF POINT:

The record establishes two categories of deficient pretrial advice: (1) advice regarding cooperation and proffer options that assumed the Government's position without meaningful inquiry -- and was later partially revised when counsel acknowledged the Government had in fact indicated willingness to speak -- but still failed to adequately develop or explain the available options (McKinnon Decl. ¶19); and (2) advice that limited Movant's understanding of her available defenses by characterizing duress and jury nullification as the only viable options, without advising Movant of her right to present an independent state-of-mind defense (McKinnon Decl. ¶20). Both categories of deficient advice caused Movant to make trial and strategy decisions without the benefit of accurate legal counsel grounded in a reasonable investigation.

The record also establishes that counsel's deficient advice extended to a failure to evaluate count-specific weaknesses. McKinnon Decl. ¶¶7–10, 18–25 establish the factual basis for a count-specific analysis: for each charged wire fraud count, Movant lacked knowledge that the information she transmitted was false because she relied on Chamblee-supplied data and lacked access to the accounts where Chamblee represented proceeds were deposited. Competent pretrial counsel was required to evaluate whether the Government could prove the knowing and intent elements as to Counts 2, 3, 4, 6, and 7 individually — and to advise Movant accordingly before she made trial and plea decisions.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

Competent pretrial counsel was required to: (a) meaningfully investigate and evaluate cooperation and proffer options before advising Movant they were unavailable; (b) accurately explain the distinction between immunity, proffer agreements, cooperation agreements, and other alternatives; (c) test the Government's actual position before representing it as closed, especially after learning the Government had indicated willingness to speak; (d) accurately advise Movant of her right to present an independent state-of-mind defense regardless of whether every element of a complete affirmative duress defense was satisfied; and (e) prepare Movant's defense, testimony, and trial strategy based on the full range of available defenses rather than a single duress-only track. Counsel's failure to conduct a reasonable investigation also deprived her of the foundation needed to give competent advice about the strength of specific counts and the risks and benefits of trial versus a negotiated resolution. McKinnon Decl. ¶¶18-25, 28-39.

Counsel was also required to conduct a count-specific analysis of the Government's knowledge and intent proof: whether the Government could establish that Movant knowingly transmitted false statements for each charged count, whether she requested the specific funds at issue, and whether each charged transaction satisfied the required fraud predicates. Counsel's failure to conduct that count-specific analysis and advise Movant of the relative strength of the Government's case on each count deprived Movant of the informed advice she needed to evaluate the risks and benefits of proceeding to trial on all counts versus seeking a negotiated resolution on specific counts. McKinnon Decl. ¶¶7–10, 18–25.

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

Counsel had direct notice of both categories of deficient advice from Movant's own explicit communications: Movant asked Lewis to explore immunity options for providing

information about Chamblee's conduct (McKinnon Decl. ¶19), and Movant communicated the factual basis for an independent state-of-mind defense throughout the pretrial period (McKinnon Decl. ¶¶6-10, 32-39). Counsel's acknowledgment that the Government had indicated willingness to speak -- after initially representing the Government's position as closed -- confirms that the cooperation pathway was not exhausted and that the advice given was based on an incomplete inquiry.

The factual basis for the count-specific analysis was available in Government discovery and in Movant's own account of events communicated to counsel throughout the pretrial period. McKinnon Decl. ¶¶7–10 document the count-specific reliance and timing facts; McKinnon Decl. ¶¶18–25 document Movant's requests for specific investigative steps and counsel's failure to follow through. Any reasonable pretrial investigation would have surfaced the count-specific weaknesses in the Government's knowledge and intent proof before trial.

MATERIALITY / PREJUDICE:

There is a reasonable probability that competent advice regarding cooperation and defense options would have produced a different result. If counsel had accurately investigated and explained the cooperation options, Movant may have pursued a proffer or cooperation agreement that avoided trial. If counsel had accurately advised Movant of her right to present an independent state-of-mind defense, Movant would have testified more fully and completely at trial, presenting a complete account of her knowledge, reliance, limited role, and lack of intent -- rather than a duress-only framework that collapsed when the Court barred it on Day 6. McKinnon Decl. ¶¶29-30, 35-39; Sent'g Tr., ECF No. 235, PageID #2352.

The prejudice from counsel's failure to conduct a count-specific analysis includes the reasonable probability that Movant would have made different plea or cooperation decisions had she received accurate advice about the relative strength of the Government's case on each count. If counsel had evaluated the knowing-element weaknesses for Count 6 (timing), the account-access and reliance issues for Counts 2, 3, and 4, and the money-laundering predicate-fraud dependency in Count 7, Movant may have been able to negotiate a resolution affecting specific counts or securing cooperation credit — outcomes she could not evaluate without count-specific competent legal advice. McKinnon Decl. ¶¶19–20, 28–39.

CROSS-GROUND NOTATION:

Ground Two — PRIMARY (Appendix C): Pretrial IAC — failure to provide competent advice regarding trial, plea, and cooperation strategy; counsel assumed the Government's position on cooperation without adequate inquiry, later acknowledged the Government had indicated willingness to speak but still advised against outreach, and affirmatively advised Movant that duress and jury nullification were the only viable defenses — without advising her of her right to present an independent state-of-mind defense — depriving Movant of the informed advice she needed to evaluate trial, plea, and cooperation options

Ground Three (Appendix D): Trial IAC — G3-RA-001 (framework failure); the duress-only trial framework and the absence of any prepared alternative defense were the direct consequence of counsel's deficient pretrial advice establishing that only duress and jury nullification were viable defenses; G3-RA-010 (Day 6 collapse / absence of alternative framework); the Day 6 procedural failures were compounded by the complete absence of a pretrial-developed alternative framework that competent strategic advice would have required counsel to build

Ground Four (Appendix E): Sentencing IAC — G4-RA-001 (sentencing framework anchor); deficient pretrial strategic advice — including failure to advise Movant of cooperation options and her right to present an independent state-of-mind defense — narrowed the record available to sentencing counsel and contributed to the conditions under which the foundational sentencing IAC failures documented in Appendix E occurred

G2-RA-010 — Failure to Interview KRP Representatives Pretrial and Develop Count 6 Non-Reliance Defense

RECORD CITATION / SOURCE:

Movant Ex. A [Tab 1] (KRP Barker Letter, January 11, 2023); Trial Tr., ECF No. 176, PageID ##1297–1317; Sent'g Tr., ECF No. 235, PageID #2394; McKinnon Decl. ¶¶7–10

EXACT QUOTE OR RECORD LANGUAGE:

Movant Ex. A (Barker Letter): "While we received various financial data from Doug Vance and Molly McKinnon, we did not rely on these financials in making the decision to proceed." "Our goal at the time was to try to assist Doug Vance and Molly McKinnon by providing seed money to build and operate the machines to process biomass into fuels and produce graphite or other substances from our coal reserves. We understood this to be a speculative matter with a reasonable probability of success but a real possibility of failure." "We considered the relationship to be a speculative investment by our company, and we did not consider the actions of Doug Vance or Molly McKinnon to be criminal in nature with respect to Kentucky River Properties LLC." Sent'g Tr., ECF No. 235, PageID #2394: The sentencing court found insufficient reliance evidence as to KRP. McKinnon Decl. ¶¶7–10: Movant documented the basis of her reliance on Chamblee-supplied information and her understanding of the business relationships at the time of each charged communication.

RECORD-PROOF POINT:

The record establishes that the materiality element for Count 6 — whether the financial information transmitted in the June 26, 2017 communication was capable of influencing KRP's decision — was subject to a non-reliance defense based on evidence accessible through ordinary pretrial witness contact. KRP's own President and CEO, Stephen Barker, confirmed in writing that KRP did not rely on financial data from Vance and McKinnon in making its decision to proceed and characterized the relationship as a speculative investment.

Movant Ex. A. That position was KRP's actual institutional position, held before and after trial, and accessible to Lewis through a pretrial interview of Barker or Jaggers. The sentencing court's finding that reliance evidence was insufficient as to KRP (Sent'g Tr., ECF No. 235, PageID #2394) confirms that the non-reliance issue was recognized by the trial judge on the full record as outcome-material.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

Counts 5 and 6 were based on emails transmitted to Dell Jaggers of KRP. At trial, Stephen Barker — KRP's President and CEO — was subpoenaed by the Government and testified on KRP's behalf, despite the fact that Barker was not the recipient of the emails underlying Counts 5 and 6; Dell Jaggers was the recipient. Lewis did not know before trial that the Government would call Barker rather than Jaggers, and she had conducted no pretrial interview of either representative. Lewis also knew, from the Government's charging theory, that Dell Jaggers was the KRP contact to whom the Count 5 and 6 communications were directed.

Defense counsel are permitted to interview potential witnesses — including Government witnesses — before trial. No rule prohibited Lewis from contacting Barker or Jaggers pretrial. A reasonably competent attorney preparing a Count 6 materiality defense would have interviewed both Barker and Jaggers before trial to determine: (a) KRP's actual basis for entering into its agreement with Vance; (b) whether KRP relied on any financial data or representations transmitted by Movant in making that decision; and (c) what any KRP representative — whether Jaggers, Barker, or another — would say about KRP's understanding of the transaction, the basis for KRP's investment decision, and Movant's role in it.

Lewis failed to conduct any such pretrial interview. Movant specifically requested Lewis subpoena Jaggers as a defense witness (McKinnon Decl. ¶18(c)). Lewis declined, representing to Movant that Jaggers was unnecessary because the Government would subpoena and call him. Lewis's failure to independently interview Jaggers — and her failure to interview Barker — meant that Lewis entered trial with no knowledge of what either KRP representative would say about the fundamental question of reliance.

Had Lewis conducted pretrial interviews, she would have discovered that KRP: received various financial data from Vance and Movant but did not rely on that financial data in making the decision to proceed; viewed the arrangement as a speculative investment it undertook to assist Vance and Movant; understood the venture to involve a reasonable probability of success but a real possibility of failure; and did not consider the actions of Vance or Movant to be criminal with respect to Kentucky River Properties LLC. This non-reliance position was KRP's actual institutional position — held by its President and CEO — accessible through the most basic pretrial investigative step. Lewis failed to take that step.

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

(a) Dell Jaggers was identified in the Government's charging documents as the KRP recipient of the Count 5 and 6 communications and was a known, identifiable pretrial interview target. (b) Stephen Barker was subpoenaed by the Government to testify at trial — his identity as KRP's President and CEO and his expected testimony were known to Lewis before trial. (c) Defense counsel are permitted to interview potential witnesses, including Government witnesses, before trial. No rule prohibited Lewis from contacting Barker or Jaggers before trial. (d) Movant specifically requested Lewis subpoena Jaggers as a defense witness (McKinnon Decl. ¶18(c)). (e) Movant Ex. A (Barker Letter, dated January 11, 2023)

is a post-conviction letter submitted to Judge Reeves in connection with pre-sentencing proceedings. It did not exist at the time of trial and is not offered as evidence Lewis could have presented to the jury. It is offered as post-conviction confirmation that KRP's non-reliance position existed at the time of trial and was directly accessible to Lewis through a pretrial witness interview. The letter demonstrates that had Lewis conducted such an interview, she would have been able to present KRP's non-reliance position to the jury as a defense to Count 6 materiality.

MATERIALITY / PREJUDICE:

There is a reasonable probability that competent pretrial development of the KRP non-reliance defense would have produced a different result on Count 6. Materiality is an essential element of wire fraud under 18 U.S.C. §1343. See Neder v. United States, 527 U.S. 1, 20 (1999). If KRP did not rely on the financial information transmitted by Movant — as Barker confirmed in writing — the Government's materiality proof for Count 6 was subject to direct challenge on the face of available evidence. The sentencing court's recognition that reliance evidence was insufficient as to KRP (Sent'g Tr., ECF No. 235, PageID #2394) confirms retrospectively what competent pretrial counsel should have recognized before trial: the KRP non-reliance evidence was outcome-material. A jury presented with KRP's own non-reliance position and its characterization of the investment as speculative could have found reasonable doubt as to whether the Count 6 communication satisfied the materiality requirement. Strickland, 466 U.S. at 694.

CROSS-GROUND NOTATION:

Ground Two — PRIMARY (Appendix C): Pretrial IAC — failure to interview KRP representatives pretrial and develop the Count 6 non-reliance defense; Lewis failed to conduct any pretrial interview of Dell Jaggers or Stephen Barker, declined to subpoena Jaggers as a defense witness despite Movant's specific request, relied on a mistaken assumption that the Government would call Jaggers, and entered trial with no knowledge of KRP's actual institutional position — that KRP did not rely on financial data from Vance and McKinnon in making its decision to proceed and characterized the relationship as a speculative investment

Ground Three (Appendix D): Trial IAC — G3-RA-009 (failure to subpoena available witnesses / failure to develop Count 6 defense evidence); Dell Jaggers is specifically identified in G3-RA-009 as a witness Movant requested Lewis subpoena; his potential testimony on the Count 6 communication timing and KRP's understanding of the arrangement bore directly on Count 6 materiality and the knowing element — and was never developed as a defense

G2-RA-011 — Failure to Develop KRP Financial Structure Defense and Counter Hubbuch's False "Lien Interest" Testimony

RECORD CITATION / SOURCE:

Movant Ex. 10 [Tab 16] (Gov't Ex. 807 — KRP Executed LOI / Transaction Document); Movant Ex. 11 [Tab 17] (Gov't Ex. 502 — NGI Bank Records and Signatory Cards); Movant Ex. 12 [Tab 18] (Gov't Ex. 801 — KRP Loan Documents); Trial Tr., ECF No. 177, PageID ##1515–1516 (Hubbuch KRP "lien interest" testimony); McKinnon Decl. ¶¶18

EXACT QUOTE OR RECORD LANGUAGE:

Trial Tr., ECF No. 177, PageID ##1515–1516: Hubbuch testified that KRP had "only lien interest in unit." Movant Ex. 10 (Gov't Ex. 807 — KRP Executed LOI): establishes actual transaction architecture — Vance contracted to build a dryer for KRP; KRP would then lease the equipment back to Vance; Vance would operate the unit; KRP and Vance would split profits from any product produced. This is a fabrication contract, a leaseback arrangement, and a profit-sharing agreement — not a passive lien. Movant Ex. 11 (Gov't Ex. 502 — NGI

Bank Records and Signatory Cards): KRP's first lease payment was made to the NGI account; signatory cards confirm Movant was not a signer, authorized user, or owner of the NGI account. Movant Ex. 12 (Gov't Ex. 801 — KRP Loan Documents): post-payment conversion of the lease arrangement to a loan, executed after KRP had already made two payments for unit fabrication; Movant is not a party to and had no role in this transaction.

RECORD-PROOF POINT:

The record establishes that the Government's financial fraud narrative regarding KRP rested in significant part on Hubbuch's characterization of KRP's financial interest as "only lien interest in unit" — a characterization directly refuted by the Government's own exhibit. Gov't Ex. 807 (the KRP Executed LOI) establishes the actual multi-stage commercial transaction: fabrication contract, leaseback, and profit-sharing, entered into between Vance and KRP in Vance's own capacity, with Movant as no party to or participant in any element of the structure. The NGI bank records and signatory cards (Gov't Ex. 502) confirm that KRP's payments flowed to an NGI account Movant did not control and had no authority over. The KRP loan documents (Gov't Ex. 801) reflect a post-payment lease-to-loan conversion solely between Vance and KRP, executed after two payments had already been made — with Movant having no role at any stage. All three exhibits were Government-admitted or Government-produced and available to Lewis before trial.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

Lewis failed to investigate and develop the KRP/Vance transaction architecture established by these Government-admitted and Government-produced exhibits, and failed to prepare a defense framework capable of challenging Hubbuch's materially false "lien interest" characterization and establishing Movant's complete non-involvement in the KRP financial

relationship. Specifically: (1) Lewis failed to develop Movant Ex. 10 (Gov't Ex. 807 — KRP Executed LOI) into a defense theory. The LOI was a Government exhibit in defense counsel's possession before trial. A reasonably competent attorney would have used it to directly challenge the "lien interest" characterization and to establish that the KRP transaction was Vance's independent commercial deal, not a fraudulent scheme involving Movant. (2) Lewis failed to develop Movant Ex. 11 (Gov't Ex. 502 — NGI Bank Records and Signatory Cards). The signatory cards confirmed that Movant was not a signer, authorized user, or owner of the NGI account through which KRP's payments flowed. Lewis failed to develop this evidence pretrial to establish that the financial flows of the KRP transaction ran through an account Movant did not control. (3) Lewis failed to develop Movant Ex. 12 (Gov't Ex. 801 — KRP Loan Documents). The loan documents reflect a post-payment lease-to-loan conversion solely between Vance and KRP — executed after KRP had already made two payments for unit fabrication. Movant is not a party to and had no role in this transaction at any stage. Lewis failed to develop this evidence to establish Movant's complete non-involvement in the KRP financial structure.

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

(a) Movant Ex. 10 (Gov't Ex. 807 — KRP Executed LOI) was a Government exhibit in defense counsel's possession before trial, establishing the fabrication/leaseback/profit-split transaction architecture. (b) Movant Ex. 11 (Gov't Ex. 502 — NGI Bank Records and Signatory Cards) established KRP's first lease payment to the NGI account and confirmed by signatory card that Movant was not a signer, authorized user, or owner of the NGI account. (c) Movant Ex. 12 (Gov't Ex. 801 — KRP Loan Documents) established that the post-payment loan conversion was solely between Vance and KRP, with no role for Movant at

any stage. (d) All three exhibits were in defense counsel's possession or available through Government discovery before trial.

MATERIALITY / PREJUDICE:

There is a reasonable probability that competent pretrial development of the KRP financial structure defense would have produced a different result. The jury heard Hubbuch's "only lien interest" characterization without any defense challenge — despite the fact that the Government's own exhibit (Gov't Ex. 807), the LOI, directly refuted it. The jury had no basis from which to understand that the KRP financial relationship was an independent Vance transaction conducted through an NGI account Movant did not control, converted to a loan structure Movant was not a party to, and documented by exhibits establishing a fabrication/leaseback/profit-split architecture wholly inconsistent with the Government's characterization. Lewis's failure to develop these exhibits before trial left the jury with a materially false picture of the KRP relationship and Movant's role in it. See App. B, G1-RA-006 (Hubbuch false KRP "lien interest" testimony — Napue/Giglio framework); G2-RA-010 (failure to interview Barker/Jaggers pretrial — non-reliance defense).

CROSS-GROUND NOTATION:

Ground Two — PRIMARY (Appendix C): Pretrial IAC — failure to develop the KRP financial structure defense; Lewis did not use the KRP Executed LOI (Gov't Ex. 807), the NGI bank records and signatory cards (Gov't Ex. 502), or the KRP loan documents (Gov't Ex. 801) to establish that the KRP transaction was Vance's independent commercial deal — a fabrication contract, leaseback, and profit-sharing arrangement — conducted through an NGI account Movant did not control; the post-payment lease-to-loan conversion was solely between Vance and KRP; Movant was not a party to or participant in any element of the KRP financial structure

Cross-Reference (App C, G2-RA-010): the KRP financial structure failure (this entry) and the KRP non-reliance failure (G2-RA-010) are analytically interconnected — G2-RA-010 establishes that KRP did not rely

on the financial data Movant transmitted and characterized its relationship with Vance as a speculative investment; this entry establishes that Movant was not a party to or participant in the underlying commercial transaction architecture; together they establish the full scope of the pretrial KRP defense failures

Ground One (Appendix B): Napue/Giglio — G1-RA-006 [Hubbuch's False "Lien Interest" Testimony] (Hubbuch falsely testified there were no transaction documents showing KRP buying a unit from NGI and characterized the transaction as merely a "lien interest"; the Government's own LOI established a fabrication contract, leaseback, and profit-sharing arrangement; the pretrial failure to develop the LOI framework allowed Hubbuch's materially false characterization to go unchallenged at trial)

Ground Three (Appendix D): Trial IAC — G3-RA-005 (Hubbuch impeachment failure); the KRP LOI, NGI signatory-card materials, and loan documents were available Government exhibits that could have been used on cross-examination to expose Hubbuch's false "lien interest" characterization at trial and were not used

G2-RA-012 — Prejudice Anchor: Sentencing Court's Recognition of Outcome-Material Testimony

RECORD CITATION / SOURCE:

Sent'g Tr., ECF No. 235, PageID #2352; McKinnon Decl. ¶¶56-59

EXACT QUOTE OR RECORD LANGUAGE:

Sent'g Tr., ECF No. 235, PageID #2352: The sentencing court found that McKinnon's testimony, if believed, "would have affected the outcome of the case." McKinnon Decl. ¶58: "If counsel had properly prepared me, preserved the state-of-mind issue, used the McKinnon Letter, developed the recorded-conversation evidence, used the journals, and presented the entity/control distinctions, there is a reasonable probability that at least one juror would have viewed the Government's intent theory differently." McKinnon Decl. ¶59: "I make these statements based on my own personal knowledge, my communications with trial counsel, my understanding of my role in the businesses, the information supplied to me by others, the records I maintained, and my experience preparing for and testifying at trial."

RECORD-PROOF POINT:

The sentencing court's finding is the strongest available judicial corroboration of Strickland prejudice for Ground Two. The finding was made by the same judge who presided over the trial, who had the full trial record before him at sentencing, and who recognized that the state-of-mind and defense framework Movant sought to present was outcome-material -- capable of changing the verdict. This entry does not identify a standalone pretrial counsel failure; it provides the cumulative prejudice anchor for G2-RA-001 through G2-RA-012. The defense theory the sentencing court recognized as potentially outcome-altering was the same defense Movant communicated to counsel before trial, that counsel failed to investigate and develop, and that counsel affirmatively mischaracterized as unavailable.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

This entry cross-references the failures identified in G2-RA-001 through G2-RA-012. The sentencing court's recognition confirms retrospectively -- through a judicial finding made on the full trial record -- that the state-of-mind defense counsel failed to investigate, develop, and prepare was not a marginal theory; it was a defense capable of changing the outcome of the proceeding. The cumulative significance is that it corroborates, from the perspective of the trial judge who saw the full record, what a competent pretrial investigation and defense preparation would have changed.

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

This entry documents post-trial judicial confirmation of the same defense theory Movant communicated to counsel throughout the pretrial period. The sentencing court's finding that Movant's testimony, if believed, would have affected the outcome confirms that the theory was neither implausible nor legally marginal -- it was a factual defense theory grounded in

available evidence that a competent counsel would have investigated, organized, and developed before trial.

MATERIALITY / PREJUDICE:

The sentencing court's recognition that Movant's testimony, if believed, "would have affected the outcome of the case" satisfies the Strickland prejudice standard for Ground Two both individually and cumulatively. Strickland, 466 U.S. at 694. The cumulative prejudice from G2-RA-001 through G2-RA-012 must be evaluated as a whole: counsel failed to investigate entity and account structure, NGEP signatory evidence, Chamblee-source and timing evidence, the McKinnon Letter and Gov't Ex. 401 issue, the independent state-of-mind defense, entity distinctions, Deware signatory evidence, Chamblee's financial role and Count 2 source of funds, cooperation/advice options, KRP non-reliance, and KRP financial structure -- and each of those failures contributed to the same result the sentencing court recognized: a defense that never reached the jury in the form the record supported. Evaluated cumulatively, those failures undermine confidence in the conviction.

CROSS-GROUND NOTATION:

Ground Two — PRIMARY (Appendix C): Pretrial IAC — cumulative prejudice anchor for G2-RA-001 through G2-RA-012; the sentencing court's finding that McKinnon's testimony, if believed, "would have affected the outcome of the case" (Sent'g Tr., ECF No. 235, PageID #2352) is the strongest available judicial corroboration that the state-of-mind defense counsel failed to investigate, develop, and prepare pretrial was not a marginal theory — it was a defense capable of changing the verdict, recognized as such by the same judge who presided over the trial

Ground Three (Appendix D): Trial IAC — G3-RA-011 (cumulative trial prejudice anchor); App C, G2-RA-012 is cross-referenced in App D, G3-RA-011 as the controlling pretrial-IAC prejudice anchor; the sentencing court's outcome-materiality finding confirms that the defense the trial-IAC failures prevented from reaching the jury traces to the same pretrial investigation failures documented in G2-RA-001 through G2-RA-012

Ground One (Appendix B): Napue/Giglio — G1-RA-014 (cumulative prejudice — letter/rebuttal sequence); G1-RA-015 (capstone cumulative materiality anchor); the sentencing court's outcome-materiality finding applies across all five grounds and reinforces the cumulative prejudice established in App B's capstone entries

McKinnon v. United States, Crim. No. 5:20-cr-00063

Movant: Molly Irene McKinnon, Register No. 23265-032

APPENDIX D - Ground Three Record-Proof Appendix

Trial Ineffective Assistance of Counsel

SCOPE AND SELECTION OF RECORD EVIDENCE

Ground Three and this Appendix plead the trial-stage ineffective-assistance claim, its operative factual theories, and the principal record evidence supporting relief. The record contains more instances of counsel's failure to investigate, impeach, object meaningfully, correct false or misleading presentations, use available evidence, preserve issues, and subject material portions of the prosecution's case to meaningful adversarial testing than could practicably be reproduced and analyzed here. The entries below present the clearest and most consequential instances establishing deficient performance, the specific breakdown in adversarial testing where alleged, and the resulting individual and cumulative prejudice. Additional instances reflected in the record are not unpleaded claims or separate grounds for relief; they provide further evidence supporting the Ground Three claim and factual theories pleaded in the Motion. If an evidentiary hearing is granted, Movant may present additional evidence supporting those pleaded allegations within the scope authorized by the Court.

G3-RA-001 — Framework: Trial IAC / Failure to Present State-of-Mind Defense at Trial

RECORD CITATION / SOURCE:

McKinnon Decl. ¶¶4–10, 20, 25, 28–39, 51–59; Trial Tr., ECF No. 179, PageID ##1762, 1771–1774, 1765, 1770, 1775–1776, 1780; Trial Tr., ECF No. 179, PageID ##1791–1796; Sent'g Tr., ECF No. 235, PageID #2352

EXACT QUOTE OR RECORD LANGUAGE:

McKinnon Decl. ¶25: "Lewis spent approximately one half-day preparing me for my own testimony. That preparation focused almost entirely on establishing a duress defense based on Chamblee's threats." McKinnon Decl. ¶29: "On the final day of trial, after the Court ruled that I

had not satisfied the prima facie burden required to present a duress defense, Lewis had no alternative defense theory prepared." McKinnon Decl. ¶30: "Lewis did not request a continuance after the Court eliminated the duress defense. Lewis did not object on the record to the ten-minute limitation as constitutionally inadequate preparation time. Lewis did not request a mistrial. I was required to take the oath and testify with no alternative framework and no guidance from counsel on how to present my testimony effectively." McKinnon Decl. ¶38: "As a result, the jury heard only fragments of my account. The jury did not hear a complete explanation of the information Chamblee supplied to me, my reliance on that information, the timing of when I learned Chamblee's reported sales were false, my lack of control over the relevant accounts, and the contemporaneous records that would have corroborated my understanding at the time." Trial Tr., ECF No. 179, PageID #1762: Government raised the Sixth Circuit proffer requirement before Movant testified. PageID ##1771–1774: Court ruled that Movant had not satisfied the prima facie burden for a complete duress defense. PageID #1765: Counsel's own proffer included a corrected timing statement. PageID #1770: Government used that corrected timing statement from counsel's proffer. PageID ##1775–1776, 1780: After the ruling, counsel received only limited additional preparation time before Movant testified. Sent'g Tr., ECF No. 235, PageID #2352: The sentencing court found that McKinnon's testimony, if believed, "would have affected the outcome of the case."

RECORD-PROOF POINT:

This entry functions as the framework anchor for Ground Three. The record establishes that counsel's entire trial presentation was built on a single defense track — duress — and that when the Court restricted that track on Day 6, no alternative framework existed. McKinnon Decl. ¶29. Counsel had prepared Movant for approximately one half-day, focusing almost entirely on

establishing a duress defense; that preparation did not include an independent state-of-mind framework built around lack of fraudulent intent, lack of knowledge, reliance on Chamblee-supplied information, lack of ownership or account access, and the timing of when Movant learned Chamblee's sales figures were false. McKinnon Decl. ¶25.

The Day 6 trial record documents the precise sequence in which the preparation failure was exposed and its consequences materialized in real time: the Government raised the Sixth Circuit proffer requirement at PageID #1762; the Court ruled against the duress presentation at PageID ##1771–1774; counsel's own proffer inadvertently supplied the Government with a corrected timing statement at PageID #1765, which the Government then used at PageID #1770; and Movant was given approximately ten minutes to consult with counsel before testifying — an entirely inadequate substitute for the prepared alternative framework that had never been built. Trial Tr., ECF No. 179, PageID ##1775–1776, 1780; McKinnon Decl. ¶30.

The result was that the jury heard only fragments of Movant's account. McKinnon Decl. ¶38. Movant testified but was unable to present a complete, coherent explanation of her reliance on Chamblee-supplied information, her lack of account access, her limited administrative role, the timing of when she learned the sales figures were false, or the contemporaneous records that would have corroborated her state of mind. Id. The Government had already argued to the jury that there was "not a shred of proof" and not "a single item of proof" in the records, emails, or documents showing Chamblee supplied information to Movant. Trial Tr., ECF No. 179, PageID ##1894, 1898; App. B, G1-RA-013. That rebuttal argument succeeded because counsel had not developed and presented the coherent state-of-mind framework needed to answer it.

This entry explains why every other G3-RA entry matters. G3-RA-002 through G3-RA-010 each identify a specific trial-execution failure — a witness not impeached, an exhibit not used, an

issue not preserved. Each of those failures occurred against the backdrop of a trial in which the jury never received a coherent framework for evaluating Movant's knowledge, intent, account access, role, and reliance on information supplied by others. Without that framework, each individual failure compounded the others, and the cumulative effect was a conviction sustained by the Government's attribution narrative rather than tested by the available defense evidence.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

By the time Day 6 arrived, the trial record already contained substantial evidence supporting an independent state-of-mind framework. Counsel had notice of all of it — it was in the trial record she had been present for and in the exhibits the jury had seen. The Bank of America NGEP account signature-card evidence identifying Chamblee and Hogan as signers had been introduced through Agent Hubbuch at Trial Tr., ECF No. 176, PageID ##1186–1187; App. B, G1-RA-002. Movant had already testified that Chamblee told her he had made sales and gave her information to input into QuickBooks, Trial Tr., ECF No. 179, PageID #1792, and that the financial information she sent to Dell Jaggers reflected Chamblee-reported sales, PageID #1796; App. B, G1-RA-003. The journal materials (Defense Ex. 82 [Tab 51] / Movant Ex. 45) had been marked for identification and were available for counsel's use. McKinnon Decl. ¶47. The McKinnon Letter (Movant Ex. C [Tab 3]) was a Court exhibit. The Day 6 timing evidence — that the Count 6 communication was sent before Chamblee disclosed the falsity of his sales figures — was documented in McKinnon Decl. ¶8 and available for development.

Counsel also had direct notice through Movant's own communications throughout trial that an independent state-of-mind defense — separate from and not dependent on duress — was both legally available and factually supported. McKinnon Decl. ¶¶32–39. The factual basis for that

defense required no new investigation at that point; it required only counsel's decision to use what was already in the record. The corrected timing statement counsel herself included in her proffer at PageID #1765 — which the Government then used against Movant — confirms that elements of a viable independent defense were available and known to counsel; they simply had not been organized into a prepared framework.

MATERIALITY / PREJUDICE:

There is a reasonable probability that a properly presented, coherent state-of-mind defense would have produced a different result. Strickland, 466 U.S. at 694. The sentencing court's finding that Movant's testimony, if believed, "would have affected the outcome of the case," Sent'g Tr., ECF No. 235, PageID #2352, constitutes the strongest available judicial corroboration of Strickland prejudice for Ground Three. That finding was made by the same judge who presided over the trial, who had observed the Day 6 restriction in real time, and who recognized that the state-of-mind defense Movant sought to present was outcome-material.

The Day 6 trial record makes the prejudice specific, documentable, and direct. At the moment the Court barred the duress presentation — Trial Tr., ECF No. 179, PageID ##1771–1774 — the jury was still deliberating on whether Movant knowingly participated in fraud. At that precise moment, counsel had no prepared alternative framework. McKinnon Decl. ¶29. The ten minutes available for consultation before Movant took the oath (McKinnon Decl. ¶30) were constitutionally inadequate to substitute for the prepared independent defense that should already have existed. Movant therefore testified without the benefit of a coherent framework, and the jury evaluated her testimony without the organized state-of-mind context that a prepared counsel would have built into the record.

The Government exploited that gap in the precise way one would predict. Its rebuttal argued that there was no "shred of proof" and not a "single item of proof" supporting Chamblee's involvement — an argument that succeeded because counsel had not developed and presented the available evidence in a coherent, organized way. Trial Tr., ECF No. 179, PageID ##1894, 1898; App. B, G1-RA-013. Had counsel presented the independent state-of-mind framework — organized around Movant's lack of account access, the Chamblee-source testimony already in the record, the journal corroboration, the McKinnon Letter context, the entity/role distinctions, and the Count 6 timing — the Government's rebuttal argument would have been directly answered by evidence the jury could evaluate. There is a reasonable probability that at least one juror would have assessed knowledge, intent, attribution, and credibility differently. McKinnon Decl. ¶58. Because the failures identified in G3-RA-002 through G3-RA-010 all trace to this same root — the absence of a prepared, coherent trial framework — the prejudice from each individual failure is both independently sufficient and cumulatively reinforcing under Strickland.

CROSS-GROUND NOTATION:

Ground Three — PRIMARY (Appendix D): Trial IAC — framework anchor; the entire trial presentation was built on a single duress track with no alternative state-of-mind defense prepared; when the Court restricted the duress presentation on Day 6, no organized independent defense framework existed for Movant to testify within; each of the ten specific trial-execution failures documented in G3-RA-002 through G3-RA-010 occurred against the backdrop of this foundational framework absence

Ground Two (Appendix C): Pretrial IAC — G2-RA-005 (failure to develop independent state-of-mind defense; counsel affirmatively advised Movant that duress and jury nullification were the only viable defenses, providing no alternative framework that would have survived the Day 6 restriction); G2-RA-001 (pretrial framework anchor — the trial framework failure is the direct downstream consequence of the pretrial investigation failure)

Ground One (Appendix B): Napue/Giglio — G1-RA-013 (Government rebuttal "not a shred of proof" argument succeeded because the organized, document-supported state-of-mind framework that would have answered it was never built into the trial record); G1-RA-015 (capstone cumulative materiality anchor — the absence of a prepared trial framework amplified the prejudice from each individual Napue violation)

Ground Five (Appendix F): Appellate IAC — G5-RA-001 (framework anchor); G5-RA-009 (clearly-stronger issue comparison); the absence of a prepared trial framework and the resulting preservation failures documented in G3-RA-010 produced an appellate record in which the unpreserved constitutional issues could not be evaluated — directly contributing to the conditions under which the omitted Napue/prosecutorial-misconduct claim was clearly stronger than the issues Napolitano raised

G3-RA-002 — Failure to Correct Entity / Ownership / Role / Account-Control Conflation at Trial

RECORD CITATION / SOURCE:

McKinnon Decl. ¶¶4–10, 36, 51–59; Trial Tr., ECF No. 179, PageID ##1782–1793, 1802–1804, 1829; Trial Tr., ECF No. 179, PageID #1787; Trial Tr., ECF No. 176, PageID ##1186–1187; Trial Tr., ECF No. 174, PageID #842; Movant Ex. 34 [Tab 40] (Gov't Ex. 629); Movant Ex. 20 [Tab 26] (Gov't Ex. 703); Movant Ex. 19 [Tab 25] (Gov't Ex. 617); Movant Ex. 21 [Tab 27] (Gov't Ex. 106); Movant Ex. 14 [Tab 20] (Gov't Ex. 507); Movant Ex. 15 [Tab 21] (Gov't Ex. 508); Movant Ex. 72 [Tab 78] (Gov't Ex. 201)

EXACT QUOTE OR RECORD LANGUAGE:

McKinnon Decl. ¶4: "At no time was I an actual owner, partner, member, or control person of NGI, NGEP, or any operating entity or account the Government attributed to me." McKinnon Decl. ¶36: "I was not an owner, partner, or member of NGI, NGEP, V4 Carbon, Carbon Holdings, or any other relevant entity. I did not control the entities or accounts in the manner the Government's presentation suggested. My work was administrative, bookkeeping, and operational in nature, and I acted based on information provided to me by others." McKinnon Decl. ¶55: "Had counsel properly reviewed, organized, and used the records I identified, the defense could have shown that the Government's broad references to 'Nex-Gen,' 'Vance and McKinnon,' ownership, control, bank access, and intent were misleading. The records would have helped separate my actual role from the conduct and accounts controlled by others." Trial Tr., ECF No. 176, PageID ##1186–1187: Agent Hubbuch identified Gov't Ex. 201 as Bank of America NGEP account records; Chamblee and Hogan were identified as listed signers; Movant was not identified as a signer on those pages. Trial Tr., ECF No. 179, PageID #1787:

Movant testified that she opened the Whitaker Bank account for payroll-related purposes and paid herself from it approximately ten months after she began working for the business. PageID ##1782–1793, 1802–1804, 1829: Movant's trial testimony addressing her role, work responsibilities, and association with the Nex-Gen entities. Trial Tr., ECF No. 174, PageID #842: Trial testimony relating to Deware and account access.

RECORD-PROOF POINT:

The record establishes that the Government's case depended on generalized collective attribution — "Nex-Gen," "Vance and McKinnon," and related shorthand — that blurred the legally significant distinctions among NexGen Industries (NGI), NexGen Energy Partners (NGEP), V4 Carbon, Carbon Holdings, and related entities. App. B, G1-RA-001. That attribution framework allowed the jury to infer ownership, control, bank access, account authority, and fraudulent intent from Movant's administrative and bookkeeping work — none of which established actual ownership, membership, partnership, or financial control. McKinnon Decl. ¶¶4, 36.

The record also establishes that the entity formation records, operating agreements, and bank account materials necessary to correct that attribution framework were available in Government discovery and admitted as Government or Defense exhibits at trial. The NGI formation records, NGEP Operating Agreement, and Vance-Deware Operating Agreement showed entity-specific ownership and role distinctions separating Movant's administrative functions from the ownership, membership, and account-control the Government attributed to her. Movant Exs. 19/20/34 (Gov't Exs. 617/703/629). The NGEP Operating Agreement (Movant Ex. 20 / Gov't Ex. 703) contains three provisions that establish the equity — not debt — character of the Chamblee/Shumard/Hogan contributions and that imposed member-authorization requirements before any loan obligation or creditor relationship could be created. First, §6.4(b) required a

Majority Vote of Members before the Company could incur indebtedness, or increase existing indebtedness, of any amount exceeding $10,000. Second, §14.6(a) ("Loans and Advances from Members to Company") provided that any Member could only lend money to the Company "with the approval of the Members by Majority Vote," and further specified that a Member who lent money to the Company under §14.6 "shall be considered an unrelated creditor with respect to such loan, to the extent allowed by law" — establishing that creditor status itself was conditioned on obtaining a prior Majority Vote that was never held. Third, §9.3 established that member contributions carried no right to interest and no right to the return of capital — the defining legal characteristics of equity, not debt — making those contributions structurally incompatible with retroactive loan recharacterization regardless of what any subsequent document purported to do. Together, these three provisions establish that the Chamblee/Shumard contributions entered NGEP as non-interest-bearing, non-returnable equity; that any conversion of those contributions into loan obligations required at minimum a Majority Vote of Members that was never held; and that the mechanism for a member to achieve creditor status under the Agreement — §14.6 — was itself gated behind that same Majority Vote. The post-FBI manufactured loan documents (Movant Ex. 43 [Tab 49] / Defense Ex. 4) — executed after FBI involvement, without notice to Vance, without any member vote, and purporting to retroactively recharacterize equity contributions as debt — were directly inconsistent with all three provisions: they created indebtedness exceeding $10,000 without the §6.4(b) Majority Vote; they purported to establish the member creditor relationship that §14.6 conditioned on a Majority Vote that was never obtained; and they attempted to confer exactly what §9.3 establishes those contributions did not carry — a right to repayment and interest. The Operating Agreement itself therefore proves that no contemporaneous loan documentation existed during the NGEP business

operations, that the Chamblee/Shumard contributions were equity, not loans, until retroactively recharacterized post-FBI involvement, and that Chamblee and Shumard had no legal pathway under the Agreement to become NGEP creditors without the member approval they never sought. Counsel's failure to present this exhibit-supported, section-specific argument to the jury — using the Government's own admitted exhibit (Gov't Ex. 703) — left the Government's loan-based attribution theory entirely unchallenged by the company's own governing documents. The V4 Carbon and Carbon Holdings bank application/signature-card materials identified Deware as an authorized user or signatory on those later partnership accounts, directly contradicting any broad impression that Movant controlled the accounts associated with those entities. Movant Exs. 14/15 (Gov't Exs. 507/508). The Bank of America NGEP account signature-card evidence identified Chamblee and Hogan as signers — not Movant — confirming that the operating account associated with Chamblee-reported sales was not an account Movant controlled or could independently audit. Trial Tr., ECF No. 176, PageID ##1186–1187; App. B, G1-RA-002. Counsel had all of this evidence at trial and did not use it to present an organized, exhibit-supported entity distinction framework. McKinnon Decl. ¶¶23, 51–55. As a result, the Government's generalized "Nex-Gen" attribution narrative went unchallenged at trial, and the jury had no organized basis for evaluating whether Movant's role was that of an owner or control person, or that of an administrative and bookkeeping employee relying on information supplied by others.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

Every item of evidence needed to present the entity distinction framework was in the trial record or available as an admitted or identified exhibit by the time Movant testified. The Bank of

America NGEP account signature-card evidence had already been introduced by the Government through Agent Hubbuch at Trial Tr., ECF No. 176, PageID ##1186–1187. The V4 Carbon and Carbon Holdings bank application/signature-card materials (Gov't Exs. 507/508) were Government exhibit materials in the trial record. Movant Exs. 19/20/34 (Gov't Exs. 617/703/629) were entity and transaction exhibit materials available in the trial record. Movant Ex. 21 (Gov't Ex. 106) was available to address the title/association-to-control inference. The Whitaker Bank account context — established by Movant's own testimony at PageID #1787 — confirmed the payroll-specific, limited purpose of Movant's separate account activity. Counsel also had direct notice from Movant's own communications throughout trial: Movant communicated the entity distinctions, her administrative role, her lack of ownership, her lack of account access, and the organizational structure to counsel before and during trial. McKinnon Decl. ¶¶4–10, 51–55. Movant identified specific exhibits bearing on entity structure, ownership, and account access and organized them for counsel's use; counsel discarded or failed to use many of those exhibits without adequate explanation. McKinnon Decl. ¶¶21–23. The Government's own repeated use of generalized "Nex-Gen" language throughout trial — visible to counsel in real time — itself provided notice each time it was used that the entity conflation required correction.

MATERIALITY / PREJUDICE:

There is a reasonable probability that a competent entity distinction presentation would have produced a different result. The Government's attribution theory depended on the jury accepting generalized "Nex-Gen" attribution as proof that Movant's administrative work, bookkeeping activity, email transmissions, and association with Vance established her ownership, control, account access, and fraudulent intent.

Had counsel organized and presented the entity formation records, operating agreements, and signature-card materials, the jury would have received specific, document-supported evidence showing: (a) NGI, NGEP, V4 Carbon, and Carbon Holdings were distinct entities with distinct formation records, operating agreements, accounts, and signatories; (b) the NGEP operating account at Bank of America was associated with Chamblee and Hogan as signers — not Movant — making it impossible for Movant to independently verify Chamblee-reported sales through account access; (c) Deware held signatory or authorized-user status on the later partnership accounts, directly limiting any broad inference that Movant controlled those accounts; and (d) Movant's work role was administrative and bookkeeping, not ownership, membership, or financial control. McKinnon Decl. ¶55. Additionally, had counsel presented the Operating Agreement's specific provisions — §6.4(b), §9.3, and §14.6(a) — in connection with the post-FBI manufactured loan documents (Movant Ex. 43 / Defense Ex. 4), the jury would have had a document-supported basis for evaluating whether the Government's loan-based attribution theory was consistent with the company's own governing documents. A jury that understood that those contributions entered NGEP as non-interest-bearing, non-returnable equity; that the documents purporting to reclassify them as loans were executed without the member vote the Agreement expressly required; and that Chamblee and Shumard had no legal pathway under §14.6 to achieve creditor status without a Majority Vote they never obtained — would have been required to evaluate the Government's fraud narrative through a materially different lens. The Government's own admitted exhibit established that the alleged "loan" obligations at the heart of the attribution theory were structurally unauthorized under the Agreement that governed NGEP. There is a reasonable probability that a jury that received that document-supported framework would have evaluated the loan-based attribution theory, and Movant's knowledge of and role in

any alleged fraud premised on that theory, fundamentally differently. Strickland, 466 U.S. at 694.

The prejudice connects to App. B, G1-RA-001 and App. C, G2-RA-006. The trial-IAC prejudice is analytically distinct: the evidence existed in the trial record and was available for counsel's use during trial. Counsel's failure to present it in an organized, coherent way meant that the jury received the Government's generalized attribution narrative without the document-supported correction that could have changed the jury's evaluation of Movant's role, knowledge, intent, and culpability. Strickland, 466 U.S. at 694.

CROSS-GROUND NOTATION:

Ground Three — PRIMARY (Appendix D): Trial IAC — failure to correct entity/ownership/role/account-control conflation at trial; the entity formation records, operating agreements, and signature-card materials necessary to separate Movant's administrative role from the ownership, control, and account access the Government attributed to her were available in the trial record and were not used in an organized, cross-examination-supported framework

Ground One (Appendix B): Napue/Giglio — G1-RA-001 (generalized entity attribution framework); the trial IAC failure to present organized entity-distinction evidence compounded the underlying prosecutorial misconduct by leaving the Government's generalized "Nex-Gen" attribution narrative unchallenged by the available documentary record the jury could have evaluated

Ground Two (Appendix C): Pretrial IAC — G2-RA-006 (failure to investigate and organize entity formation records, operating agreements, and bank account materials pretrial); G2-RA-002 (failure to investigate NGEP account signer records before trial); the trial execution failure to use the entity and signatory evidence is the direct downstream consequence of the pretrial investigation failures documented in those entries

Ground Five (Appendix F): Appellate IAC — G5-RA-003 (appellate record foundation — the entity conflation and attribution errors were a component of the record-based, non-speculative foundation for the omitted appellate Napue/prosecutorial-misconduct claim; the trial-level failure to correct the entity conflation left the false attribution framework intact in the record the Sixth Circuit reviewed)

G3-RA-003 — Failure to Impeach Chamblee (Loan/Investment Qualifications, Count 2 Source-of-Funds, and Sales-Information Testimony)

RECORD CITATION / SOURCE:

Trial Tr., ECF No. 175, PageID ##1008, 1034–1036, 1055–1056; Trial Tr., ECF No. 176, PageID ##1168–1169, 1172; Trial Tr., ECF No. 178, PageID ##1585–1586 (Agent Hubbuch cross-examination, Day 5 — Defense Ex. 114, NGEP Bank of America account, July 2018 statement, Count 2 source-of-funds); McKinnon Decl. ¶¶4, 6–9, 32–39, 40–44; Movant Ex. 17

[Tab 23] (Gov't Ex. 717); Movant Ex. 41 [Tab 47] (Defense Ex. 76); App. B, G1-RA-003; App. B, G1-RA-004; App. B, G1-RA-006

EXACT QUOTE OR RECORD LANGUAGE:

Trial Tr., ECF No. 175, PageID ##1034–1036: Chamblee characterized funds as "in loans to Mr. Vance" and "a lot of it was loan as well." Trial Tr., ECF No. 175, PageID ##1055–1056: Chamblee reviewed bank records and qualified whether the $5,600 underlying Count 2 came from him personally or from a transfer from the NGEP Bank of America account. Trial Tr., ECF No. 176, PageID ##1168–1169, 1172: Additional bank-record testimony qualifying the Count 2 transaction source. Trial Tr., ECF No. 178, PageID ##1585–1586 (Agent Hubbuch cross-examination, Day 5): Lewis showed Hubbuch Defense Exhibit 114 — the Bank of America NexGen Energy Partners account statement for July 2018. Hubbuch confirmed the document was a Bank of America statement for the NexGen Energy Partners account. Lewis directed Hubbuch to the first withdrawal dated July 3rd and asked who the transfer was from and to; Hubbuch answered: "That is a transfer from NexGen Energy Partners to NexGen Energy Partners." When Lewis asked whether it appeared to be an intercompany transfer, Hubbuch responded: "I really don't have the details of that so I'm not sure." When Lewis asked whether Gary Chamblee was "certainly not listed," Hubbuch responded: "Not in this. But the detail statement, the transfer detail might indicate that." Lewis also elicited that deposits on the same statement came from Clorox, which Hubbuch characterized as "consistent with sales of the test loads." McKinnon Decl. ¶7: "Chamblee routinely provided me with balance information and sales figures for the business. I relied on those representations in preparing financial reports and in communicating information to investors and lenders. I had no reason at the time to believe that Chamblee's reported sales were false, because Chamblee represented to me that all sales

proceeds were being deposited into accounts controlled solely by him and his partners." McKinnon Decl. ¶8: "I did not learn that Chamblee's initial reported sales were false until the afternoon of June 26, 2017, when Chamblee informed me of that fact. The email underlying Count 6 — sent to Dell Jaggers of KRP — was sent by me on the morning of June 26, 2017, several hours before Chamblee disclosed to me that his sales were fabricated." McKinnon Decl. ¶¶40–44: Movant recorded conversations with Chamblee and began transcribing at least some of those recordings, which were relevant to corroborating what Chamblee told her and the information she relied upon in preparing financial reports.

RECORD-PROOF POINT:

The record establishes four distinct categories of available impeachment evidence that counsel failed to develop and use during Chamblee's trial testimony.

First, Chamblee's own trial testimony included loan and investment characterizations of his financial role, describing funds as "in loans to Mr. Vance" and "a lot of it was loan as well," which directly qualified the Government's simplified victim/personal-payment narrative and bore on the source, nature, and attribution of the funds at issue. Trial Tr., ECF No. 175, PageID ##1034–1036; App. B, G1-RA-006. A competent cross-examination would have developed those qualifications to show the jury that Chamblee's own testimony described a more complex financial relationship than the Government's victim-framing allowed.

Second, the Count 2 source-of-funds issue was identifiable from Chamblee's own bank-record review at trial: the $5,600 underlying Count 2 appeared to reflect a transfer from the NGEP Bank of America account rather than a direct personal payment from Chamblee. Trial Tr., ECF No. 175, PageID ##1055–1056; Trial Tr., ECF No. 176, PageID ##1168–1169, 1172; App. B, G1-

RA-004. That transaction-source qualification bore directly on the attribution of the Count 2 wire to Movant's conduct and on whether the personal-victim framing of that count survived scrutiny. Third, counsel failed to develop the Chamblee-source state-of-mind defense through available impeachment and corroboration evidence. Movant consistently maintained that Chamblee supplied sales figures and balance information that she later relied upon in preparing financial records and communications. McKinnon Decl. ¶¶7–9. However, Chamblee did not admit that fact during his trial testimony. Instead, when questioned regarding whether he reported sales to Movant, he denied doing so. That denial made impeachment and corroboration especially important. Counsel failed to use the available journal records, recorded-conversation materials, account-access evidence, and other corroborating records to challenge Chamblee's denial or to build a coherent cross-examination framework showing why Movant allegedly relied on information that originated with him. Without that development, the Government was later able to argue in rebuttal that there was no "shred of proof" supporting the Chamblee-source defense. Trial Tr., ECF No. 179, PageID ##1894, 1898; App. B, G1-RA-013.

Fourth, the cross-examination of Agent Hubbuch at Trial Tr., ECF No. 178, PageID ##1585–1586 established account-attribution evidence bearing directly on the Count 2 source-of-funds issue developed in paragraph two above. Lewis showed Hubbuch Defense Exhibit 114 — the Bank of America NexGen Energy Partners account statement for July 2018 — and elicited that the first withdrawal dated July 3rd appeared on the face of the statement as a transfer from NexGen Energy Partners to NexGen Energy Partners, not as a personal payment from Gary Chamblee, and that Chamblee was not identified on the face of the statement as the named source of the transfer. That cross-examination record directly corroborated and reinforced the Count 2 source-of-funds point raised through Chamblee's own bank-record review at Trial Tr.,

ECF No. 175, PageID ##1055–1056: the $5,600 underlying Count 2 reflected an intercompany NGEP account transfer, not a direct personal payment from Chamblee, directly contradicting the Government's personal-victim framing of that count. The Hubbuch cross-examination was in one respect stronger than the Chamblee testimony on this point — the Government's own lead investigator was confirming what appeared on the face of the NGEP Bank of America account record with Chamblee's name absent — but Hubbuch hedged by suggesting the underlying transfer detail might separately identify Chamblee's involvement. Lewis did not follow up on that hedge, did not pin down or neutralize it, and did not connect the account-structure cross-examination against Hubbuch to the Count 2 source-of-funds argument she had begun to develop through Chamblee's testimony at PageID ##1055–1056. The result was that two independent lines of cross-examination bearing on the same Count 2 attribution issue — Chamblee's bank-record testimony and Hubbuch's hedged account-statement cross-examination — were each left undeveloped and were never consolidated into a coherent, organized challenge to the Government's loss and attribution theory on Count 2.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

All of the impeachment evidence identified in this entry was in the trial record during and after Chamblee's testimony, and available to counsel for cross-examination and closing argument. Chamblee's loan and investment characterizations were elicited during his direct examination at Trial Tr., ECF No. 175, PageID ##1034–1036 — counsel heard that testimony and had it available for cross-examination. The Count 2 source-of-funds qualification arose from Chamblee's own bank-record review at Trial Tr., ECF No. 175, PageID ##1055–1056 and was reflected in Government exhibit bank-record materials (Trial Tr., ECF No. 176, PageID ##1168–

1169, 1172) that were before the jury. Movant Ex. 17 (Gov't Ex. 717) and Movant Ex. 41 (Defense Ex. 76) were trial exhibits reflecting the relevant bank-record evidence.

Counsel also had direct notice from Movant throughout trial that the Chamblee-source theory was central to her defense: Movant communicated throughout the pretrial period and at trial that she received sales and balance information from Chamblee, relied on it without independent ability to verify it, and did not learn the reported sales were false until after she had already transmitted the Count 6 communication. McKinnon Decl. ¶¶7–9, 32–39. Movant had also recorded conversations with Chamblee and provided counsel with transcription materials corroborating the Chamblee-source theory. McKinnon Decl. ¶¶40–44. Counsel had every source needed to conduct a coherent, record-supported Chamblee cross-examination — she simply did not do so.

MATERIALITY / PREJUDICE:

There is a reasonable probability that a competent Chamblee cross-examination would have produced a different result on multiple counts. Chamblee was the Government's key witness on source-of-funds, victim status, loss, and the attribution of conduct to Movant. Effective impeachment on each of the four categories identified above would have provided the jury with a more complete picture of Chamblee's financial role, the source-of-funds issues, and the disputed question of where the sales and balance information relied upon by Movant originated.

The Count 2 source-of-funds prejudice is independently material. If the $5,600 underlying Count 2 reflected a transfer from the NGEP Bank of America account rather than a direct personal payment from Chamblee, the Government's victim-attribution framing of that count was subject to direct challenge based on Chamblee's own bank-record testimony. A jury that understood that

qualification could have evaluated differently whether Count 2 involved the personal-payment attribution the Government presented. App. B, G1-RA-004.

The most significant prejudice concerns counsel's failure to develop the source-of-information issue. The Government argued in rebuttal that there was no "shred of proof" and no "single item of proof" showing that Chamblee supplied information to Movant. Trial Tr., ECF No. 179, PageID ##1894, 1898; App. B, G1-RA-013. Counsel did not use the available corroborating materials, did not develop the source-of-information issue through Chamblee's testimony, and did not connect the account-control and verification evidence to Movant's state-of-mind defense. As a result, the jury was left without a developed record concerning the information Movant claimed she received and relied upon. Had counsel built a coherent cross-examination using the available documentary, journal, account-access, and corroborating evidence, there is a reasonable probability that at least one juror would have evaluated Movant's knowledge, intent, and credibility differently. McKinnon Decl. ¶¶56–58; Strickland, 466 U.S. at 694.

CROSS-GROUND NOTATION:

Ground Three — PRIMARY (Appendix D): Trial IAC — failure to impeach Chamblee on loan/investment qualifications, Count 2 source-of-funds, and sales-information testimony; available impeachment evidence — including the intercompany-transfer banking documentation, the NGEP Operating Agreement's prohibition on the manufactured loan structure, and the available journal and recording corroboration — was not used to develop a coherent Chamblee cross-examination framework

Ground One (Appendix B): Napue/Giglio — G1-RA-003 (Chamblee supplied QuickBooks sales information; the Chamblee-source chain was in the trial record but the documentary corroboration in Movant Ex. 45 / Defense Ex. 82 was never admitted or used during Chamblee's cross-examination); G1-RA-004 (Count 2 $5,600 false personal-payment attribution; the intercompany-transfer banking documentation confirming the Count 2 source was available for cross-examination and was not used); G1-RA-006 (Chamblee false loan documentation; the NGEP Operating Agreement prohibitions rendering the manufactured loan documents void or voidable were available for cross-examination and were not used)

Ground Two (Appendix C): Pretrial IAC — G2-RA-003 (failure to develop the Chamblee-source state-of-mind defense; failure to subpoena Dell Jaggers; failure to organize Count 6 timing evidence; the trial impeachment failure is the direct consequence of the absence of a pretrial-developed Chamblee cross-examination framework)

Ground Five (Appendix F): Appellate IAC — G5-RA-005 (Count 2 source-of-funds mischaracterization; the trial-level failure to use the intercompany-transfer banking evidence to challenge the Count 2 personal-victim attribution created the evidentiary gap that persisted into the appellate record, contributing to the non-speculative record-based foundation for the omitted appellate Napue claim)

G3-RA-004 — Failure to Impeach Deware (Account Access / Signatory Contradictions)

RECORD CITATION / SOURCE:

Trial Tr., ECF No. 174, PageID ##842, 850; Movant Ex. 1 [Tab 7] (USA discovery production — BATES USA-00049465 — Smith 302); Movant Ex. 14 (Gov't Ex. 507); Movant Ex. 15 (Gov't Ex. 508); Movant Ex. 16 [Tab 22] (Gov't Ex. 608); McKinnon Decl. ¶¶4–10, 18; App. B, G1-RA-007; App. C, G2-RA-007

EXACT QUOTE OR RECORD LANGUAGE:

BATES USA-00049465 (Smith 302): Smith told Agent Hubbuch that Deware "had control and was signatory on the NexGen account for the Kentucky business." Movant Ex. 14 (Gov't Ex. 507) and Movant Ex. 15 (Gov't Ex. 508): bank application and signature-card materials identifying Deware as an authorized user or signatory on later V4 Carbon and Carbon Holdings accounts. Movant Ex. 16 (Gov't Ex. 608): Shumard draw communication reflecting Deware's financial-role involvement in the partnership business context.

Trial Tr., ECF No. 174, PageID #842: Deware testified at trial in a manner that created or permitted a broad impression that he did not have access to or control over the relevant business accounts. PageID #850: Additional Deware testimony bearing on his financial role and account involvement. McKinnon Decl. ¶4: "At no time was I an actual owner, partner, member, or control person of NGI, NGEP, or any operating entity or account the Government attributed to me." McKinnon Decl. ¶18: Movant specifically requested Lewis subpoena David Smith as a witness; Lewis failed to do so.

RECORD-PROOF POINT:

The record establishes that Deware's trial testimony created or permitted a broad "no access" impression — the inference that Deware did not have access to or control over the relevant

business accounts, which the Government's attribution theory used to concentrate account control and financial responsibility on Movant. App. B, G1-RA-007. That impression was directly contradicted by three independent sources of available trial evidence that counsel failed to use.

First, the Smith 302 (BATES USA-00049465) documented that Smith told Agent Hubbuch that Deware "had control and was signatory on the NexGen account for the Kentucky business." That statement — made by a witness to the lead investigator before trial — directly contradicted any broad impression that Deware lacked account access or signatory authority for the partnership business accounts associated with the Kentucky business. App. B, G1-RA-007.

Second, the V4 Carbon and Carbon Holdings bank application and signature-card materials (Movant Ex. 14 / Gov't Ex. 507; Movant Ex. 15 / Gov't Ex. 508) identified Deware as an authorized user or signatory on those later partnership accounts. Those exhibits were Government exhibit materials in the trial record. A competent cross-examination would have confronted Deware with those signature-card materials to correct the broad "no access" impression his testimony permitted. The relevant distinction — which counsel failed to establish — is that Deware had no reason to access Vance's separate earlier Nex-Gen Inc. / Wells Fargo account before the partnership/new-company accounts were created; the issue was Deware's access and signatory authority on the later partnership business accounts, and the evidence showed he had it. App. B, G1-RA-007.

Third, Movant Ex. 16 (Gov't Ex. 608) — the Shumard draw communication — provided additional evidence of Deware's financial-role involvement in the partnership business context. Taken together, the Smith 302, the signature-card materials, and the Shumard draw communication established that Deware's financial role and account access in the later

partnership entities was significantly broader than any broad "no access" impression his testimony permitted — and that the Government and Agent Hubbuch had notice of that contradiction before trial.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

All three categories of impeachment evidence were available to counsel at trial. The Smith 302 (BATES USA-00049465) was Government-produced discovery — part of the USA discovery production available to defense counsel before and during trial. The V4 Carbon and Carbon Holdings bank application/signature-card materials were Government exhibit materials (Gov't Exs. 507/508) admitted or available in the trial record. Movant Ex. 16 (Gov't Ex. 608) was a trial exhibit reflecting Deware's financial-role involvement. All of it was available for use during Deware's cross-examination.

Counsel also had direct notice from Movant of the Deware account-access issue. Movant communicated to counsel before trial that she was not a signatory or authorized user on Vance's accounts or on the NGEP Bank of America account, and that Deware had account access and signatory authority in the later partnership entities — a fact she specifically asked counsel to investigate and develop by subpoenaing David Smith. McKinnon Decl. ¶¶4–10, 18. Agent Hubbuch — who testified at trial — had direct personal notice of the Deware account-access issue through the Smith 302 statement: Smith told Hubbuch before trial that Deware had control and was a signatory on the NexGen account for the Kentucky business. That prior notice was available for cross-examination of Hubbuch on whether the Government's financial investigation fairly accounted for Deware's signatory role. App. B, G1-RA-007.

MATERIALITY / PREJUDICE:

There is a reasonable probability that a competent Deware cross-examination — using the Smith 302, the signature-card materials, and the Shumard draw communication — would have produced a different result. The Government's attribution theory depended in part on concentrating account control and financial responsibility on Movant. Deware's unchallenged "no access" testimony supported that concentration by removing him from the account-control picture. Had counsel impeached Deware with the available documentary evidence, the jury would have been required to evaluate his testimony against the Smith 302 statement and the signature-card materials confirming his signatory role — a very different evidentiary posture than the one the jury actually faced.

The prejudice is analytically distinct from, but closely related to, the Ground One due-process prejudice identified in App. B, G1-RA-007. Ground One establishes that the Government and Hubbuch had notice — through the Smith 302 — that Deware's broad "no access" testimony required correction or limitation, and that the Government failed to correct it. Ground Three establishes that defense counsel, with the same Smith 302 and signature-card evidence available in the trial record, failed to use that evidence to impeach Deware on cross-examination. The two failures are independent but reinforcing: the Government failed to correct a misleading impression it had reason to know was incomplete, and defense counsel failed to correct the same impression using the same available evidence. Together, they ensured the jury evaluated Deware's account role through an inaccurate lens.

The entity-based distinction matters to the prejudice analysis. The relevant issue was not whether Deware accessed Vance's separate Nex-Gen Inc. / Wells Fargo account — he had no reason to do so before the partnership accounts were created. The relevant issue was whether Deware had access and signatory authority on the later V4 Carbon, Carbon Holdings, and Kentucky business

partnership accounts — and the Smith 302 and signature-card materials confirmed that he did. Had the jury understood that distinction, it could have evaluated differently who controlled the accounts associated with the later partnership entities, and whether the Government's attribution of account control and financial responsibility to Movant was supported by the full evidentiary record. There is a reasonable probability that the jury's assessment of credibility, account control, attribution, and intent would have been materially different had it received the complete Deware impeachment. Strickland, 466 U.S. at 694; App. B, G1-RA-007.

CROSS-GROUND NOTATION:

Ground Three — PRIMARY (Appendix D): Trial IAC — failure to impeach Deware on account access and signatory status; the Smith 302 (BATES USA-00049465) confirming Deware had control and signatory authority on the Kentucky NexGen account, and the bank application/signature-card materials (Gov't Exs. 507, 508) confirming Deware as authorized signatory on V4 Carbon and Carbon Holdings, were in the trial record and Government discovery and were not used to impeach Deware's broad "no access" testimony

Ground One (Appendix B): Napue/Giglio — G1-RA-007 (Napue violation / "company never created" false testimony / Deware signatory evidence); the trial IAC failure to use Govt. Exs. 507 and 508 to confront Deware with his own co-signatory status on both company accounts, and to use BATES USA-00049465 to impeach Deware's "not aware" testimony, left the false opening assertion and Deware's corroborating false trial testimony standing unrebutted by the Government's own exhibit materials through the entirety of jury deliberations

Ground Two (Appendix C): Pretrial IAC — G2-RA-007 (failure to investigate Deware's account access and signatory evidence pretrial; failure to subpoena David Smith despite Movant's specific request); the trial impeachment failure is the direct downstream consequence of the pretrial investigation failure — the evidence existed in Government discovery but was never developed into a prepared cross-examination framework before trial

Ground Five (Appendix F): Appellate IAC — G5-RA-006 (Deware bank-access/signatory contradiction; the trial-level failure to impeach Deware left the false "no access" testimony in the trial record on which the Sixth Circuit's direct-appeal review was based, contributing to the non-speculative record-based foundation for the omitted appellate Napue/prosecutorial-misconduct claim that Napolitano declined to raise)

G3-RA-005 — Failure to Impeach Hubbuch (Financial-Summary and Investigation-Completeness Testimony)

RECORD CITATION / SOURCE:

Trial Tr., ECF No. 176, PageID #1186; Trial Tr., ECF No. 177, PageID ##1483–1486, 1521–1522; Trial Tr., ECF No. 178, PageID ##1575–1576; Movant Ex. 9 [Tab 15] (Gov't Ex. 501);

Gov't Ex. 401; Movant Ex. F [Tab 6] (DOJ/FBI Transcript of Gov't Ex. 401); McKinnon Decl. ¶¶11–15; App. B, G1-RA-005; App. B, G1-RA-009; App. B, G1-RA-010

EXACT QUOTE OR RECORD LANGUAGE:

Trial Tr., ECF No. 176, PageID #1186: Hubbuch testified about identifying involved accounts, subpoenaing accounts, and trying to "get a handle" on the accounting in a money/fraud investigation. Trial Tr., ECF No. 177, PageID ##1483–1486: Hubbuch direct examination testimony addressing the scope and method of the financial investigation. Trial Tr., ECF No. 177, PageID ##1521–1522: Hubbuch testified that Vance referred him to "a letter that Molly had" and that Hubbuch never received it.

Trial Tr., ECF No. 178, PageID ##1575–1576: Cross-examination testimony addressing additional investigative "strings" — unresolved avenues and limitations in the financial investigation that qualified the completeness of the Government's financial reconstruction. Movant Ex. F (DOJ/FBI Transcript of Gov't Ex. 401): The fuller interview transcript preserved Hubbuch's characterization of the McKinnon Letter as potentially exculpatory — "if there's some letter out there that-that-that is exculpatory for you" — and his statement that he would involve the prosecutor/AUSA in obtaining it: "I will ask the prosecutor, the A.U.S.A. to reach out to your attorney for this letter." Vance characterized the letter's accessibility: "Because the letter is so easy for you to get." McKinnon Decl. ¶14: "At trial, Agent Hubbuch testified that he never received the McKinnon Letter. The prosecution similarly stated that it had never received it. I find it highly unlikely that a seasoned FBI agent, having been told in a recorded interview that exculpatory evidence existed and was in an attorney's possession, failed to follow up and obtain that document."

RECORD-PROOF POINT:

The record establishes that Agent Hubbuch was the lead investigator and the Government's primary financial witness. His trial testimony presented the Government's financial reconstruction — including the "get a handle" investigative-method testimony — as the basis for attribution, knowledge, intent, and loss. App. B, G1-RA-005. The record also establishes three distinct categories of available impeachment evidence that counsel failed to develop and use during Hubbuch's testimony.

First, the investigation-completeness and "strings" impeachment. Hubbuch's cross-examination at Trial Tr., ECF No. 178, PageID ##1575–1576 reflected evidence of additional investigative "strings" — unresolved avenues and limitations in the financial investigation that qualified any broad impression that the Government's financial reconstruction was complete and reliable. App. B, G1-RA-005. Counsel failed to develop those limitations into an organized cross-examination framework showing the jury that the financial investigation had not resolved all relevant account, source-of-funds, or transaction-context issues. Without that development, the jury evaluated the Government's attribution and intent theory through the lens of an investigation that appeared more complete than the cross-examination record revealed.

Second, the Gov't Ex. 501 / Movant Ex. 9 financial-summary limitation. Hubbuch's testimony presented Gov't Ex. 501 — the Government's financial summary — as the reconstruction of relevant financial activity. But the financial summary's evidentiary weight depended entirely on what accounts were reviewed, what information sources were included or excluded, and how the investigation handled unresolved financial leads. App. B, G1-RA-005. Counsel failed to challenge Hubbuch on the scope and completeness of the financial summary, including the omitted Bank of America account context and the limitations reflected in the cross-examination testimony at PageID ##1575–1576. Without that challenge, the jury could treat Gov't Ex. 501 as

a complete and neutral reconstruction when it was in fact a summary dependent on investigation-scope decisions that counsel failed to probe.

Third — and most significant — counsel failed to cross-examine Hubbuch on the Gov't Ex. 401 source issues and the McKinnon Letter context. The jury heard selected testimony at Trial Tr., ECF No. 177, PageID ##1521–1522 that Vance referred Hubbuch to "a letter that Molly had" and that Hubbuch never received it. The fuller interview transcript (Movant Ex. F) preserved Hubbuch's own statements recognizing the letter's potential exculpatory significance, its accessibility, and his stated intent to involve the AUSA in obtaining it. App. B, G1-RA-010. Counsel failed to cross-examine Hubbuch on that fuller context — including why a seasoned investigator who recognized the letter as potentially exculpatory and accessible failed to obtain it before trial. That cross-examination was available from the trial record and would have supplied the jury with a materially different picture of the Government's investigative thoroughness and its handling of potentially favorable evidence.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

All of the cross-examination material identified in this entry was in the trial record or available in Government discovery when Hubbuch testified. The "strings" testimony at Trial Tr., ECF No. 178, PageID ##1575–1576 was elicited during cross-examination — counsel had already obtained that testimony and had it available to develop further. Gov't Ex. 501 / Movant Ex. 9 was a Government exhibit in the trial record. Gov't Ex. 401 was a Government exhibit. Movant Ex. F — the fuller DOJ/FBI transcript of Gov't Ex. 401 — was available as a defense exhibit reflecting the broader interview context, including Hubbuch's statements about the letter's potential exculpatory significance, its accessibility, and his stated intent to involve the AUSA in

obtaining it. The Smith 302 (BATES USA-00049465) was Government-produced discovery available to counsel before and during trial.

Counsel also had direct notice of the Gov't Ex. 401 and McKinnon Letter issues through Movant's own communications before and during trial. Movant communicated the letter's existence, its relevance to her state-of-mind defense, and the circumstances surrounding Hubbuch's knowledge of it throughout the pretrial period. McKinnon Decl. ¶¶11–15. The selected testimony elicited at Trial Tr., ECF No. 177, PageID ##1521–1522 — which placed before the jury the fact that Hubbuch never received "a letter that Molly had" — itself provided counsel with notice during trial that the fuller Movant Ex. F context was needed to correct the impression that testimony created. The source distinction among Gov't Ex. 401, Movant Ex. F, and Movant Ex. C was established in App. B, G1-RA-011 and was available for development during Hubbuch's cross-examination.

MATERIALITY / PREJUDICE:

There is a reasonable probability that a competent Hubbuch cross-examination — developed across the three categories of available impeachment evidence identified in this entry — would have produced a different result. Hubbuch was the lead investigator and the witness through whom the Government presented its financial reconstruction. A thorough cross-examination challenging the completeness of that reconstruction, the scope of the financial summary, and the handling of the McKinnon Letter would have supplied the jury with an organized, record-supported basis for questioning whether the Government's attribution and intent theory rested on a complete and reliable investigation.

The investigation-completeness and "strings" prejudice is independently material. If the jury understood — from Hubbuch's own cross-examination testimony — that additional investigative

avenues existed and remained unresolved, it could have evaluated the reliability of the Government's financial reconstruction and the attribution inferences drawn from it very differently. A financial summary that the jury understands to be incomplete or limited is a weaker foundation for knowledge, intent, and attribution inferences than a summary the jury treats as a complete and neutral reconstruction. App. B, G1-RA-005.

The Gov't Ex. 401 and McKinnon Letter cross-examination prejudice is the most direct. The Government's case exploited the letter's effective absence: the jury heard that Hubbuch never received a letter Vance had referenced, but was never told — from cross-examination — that Hubbuch himself recognized the letter as potentially exculpatory, said it was easy to obtain, and stated he would involve the AUSA in getting it. App. B, G1-RA-010. Had counsel cross-examined Hubbuch on those statements using Movant Ex. F, the jury would have received a materially different picture of the Government's handling of potentially favorable evidence. That picture — a lead investigator who recognized exculpatory significance, understood the letter was easy to get, and then did not get it before trial — goes directly to investigative completeness, the Government's handling of the McKinnon Letter issue, and the reliability of the attribution theory the Government presented. Combined with the "shred of proof" rebuttal argument the Government later made, the failure to cross-examine Hubbuch on this context allowed the Government to simultaneously suppress the letter's exculpatory context and argue that no such context existed. There is a reasonable probability that a competent Hubbuch cross-examination would have changed the jury's assessment of investigative completeness, the McKinnon Letter issue, and the attribution and intent theory as a whole. Strickland, 466 U.S. at 694; App. B, G1-RA-005, G1-RA-010, G1-RA-013.

CROSS-GROUND NOTATION:

Ground Three — PRIMARY (Appendix D): Trial IAC — failure to impeach Hubbuch on Gov't Ex. 501 false completeness, the NGEP Bank of America account exclusion, the "lien interest" KRP mischaracterization, and the "no employees" sham-company impression; Movant informed trial counsel before both McCracken and Hubbuch testified that the NGEP Bank of America and Whitaker accounts were not in Gov't Ex. 501; counsel declined to cross-examine McCracken and failed to challenge Hubbuch's false BOA confirmation

Ground One (Appendix B): Napue/Giglio — G1-RA-005, Sub-entry 3 (Gov't Ex. 501 false-completeness violation; McCracken's false forensic validation and Hubbuch's independent false BOA confirmation went unchallenged because counsel declined to cross-examine McCracken and failed to contest Hubbuch's false confirmation on cross-examination); G1-RA-006 [Hubbuch's False "Lien Interest" Testimony] (Hubbuch's false characterization of the KRP transaction as "only lien interest" went unchallenged despite the executed LOI in evidence establishing the actual fabrication-contract, leaseback, and profit-sharing architecture); G1-RA-005, Sub-entry 4 (Hubbuch's false "no employees" testimony; the corrective operational evidence from Francis, Surmeier, and the Carbonox PO was available in the trial record and was not consolidated against Hubbuch's sham-company impression)

Ground Two (Appendix C): Pretrial IAC — G2-RA-008 (failure to retain a qualified forensic accountant; the forensic-level analysis that would have provided the documented, quantified foundation needed to cross-examine Hubbuch effectively on Gov't Ex. 501's false completeness was never conducted); G2-RA-011 (failure to develop the KRP financial structure defense; the same Government exhibits Lewis failed to develop pretrial — Gov't Exs. 807, 502, and 801 — were available to expose Hubbuch's "lien interest" mischaracterization at trial)

Ground Five (Appendix F): Appellate IAC — G5-RA-004 (financial-summary / Bank of America record chain; the trial-level failure to challenge McCracken's and Hubbuch's false completeness representations left both witnesses' certifications standing in the appellate record as validated, unchallenged testimony — contributing to the non-speculative record-based foundation for the omitted appellate Napue/prosecutorial-misconduct claim)

G3-RA-006 — Failure to Impeach Francis (Financial-Role, Business-Distress, Payroll, and Red-Flag Testimony)

RECORD CITATION / SOURCE:

ECF No. 174, Trial Tr. Day 1 (Oct. 4, 2022), pp. 18–59, PageID ##743–784; Lewis opening, ECF No. 174, Trial Tr. Day 1, pp. 13–17, PageID ##738–742; Deware testimony, ECF No. 174, Trial Tr. Day 1, pp. 68–73, PageID ##793–798; ECF No. 174, Trial Tr. Day 1, pp. 40–41, PageID ##765–766; McKinnon Decl. ¶¶7, 79–80, 4, 81, 82, 83; Movant Ex. 45 (Defense Ex. 82);

EXACT QUOTE OR RECORD LANGUAGE:

ECF No. 174, Trial Tr. Day 1, pp. 48–49, PageID ##773–774 (Francis cross-examination — limited-role confirmation): "Q: You weren't privilege to any information as to what exactly Mr. Vance's relationship was with any of his investors or partners, were you? A: No. I knew there were several."; ECF No. 174, Trial Tr. Day 1, pp. 53–54, PageID ##778–779 (Francis cross-examination — "locked up" email confirmation): "I was upset, yes. And so I threw that in, I

did."; ECF No. 174, Trial Tr. Day 1, pp. 57–58, PageID ##782–783 (Francis redirect): Francis attributed the "locked up" statement to Vance having made "very sexual comments" toward her that she found "humiliating and derogatory," stating she was the only female in the office and had never filed a harassment complaint.; ECF No. 174, Trial Tr. Day 1, p. 58, PageID #783 (Francis recross — unable to recall date of Vance's comment): "That's been five years ago now. No, ma'am, I do not."; Lewis opening, ECF No. 174, Trial Tr. Day 1, p. 14, PageID #739: "It was Mr. Deware's plan to eventually buy out the Shumard Group...he was going to be the marketing arm for this carbon business." / "a lot of these red flags that that insider, which will be April Francis, brings up, Mr. Deware already knew about. They weren't red flags to him, and those weren't sufficient." / "He soon found out sales were hard to make...profits weren't being made as quickly as he thought they would be."; Lewis opening, ECF No. 174, Trial Tr. Day 1, pp. 15–16, PageID ##740–741: "[Chamblee] wanted to show more carbon sales...She dutifully records it, it's her job to do that. Later on, she learns these sales weren't even real."; McKinnon Decl. ¶7: "Chamblee routinely provided me with balance information and sales figures for the business. I relied on those representations in preparing financial reports and in communicating information to investors and lenders. I had no reason at the time to believe that Chamblee's reported sales were false, because Chamblee represented to me that all sales proceeds were being deposited into accounts controlled solely by him and his partners."; McKinnon Decl. ¶79 (key content): (a) Francis and Vance reconciled the NGI bank account every Monday; (b) as part of her duties, Francis sent Vance a weekly text message identifying the total amount of money needed to cover all checks and invoices for the following week so that Vance could ensure sufficient funds were deposited before those checks cleared; (c) on several occasions, Francis provided inaccurate figures in those weekly text messages, which caused a cascading number of

bounced checks; and (d) McKinnon is uncertain whether the errors were intentional, but multiple instances of incorrect financial information were sent by Francis and those errors directly resulted in checks bouncing.; McKinnon Decl. ¶80: Francis harbored an unrequited romantic interest in Vance; Vance was unaware of those feelings until McKinnon informed him; McKinnon spoke with both Francis and Vance regarding the April 2017 incident on the day it came to her attention; Vance was embarrassed by his comment and apologized to Francis directly; and Francis became noticeably hostile toward Vance after the incident, including sending a sexually charged text message about a male employee.

RECORD-PROOF POINT:

Section 1 — Francis's Testimony and Her Role

Francis was hired in the last quarter of 2016 as an office manager at the Nex-Gen facility in Hazard, Kentucky — a position that was created, in part, because Gary Chamblee had unilaterally changed the parties' original accounting arrangement. Under the original Vance/Chamblee agreement, the Shumard/Chamblee group was to handle all accounting and administrative functions for the NGEP partnership. After Chamblee unilaterally decided to run the partnership accounting through Vance's NGI company instead, Vance hired Francis to handle NGI's financial, administrative and functions, including those that now encompassed NGEP transactions flowing through NGI. McKinnon Decl. ¶4.

Francis's assigned duties were primarily financial and administrative: tracking incoming trucks on the scale, logging outgoing checks on a spreadsheet, sending weekly payroll hours to McKinnon, and — critically — providing Vance with a weekly total of all bills and obligations due so that Vance could ensure sufficient funds were in the account before checks cleared. ECF No. 174, Trial Tr. Day 1, pp. 19–20, 28, PageID ##744–745, 753. While she met investors, she

had no detailed involvement in investor relations, business development, sales transactions, or company-level financial management. Id. at p. 29, PageID #754.

At trial, Francis characterized her role as primarily clerical and portrayed herself as having limited financial involvement with the company. However, Francis's own FBI 302 statement described her as being responsible for financial statements — a characterization that directly contradicted her trial minimization of her financial role. In fact, Francis reconciled the bank statements with Vance every week. ECF No. 174, Trial Tr. Day 1, pp. 24–25, PageID ##749–750; McKinnon Decl. ¶79. Because Chamblee had directed all NGEP transactions through the NGI account, those bank statements — which Francis reviewed in her weekly reconciliation with Vance — reflected deposits from all business sources. Francis therefore had complete visibility into all transactions flowing through the business during the relevant period. There was no concealment of investors or transactions from Francis — she saw the full picture each week in the ordinary course of her duties. McKinnon Decl. ¶79.

On cross-examination by both defense counsel, Francis confirmed her limited knowledge of investor terms: she was not privy to the specific terms of Vance's agreements with any investor or partner, including the Shumard Group and Deware; she had no knowledge of the specific financial arrangements between those parties; and she acknowledged that her role did not extend to financial management decision-making. Id. at pp. 48–49, PageID ##773–774 ("Q: You weren't privilege to any information as to what exactly Mr. Vance's relationship was with any of his investors or partners, were you? A: No. I knew there were several."). Knowing the terms of investor agreements is distinct from having visibility into the bank account itself — Francis had the latter, but not the former.

Francis testified on direct that she never saw coal or carbon product produced in bulk — only five-gallon-bucket and Ziploc-bag samples — and that no full tractor-trailer load of product ever left the facility during her time there. Id. at pp. 25–26, 56–57, PageID ##750–751, 781–782. She testified that payroll checks bounced four to five times personally, and that employees were sometimes paid partially in cash after multi-week delays. Id. at pp. 24–25, PageID ##749–750. She testified that McKinnon was "irate" upon learning Francis had seen the Wells Fargo bank statement that Vance had asked Francis to help print. Id. at p. 30, PageID #755. She testified that she located Deware on LinkedIn, contacted him independently without Vance's or McKinnon's authorization, and sent him payroll hour sheets, feedstock reports, the check register, and the bank statement excerpt for February 2017. Id. at pp. 31–33, PageID ##756–758.

Section 2 — What Francis Did Not Know — The Dual Business Structure

Francis's testimony was the product of a fundamentally incomplete view of the Nex-Gen enterprise — one that counsel failed to contextualize for the jury. The record reflects two legally and operationally distinct entities operating at the Trus Joist facility: (1) NGI (Nex-Gen Industries), Vance's own company, which conducted logging and wood-processing operations and served as Vance's separate income-generating business; and (2) NGEP (NexGen Energy Partners), the equity partnership formed between Vance and the Shumard/Chamblee group, in which the Shumard group held a 51% interest. Lewis opening, ECF No. 174, Trial Tr. Day 1, pp. 13–17, PageID ##738–742. Under the original agreement between Vance and Chamblee, the Shumard/Chamblee group was to handle all accounting and administrative functions for the NGEP partnership. Chamblee later unilaterally changed that arrangement and directed that all accounting — including NGEP partnership transactions — run through Vance's NGI company. McKinnon Decl. ¶4. Consistent with that direction, the Shumard/Chamblee group specifically

instructed that bills be run through NGI. Francis was hired by Vance in the last quarter of 2016 as a direct result of Chamblee's unilateral change to the accounting structure — to handle the financial, administrative and clerical functions that the Shumard/Chamblee group had agreed to perform but then redirected to NGI. McKinnon Decl. ¶4.

The consequence of Chamblee's decision to run all transactions through NGI was that the bank statements Francis reconciled weekly with Vance included all transactions — NGI operations, Shumard deposits, Deware deposits, and NGEP partnership activity. Francis therefore had complete weekly visibility into the full financial picture, including all investor-related transactions. There was no effort by Vance or McKinnon to conceal one investor from another — there was nothing to conceal from Francis, because she already saw it all as part of her weekly bank reconciliation. McKinnon Decl. ¶79. The Government's implied theory — that McKinnon was "irate" because Francis had seen something she was supposed to hide — was directly contradicted by the structure of Francis's own job duties, which gave her routine, weekly access to exactly the bank statements the Government treated as sensitive.

Additionally, because Movant was not permitted to open the Whitaker Bank account until March 2017 and was not permitted to use it until June 2017, Francis had complete visibility into all business transactions through the NGI account during the entirety of her employment which included the period most relevant to the charged conduct. McKinnon Decl. ¶79. The Government's attribution of fraudulent concealment to McKinnon during this period was therefore irreconcilable with Francis's own weekly access to the same financial records.

The very premise of the NGEP partnership was that the Shumard/Chamblee group would serve as the equity partner and purchase the Trus Joist facility, which Vance needed in order to retrofit the facility's large industrial drum dryers for scaled-up char production. Without the Trus Joist

facility's large dryers, Vance could only produce product in limited quantities using the smaller mobile drum dryers he had built — insufficient volume to fulfill the commercial purchase orders. Simultaneously, Gary Chamblee — as an NGEP equity partner — was reporting carbon product sales directly to McKinnon for entry into the NGEP books. These reported sales were purportedly from product produced and shipped from a location other than the Trus Joist scale house where Francis was stationed. McKinnon recorded those sales in good faith, unaware that Chamblee's reported sales were fictitious. McKinnon Decl. ¶7 ("Chamblee routinely provided me with balance information and sales figures for the business. I relied on those representations in preparing financial reports and in communicating information to investors and lenders. I had no reason at the time to believe that Chamblee's reported sales were false, because Chamblee represented to me that all sales proceeds were being deposited into accounts controlled solely by him and his partners."); Movant Ex. 45 (Defense Ex. 82) (McKinnon's contemporaneous journal entries, marked for identification at trial but never offered into evidence or admitted, corroborating what Chamblee reported to her and the information she relied upon during the charged period); Lewis opening, ECF No. 174, Trial Tr. Day 1, pp. 15–16, PageID ##740–741 ("[Chamblee] wanted to show more carbon sales...She dutifully records it, it's her job to do that. Later on, she learns these sales weren't even real."). Francis had no reason to know about Chamblee's sales reporting to McKinnon. She would not have seen product or shipments associated with those reported sales because they were recorded entirely outside the scope of her NGI scale-house role.

Movant's own role within the business was intended to be temporary — approximately six to nine months to help get the Shumard partnership business up and running, after which Movant planned to return to her own separate business. McKinnon Decl. ¶81. The plan during that period

was for Francis to take on increasing responsibility and eventually replace Movant in the administrative role. McKinnon Decl. ¶81. Movant progressively assigned Francis more responsibility but ultimately concluded that Francis did not have the skill set to handle a larger role. McKinnon Decl. ¶81. This context — McKinnon as a temporary administrator training a replacement, not as a permanent owner or financial controller — further undercuts the Government's narrative that Movant had the institutional control and financial authority the attribution theory required.

Section 3 — Bounced Checks — Context and Cause

Francis testified that checks bounced four to five times personally and that vendors and other employees also experienced bounced payroll. ECF No. 174, Trial Tr. Day 1, pp. 24–25, PageID ##749–750. On cross-examination by Lewis, Francis acknowledged that Vance made good on some bounced checks with cash and that she could not confirm whether all were ultimately made good. Id. at p. 46, PageID #771. The machine was running; fuel bills (Hazard Petroleum) were being paid; and product was being produced in sample quantities. Id. at pp. 46–47, PageID ##771–772. Francis agreed it was fair to say that Vance was possibly perfecting the formula before shipping truckloads. Id. at p. 47, PageID #772.

The bounced checks were consistent with the capital-constrained financial environment of a start-up company awaiting equity partner performance and reliant on Vance's own NGI business income as a bridge funding source. A critical but underdeveloped dimension of the bounced-check evidence is that Francis herself was directly responsible for several of those incidents. Francis's financial duties included providing Vance each week with the total amount of all bills and obligations due so that Vance could ensure sufficient funds were in the account before those checks cleared. McKinnon Decl. ¶79. On at least two occasions, and possibly more, Francis

provided inaccurate figures in those weekly reports, causing Vance to under-fund the account — which in turn caused a cascading number of checks to bounce. McKinnon Decl. ¶79. McKinnon is uncertain whether the errors were intentional, but the direct causal link between Francis's inaccurate reporting and the bounced checks was known and is documented from personal knowledge. McKinnon Decl. ¶79. To the extent that Francis failed to accurately report upcoming financial obligations, Vance — who was depositing NGI operating income as cash flow was available — would not have known to deposit sufficient funds in advance to cover those draws. Deware was aware of the financial struggles of the startup and did not treat them as evidence of fraud. Lewis opening, ECF No. 174, Trial Tr. Day 1, p. 14, PageID #739 ("He soon found out sales were hard to make...profits weren't being made as quickly as he thought they would be."). Counsel failed to develop this critical context on cross-examination — that some portion of the bounced-check evidence the Government offered as evidence of a fraudulent enterprise was directly caused by the inaccurate reporting of the Government's own lead witness.

Section 4 — Francis's Motive and Bias — Romantic Rejection and the "Locked Up" Email

The most significant impeachment evidence presented against Francis was an email she sent to Deware on June 29, 2017, in which she stated she would do "anything and everything" to have Vance locked up. ECF No. 174, Trial Tr. Day 1, pp. 52–54, 57–58, PageID ##777–779, 782–783. Francis initially denied any memory of the statement; her memory was refreshed after Lewis showed her the document; she then confirmed: "I was upset, yes. And so I threw that in, I did." Id. at pp. 53–54, PageID ##778–779. On redirect, Francis attributed the statement to Vance having made "very sexual comments" toward her that she found "humiliating and derogatory," stating she was the only female in the office and had never filed a harassment complaint. Id. at pp. 57–58, PageID ##782–783. On recross, Lewis established that Francis was still upset about

the comment months later and could not remember the exact date it was made. Id. at p. 58, PageID #783 ("That's been five years ago now. No, ma'am, I do not.").

The government elicited a sympathetic framing of Francis's motivation — a female employee upset about a harassing comment — and the redirect successfully rehabilitated her credibility on that basis. What the jury never heard was the complete predicate for Francis's animus toward Vance: that Francis had developed an unrequited personal romantic interest in Vance, who was married, and that Vance was not even aware of Francis's feelings until McKinnon informed him. Following Vance's April 2017 workplace comment — which Francis misinterpreted as expressing romantic interest in her — Francis came to McKinnon's office the next day wearing make-up for the first time, dressed differently, and told McKinnon that Vance "liked" her. McKinnon corrected Francis's misimpression, informed Vance of Francis's feelings that same day, and Vance — embarrassed by his comment — apologized to Francis directly. Francis appeared to accept the apology. Thereafter, Francis became noticeably hostile toward Vance. McKinnon Decl. ¶80. In this context, the "anything and everything" statement was not a passing remark made in frustration over a workplace comment — it was the stated objective of a former employee whose personal vendetta against Vance, and later McKinnon, predated and motivated her entire course of conduct: contacting Deware on LinkedIn without authorization, conducting months-long covert surveillance of Vance and McKinnon, forwarding company documents without permission, and ultimately appearing as the government's lead trial witness.

Deware himself — who had received Francis's reports — did not regard her "red flags" as alarming, because he already knew the facts she was reporting: he was aware of the Shumard group, aware that Vance was bridging NGEP operations with his own funds, and aware that the company was a struggling startup. Lewis opening, ECF No. 174, Trial Tr. Day 1, p. 14, PageID

#739 ("a lot of these red flags that that insider, which will be April Francis, brings up, Mr. Deware already knew about. They weren't red flags to him, and those weren't sufficient."). Francis's reports to Deware were not the disclosures of a concerned insider exposing a fraud — they were the campaign dispatches of an employee with a personal motive, reporting a one-sided, incomplete view of a struggling but operating startup to an investor who already understood the context.

A further dimension of bias that counsel failed to develop is the scope of Francis's stated animus in the "locked up" email itself. Francis told Deware she would do "anything and everything" to have Vance locked up. She did not say the same about McKinnon. The email does not mention McKinnon by name as a target of Francis's mission. If Francis genuinely believed — as she implied at trial — that both Vance and McKinnon were operating a fraudulent scheme and defrauding investors, there is no principled explanation for why her stated mission to have people "locked up" would be limited to Vance and omit McKinnon entirely. The exclusive focus on Vance is consistent with the established predicate: Francis's animus was driven by Vance's rejection of her romantic interest — not by a genuine belief that a fraud was being perpetrated. A disinterested fraud whistleblower equally suspicious of both alleged co-conspirators would have expressed equal animus toward both. Francis's email did not. Counsel failed to make this argument, failing to use the email's own language to expose the personal, Vance-specific nature of Francis's motivation rather than allowing the Government's sympathetic "fraud whistleblower" framing to go unchallenged.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

The June 29, 2017 "locked up" email and the surrounding chain of communications between Francis and Deware were in the government's possession and produced in discovery prior to trial. Lewis was on actual notice of the email's existence and content — she used it on cross-examination. Additional evidence available to counsel before trial further supports the impeachment that Lewis failed to develop. Francis's own FBI 302 — available in Government-produced discovery — stated that she was responsible for financial statements, directly contradicting her trial testimony minimizing her financial role. _.] Movant possessed an email from Mendie Hogan specifically confirming that the Shumard/Chamblee group directed that bills be run through NGI — establishing the documentary basis for the claim that all NGEP transactions flowed through the NGI account and therefore through the bank statements Francis reconciled weekly. The Whitaker Bank account records established that Movant was not permitted to open that account until March 2017 and was not permitted to use it until June 2017, meaning Francis had complete financial visibility through the NGI account during the entire period most relevant to the charged conduct. McKinnon Decl. ¶4. The original Vance/Chamblee accounting agreement — and Chamblee's unilateral change to that arrangement — was a fact Movant communicated to counsel and was corroborated by the documentary record. McKinnon Decl. ¶4. The content of Francis's "locked up" email, limited exclusively to Vance, was in Lewis's hands — she used the email on cross-examination and could have argued its exclusive focus on Vance as evidence of personal animus rather than fraud concern. Lewis simply did not make that argument.

The corporate structure of NGI and NGEP was a matter of documentary record established by admitted trial exhibits, including the Deware operating agreement (Govt. Ex. 617), the bill of sale (Govt. Ex. 619 [Tab 41]), the NGEP formation documents, and the financial records in

evidence. The Shumard group's equity-partner obligations and their failure to purchase the Trus Joist facility were facts known to the defense prior to trial. McKinnon's role in recording Chamblee's reported sales was a core element of the defense theory as articulated in Lewis's own opening statement. All of the impeachment tools needed to develop the complete picture of Francis's bias, limited knowledge, and the dual business structure were available to trial counsel before Francis took the stand. McKinnon Declaration ¶80 establishes from personal knowledge: Francis harbored an unrequited romantic interest in Vance; Vance was unaware of those feelings until McKinnon informed him; McKinnon spoke with both Francis and Vance regarding the April 2017 incident on the day it came to her attention; Vance was embarrassed by his comment and apologized to Francis directly; and Francis became noticeably hostile toward Vance after the incident, including sending a sexually charged text message about a male employee. McKinnon Decl. ¶80. The romantic-interest predicate is therefore verified and available for court-facing use without qualification.

MATERIALITY / PREJUDICE:

April Francis was the government's first trial witness and the only Nex-Gen insider who testified about day-to-day operations. Her testimony established the jury's initial impression of the entire fraud narrative: no bulk product, no income, bounced checks, a CEO who was "irate" about financial disclosures — all presented through the eyes of what appeared to be a credible, neutral, on-the-ground observer. The government's opening statement had already primed the jury to receive her testimony as coming from a brave insider who risked her job to expose the fraud. The defense opening, while outlining the limited-view theory, did not cure the deficiencies in Lewis's cross-examination — an opening statement is not evidence, and the jury evaluated Francis's credibility based on her testimony, not Lewis's preview of it.

Had trial counsel (i) admitted the full "locked up" email and chain as a bias exhibit; (ii) developed the complete predicate of unrequited romantic interest, Vance's unawareness of Francis's feelings until informed by McKinnon, the misinterpreted comment, the apology, and the resulting personal vendetta; (iii) used the email's exclusive focus on Vance — and not McKinnon — to demonstrate that Francis's stated mission was personal and Vance-specific, not the product of a genuine fraud concern that would have equally implicated both alleged co-conspirators. McKinnon Decl. ¶83; (iv) established through Francis's own 302 and the weekly bank reconciliation evidence that Francis was far more financially involved than she portrayed at trial and had weekly access to all transactions — meaning McKinnon had no reason to be "irate" about bank statement access from a concealment standpoint; (v) developed the actual basis for McKinnon's most significant frustration with Francis — the theft of $200 intended to replace a bounced check — which was a legitimate employer response to employee misconduct, entirely unrelated to fraud consciousness; (vi) established that at least two and possibly more instances of bounced checks were directly caused by Francis's own inaccurate weekly financial reporting; and (vii) established through cross-examination that Francis's NGI scale-house observations provided no basis for conclusions about NGEP-level operations, Chamblee-reported sales, or Vance's broader investor relationships — the jury would have evaluated Francis as a financially knowledgeable, deeply biased, personally motivated witness whose trial testimony systematically minimized her own role while overstating what her position at NGI allowed her to observe. The "irate" reaction testimony — the government's clearest piece of consciousness-of-guilt evidence from Francis — would have been reframed not only as a normal employer response to a routine banking task, but as implausible on its face given Francis's weekly bank access. McKinnon was materially prejudiced by these failures. There is a reasonable probability

that, but for trial counsel's deficient performance in handling Francis's testimony, the result of the proceeding would have been different. Strickland v. Washington, 466 U.S. 668, 694 (1984).

CROSS-GROUND NOTATION:

Ground Three — PRIMARY (Appendix D): Trial IAC — failure to impeach Francis on financial-role, business-distress, payroll, and red-flag testimony; counsel failed to use the available entity and account-structure evidence to contextualize Francis as an interpretive witness whose characterizations were limited by the scope of her role, to challenge the basis and limitations of her financial characterizations, and to use her testimony affirmatively to establish the operational reality of the business

Ground One (Appendix B): Napue/Giglio — G1-RA-005, Sub-entry 4 (Hubbuch's false "no employees anywhere to be seen" testimony; Francis's trial testimony regarding employee presence at the operation directly contradicted Hubbuch's false sham-company impression — a contradiction counsel failed to consolidate into an organized trial presentation refuting the "no employees" framing and the broader sham-company narrative it was designed to create)

Ground Two (Appendix C): Pretrial IAC — G2-RA-001 (pretrial investigation framework anchor); the failure to develop a comprehensive entity and role distinction framework before trial meant there was no organized approach for contextualizing Francis's testimony within the broader defense framework — the same root investigation failure that underlies each of the specific trial-execution failures documented in G3-RA-002 through G3-RA-010

G3-RA-007 — Failure to Use McKinnon Letter and Gov't Ex. 401 at Trial / Failure to Preserve Restricted-Testimony Issue

RECORD CITATION / SOURCE:

Trial Tr., ECF No. 177, PageID ##1521–1522; Trial Tr., ECF No. 179, PageID ##1776–1779; Movant Ex. C (McKinnon Letter); Gov't Ex. 401 (Vance/Hubbuch recorded interview, December 2018); Movant Ex. F (DOJ/FBI transcript of Gov't Ex. 401); McKinnon Decl. ¶¶11–15, 29–31; App. B, G1-RA-008; G1-RA-009; G1-RA-010; G1-RA-011; G1-RA-012; App. C, G2-RA-004

EXACT QUOTE OR RECORD LANGUAGE:

McKinnon Decl. ¶13: "In December 2018, Vance disclosed the letter's existence to Agent Hubbuch in a recorded interview — Government Exhibit 401 — and informed Hubbuch that the letter was in his attorney's possession."

McKinnon Decl. ¶14: "At trial, Agent Hubbuch testified that he never received the McKinnon Letter. The prosecution similarly stated that it had never received it. I find it highly unlikely that

a seasoned FBI agent, having been told in a recorded interview that exculpatory evidence existed and was in an attorney's possession, failed to follow up and obtain that document."

McKinnon Decl. ¶15: "The McKinnon Letter was directly relevant to the knowing and voluntary elements the Government was required to prove. Had the jury been permitted to consider the letter, it would have provided direct, contemporaneous evidence of my state of mind, my fear of Chamblee, and the coercive circumstances under which I acted."

McKinnon Decl. ¶31: "Lewis did not make an adequate offer of proof after the Court excluded the McKinnon Letter from the jury's consideration, did not seek admission of the letter on any alternative evidentiary basis, and did not preserve the distinction between a complete duress defense and independently relevant state-of-mind evidence. Lewis also did not object on the record to the exclusion's prejudicial effect on my ability to present my defense."

Trial Tr., ECF No. 177, PageID ##1521–1522: Agent Hubbuch testified about Gov't Ex. 401 — that Vance referred him to "a letter that Molly had" — and acknowledged that he never received the letter.

Trial Tr., ECF No. 179, PageID ##1776–1779: The Court ruled that Movant Ex. C (the McKinnon Letter) would be received only as a Court exhibit; the defense was prohibited from sending the letter to the jury or discussing its contents during closing argument.

RECORD-PROOF POINT:

This entry establishes a three-part trial-execution failure arising from a single critical evidentiary issue — the McKinnon Letter (Movant Ex. C) — and its related record materials. The three parts are: (a) counsel's failure to develop and use the McKinnon Letter proactively at trial before the Day 6 restriction ruling; (b) counsel's failure to make an adequate offer of proof after the Court's restriction ruling; and (c) counsel's failure to preserve on the record the legally significant

distinction between a complete affirmative duress defense and independently admissible state-of-mind evidence bearing on knowledge and intent.

Before the Day 6 restriction ruling, the McKinnon Letter had not been formally introduced as a trial exhibit. Its existence was established in the trial record through the prosecution's selective playback of Gov't Ex. 401 --- the December 2018 Vance/Hubbuch recorded interview --- in which Vance disclosed the letter's existence to Hubbuch and directed him to it. The letter itself was obtainable through Vance's attorney's office. It was only when Darling sought to re-open Vance's case near the close of trial that the letter was formally received by the Court --- marked as Vance Defense Exhibit 1 at Trial Tr., ECF No. 179, PageID ##1776--1779 --- with the Court simultaneously prohibiting both defendants from discussing its contents, preventing it from being transmitted to the jury, and barring any reference to its contents in closing arguments. The prosecutor objected to the letter's introduction, notwithstanding that the jury had already heard of the letter's existence through the prosecution's own selective playback of the Vance/Hubbuch recorded interview. The letter documented Movant's limited role in the businesses, her lack of ownership or financial control, her reliance on Chamblee-supplied information, and the timing of when she learned that Chamblee's reported sales were false. McKinnon Decl. ¶¶11--15; App. B, G1-RA-008. The trial record already contained the evidentiary predicate for the letter's significance before Day 6 arrived: Agent Hubbuch testified at Trial Tr., ECF No. 177, PageID ##1521--1522, that Vance had referred him during the December 2018 recorded interview --- Gov't Ex. 401 --- to "a letter that Molly had," but that Hubbuch never received the letter. App. B, G1-RA-009. The fuller context available through Gov't Ex. 401 and the Movant Ex. F transcript of that recording established that Hubbuch understood the possible exculpatory significance of the letter, knew it was obtainable through Vance's attorney's office, and said he would involve

the prosecutor/AUSA in obtaining it. App. B, G1-RA-010. That multi-record foundation --- the letter itself, the recorded interview in which the lead investigator was told of its existence, and Hubbuch's claim at trial that he never obtained it --- created a concrete, document-supported basis for presenting the McKinnon Letter not merely as duress evidence but as independently relevant corroboration of Movant's state of mind on the knowledge and intent elements the Government was required to prove.

Despite that foundation, counsel did not develop an organized, affirmative evidentiary strategy for the McKinnon Letter before Day 6. The Day 6 restriction ruling — Trial Tr., ECF No. 179, PageID ##1776–1779, which allowed the letter only as a Court exhibit and barred the defense from sending it to the jury or discussing its contents in closing — compounded what was already a pre-existing preparation failure. After the ruling, a specific and immediate procedural duty arose: make an adequate offer of proof establishing what the letter contained and why its contents remained independently admissible on grounds separate from the complete duress defense the Court had just restricted. McKinnon Decl. ¶31. Counsel did not make that offer of proof, did not seek admission on alternative evidentiary grounds, and did not preserve the legally critical distinction between the restricted complete duress defense and the independently admissible state-of-mind evidence bearing on knowledge, intent, reliance, and lack of fraudulent purpose. Id.

The source-separation rule established in App. B, G1-RA-011 applies throughout this entry: Gov't Ex. 401 is the Vance/Hubbuch recorded interview; Movant Ex. F is the DOJ/FBI transcript of that recording; Movant Ex. C is the McKinnon Letter itself. These three are not interchangeable, and the analytical significance of each is distinct.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

The McKinnon Letter (Movant Ex. C) which documented Movant's limited role, lack of ownership, reliance on Chamblee-supplied information, and the timing of when she learned his reported sales were false — was available to Lewis and known by her throughout the trial proceedings. McKinnon Decl. ¶¶11–15.

Agent Hubbuch's trial testimony at Trial Tr., ECF No. 177, PageID ##1521–1522, provided Lewis with specific, documented advance notice that: (i) the lead investigator knew the McKinnon Letter existed because Vance had referenced it during the December 2018 recorded interview (Gov't Ex. 401); (ii) Hubbuch acknowledged at trial that he never received it; and (iii) the fuller context available through Gov't Ex. 401 and the Movant Ex. F transcript established that Hubbuch understood the letter's possible exculpatory significance, knew it was obtainable through Vance's attorney's office, and said he would involve the prosecutor/AUSA in its collection. App. B, G1-RA-009; G1-RA-010. That testimony preceded Day 6, giving Lewis documented, record-based notice before the restriction ruling that the McKinnon Letter was a contested evidentiary issue requiring a prepared advocacy strategy.

Lewis also had direct notice from Movant's own communications before and during trial. Movant identified the McKinnon Letter as central to her state-of-mind defense throughout trial preparation. McKinnon Decl. ¶¶32–39; App. C, G2-RA-004. Movant communicated to Lewis that the letter documented her limited role, her lack of ownership or financial control, and the circumstances under which she acted — each of these being elements of the independent state-of-mind defense, separate from and not dependent on duress. McKinnon Decl. ¶15.

The Sixth Circuit's proffer requirement — the procedural mechanism through which the Day 6 confrontation arose — was foreseeable before Day 6 because Lewis knew prior to trial that the

Government was likely to challenge a complete duress presentation. A competent attorney in Lewis's position was required to have anticipated that requirement and prepared a proffer strategy in advance, including an explicit argument for the independent admissibility of the McKinnon Letter's contents separate from the complete duress defense. Lewis's failure to prepare that strategy was a deficiency that predated the restriction ruling; Day 6 exposed it rather than created it.

MATERIALITY / PREJUDICE:

There is a reasonable probability that the trial outcome would have been different had Lewis: (a) developed an affirmative trial-use theory for the McKinnon Letter before Day 6; (b) made an adequate offer of proof after the restriction ruling; and (c) preserved the distinction between the restricted complete duress defense and independently admissible state-of-mind evidence. Strickland, 466 U.S. at 694.

The prejudice from Lewis's failures was direct, specific, and sequentially compounding. As of the Day 6 restriction ruling at Trial Tr., ECF No. 179, PageID ##1776–1779, the jury had never been permitted to see or meaningfully consider the McKinnon Letter. The letter had been admitted as a Court exhibit but had not been sent to the jury and could not be discussed in closing argument. The Government was therefore free to argue in rebuttal — and did argue — that there was "not a shred of proof" and not "a single item of proof" in the records, emails, or documents showing that Chamblee provided McKinnon information for the financial documents, and later that the jury would not see "a single email or document" supporting Chamblee's involvement. Trial Tr., ECF No. 179, PageID ##1894, 1898; App. B, G1-RA-013. Those rebuttal arguments were made against the backdrop of a restriction that Lewis had failed to adequately challenge or preserve — leaving the Government free to exploit the absence of jury-visible

documentary proof while the defense was barred from using the very contemporaneous document that supplied corrective context.

An adequate offer of proof after the restriction ruling would have accomplished several concrete things. It would have established on the record the full content of the McKinnon Letter and its specific, independent evidentiary relevance to knowledge and intent. It would have preserved for appellate review whether the Court's restriction — as applied to independently admissible state-of-mind evidence on the mens rea elements — was lawful and whether its scope was overbroad. And it would have required the Court to confront, on the record, the distinction between restricting a complete affirmative duress defense and restricting evidence of Movant's knowledge, intent, and reliance that the government was constitutionally obligated to allow the jury to consider. Had that distinction been preserved, the Sixth Circuit on direct appeal would have had a specific, record-supported restriction ruling to evaluate — rather than the unpreserved issue that reached the appellate court. App. B, G1-RA-012; App. F (Ground Five).

The sentencing court's finding that Movant's testimony, if believed, "would have affected the outcome of the case," Sent'g Tr., ECF No. 235, PageID #2352, applies with particular force to this entry. The McKinnon Letter was the most direct, pre-indictment documentary evidence of the state-of-mind facts the sentencing court identified as material. A jury that received the McKinnon Letter in a usable form — supported by an adequate pre-Day 6 evidentiary foundation and contextualized through the Gov't Ex. 401 record showing the lead investigator's contemporaneous knowledge of its existence and possible significance — would have had documentary corroboration of Movant's limited role, lack of ownership or financial control, reliance on Chamblee-supplied information, and the timing of when she learned his reported sales were false. McKinnon Decl. ¶15. There is a reasonable probability that at least one juror

would have evaluated the knowledge and intent elements differently with that documentary anchor available and the Government's attribution narrative tested against it. McKinnon Decl. ¶58. This prejudice is independently sufficient and reinforces the cumulative Strickland analysis consolidated in G3-RA-011.

CROSS-GROUND NOTATION:

Ground Three — PRIMARY (Appendix D): Trial IAC — three-part McKinnon Letter failure: (1) failure to develop a pre-Day 6 evidentiary strategy for the letter's admission independent of the complete duress defense; (2) failure to make an adequate offer of proof after the Court's restriction ruling — the inadequate, unprepared proffer at PageID #1765 supplied the Government with a corrected timing statement it then used against Movant at PageID #1770; (3) failure to preserve the legally critical distinction between the restricted complete duress defense and independently admissible state-of-mind evidence bearing on knowledge, intent, and Chamblee-source reliance

Ground One (Appendix B): Napue/Giglio — G1-RA-008 through G1-RA-013 (McKinnon Letter sequence — selective introduction through Gov't Ex. 401 / Hubbuch testimony, the absolute trial bar, and the Government's rebuttal exploitation of the resulting documentary void); the trial IAC failure to make an adequate offer of proof and preserve the independent admissibility theory compounded each stage of the Napue sequence; the absence of an adequate proffer made it impossible for appellate counsel to argue the restriction on direct appeal with a preserved, developed record

Ground Two (Appendix C): Pretrial IAC — G2-RA-004 (failure to investigate and prepare the McKinnon Letter as independent state-of-mind evidence pretrial); the two entries are analytically complementary — G2-RA-004 establishes what should have been prepared before trial; this entry establishes what should have been done when the trial restriction arrived; the Day 6 proffer failure was the direct consequence of the absence of a pretrial-developed independent admissibility strategy

Ground Five (Appendix F): Appellate IAC — G5-RA-007 (McKinnon Letter / Gov't Ex. 401 pattern; the trial-level preservation failures documented in this entry — the absence of an adequate offer of proof, the failure to preserve the distinction between the restricted duress defense and independently admissible state-of-mind evidence — directly contributed to the underdeveloped appellate record the Sixth Circuit reviewed; the omitted appellate Napue claim included the McKinnon Letter / Gov't Ex. 401 pattern as a specific component)

G3-RA-008 — Failure to Develop and Use Journal and Recorded-Conversation / Transcription Evidence at Trial

RECORD CITATION / SOURCE:

Trial Tr., ECF No. 179, PageID ##1797, 1894; McKinnon Decl. ¶¶40--50; Defense Ex. 82 / Movant Ex. 45 (McKinnon contemporaneous journal entries --- marked for identification at trial; never offered into evidence, never admitted, never used); App. B, G1-RA-003; App. B, G1-RA-013; App. C, G2-RA-003

EXACT QUOTE OR RECORD LANGUAGE:

McKinnon Decl. ¶42: "I provided Trial Counsel with copies of the transcriptions. These recorded conversations were also referenced in my contemporaneous journals as well as an email I sent to Vance. I testified at trial that I had recorded conversations with Chamblee and had begun transcribing them. Counsel did not adequately follow up with me regarding the content of those recordings, whether they were documented in my journals, whether transcripts existed and whether those transcripts could be used to corroborate my testimony, or whether they could be used to impeach Chamblee or rebut the Government's argument that there was no documentary support for my account." McKinnon Decl. ¶44: "Lewis told me she could not use the transcripts because the prosecution would simply argue that the transcripts were 'made up.' I asked Lewis to obtain my cellular telephone records so that the dates and times of my calls with Chamblee could be compared against the transcribed calls, but, to my knowledge, she did not do so." McKinnon Decl. ¶47: "Defense Exhibit 82 --- my contemporaneous journal entries --- was marked for identification at trial but was never offered into evidence, never admitted, and never used by counsel at any point during the trial proceedings. The journal materials are identified in this § 2255 proceeding as Movant Exhibit 45. "McKinnon Decl. ¶49: "Trial counsel Lewis called me to testify but asked me no questions about the journals during my examination. Counsel failed to use my journals and related contemporaneous records effectively to explain my state of mind, lack of fraudulent intent, reliance on information supplied by others, and lack of knowledge that certain information was false at the time I acted." McKinnon Decl. ¶50: "If counsel had used these records properly, the jury would have had contemporaneous support for my testimony rather than being left with the Government's suggestion that my account was unsupported or self-serving." Trial Tr., ECF No. 179, PageID #1797: Movant testified at trial that she had recorded conversations with Gary Chamblee and had begun transcribing them. Trial Tr., ECF No. 179,

PageID #1894: Government argued in rebuttal that there was "not a shred of proof" and not "a single item of proof" in the records, emails, or documents showing that Chamblee provided McKinnon information for the financial documents.

RECORD-PROOF POINT:

The record establishes two categories of contemporaneous corroborating evidence that were available to counsel and that counsel failed to develop and use at trial: (a) the journal materials marked as Defense Ex. 82 / Movant Ex. 45, and (b) the recorded-conversation transcription evidence Movant provided to counsel and testified about on the stand. Both categories were directly relevant to corroborating Movant's account of her state of mind, her reliance on Chamblee-supplied information, her lack of knowledge that certain information was false, and the coercive circumstances under which she acted.

The journal materials were Movant's contemporaneous daytimer/journal entries --- dated, handwritten records in which Movant recorded, in real time during or immediately following telephone calls, the sales figures and balance information that Chamblee reported to her. Movant later transferred those figures from her daytimer/journal entries into QuickBooks. The entries also contained personal reminders and notes entirely unrelated to business operations, establishing the journal as a genuine working record written as events occurred --- not a document created in anticipation of litigation. McKinnon Decl. ¶¶40--48. Lewis had Defense Ex. 82 marked as a defense exhibit, meaning she had identified and labeled it for potential trial use. But Lewis never offered Defense Ex. 82 into evidence, never sought its admission, and never used it at any point during the trial --- not during Chamblee's cross-examination and not during Movant's own direct examination. The failure here has two distinct dimensions: Lewis did not admit the journals into evidence at all, and having failed to admit them, she also conducted

Movant's entire direct examination without asking a single question about them. McKinnon Decl. ¶49. As a result, the jury never received the contemporaneous, pre-litigation corroboration the journal materials could have supplied --- either through Chamblee's cross-examination, where the journals could have been used to confront him about the source of the figures Movant recorded and transferred into QuickBooks, or through Movant's direct examination, where the journals could have corroborated Movant's account of what she was told, when she was told it, and what she understood at the time.

The recorded-conversation transcription evidence presents a closely related failure. Movant testified at Trial Tr., ECF No. 179, PageID #1797, that she had recorded conversations with Chamblee and had begun transcribing them. That testimony placed the existence of the recordings before the jury --- but counsel had already made a threshold decision not to use the transcription materials Movant had provided to her, on the stated ground that the prosecution would argue the transcripts were "made up." McKinnon Decl. ¶44. Counsel also failed to obtain cellular telephone records that could have corroborated the dates and times of the recorded calls, independently verifying the transcriptions against an objective, third-party data source. Id. The combined effect was that Movant's trial testimony confirmed the existence of contemporaneous corroborating records --- the recording transcriptions and the journals --- while counsel simultaneously declined to admit or use those records to corroborate that testimony. The Government's rebuttal then exploited the resulting evidentiary vacuum by arguing that there was "not a shred of proof" and not "a single item of proof" supporting Chamblee's role as the supplier of information to Movant. Trial Tr., ECF No. 179, PageID #1894; App. B, G1-RA-013. That rebuttal argument succeeded precisely because counsel had not developed and used the available contemporaneous corroborating evidence that would have answered it.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

Under Strickland v. Washington, 466 U.S. 668, 690--91 (1984), trial counsel Brandi N. Lewis was required to develop and use the contemporaneous corroborating evidence available to her to support Movant's testimony about her state of mind, reliance on Chamblee-supplied information, and lack of knowledge that the information was false. The transcription materials had been provided to Lewis by Movant before trial. App. C, G2-RA-003. Defense Ex. 82 --- the journal entries --- had been marked as a defense exhibit, meaning Lewis had identified and labeled it for trial use. The duty at the trial-execution stage was both to admit that evidence and to use it. Lewis failed on both dimensions, and with respect to both categories of evidence.

With respect to the journal materials, competent trial counsel was required to: (a) offer Defense Ex. 82 into evidence during the trial, securing its admission so that the dated, contemporaneous journal entries were part of the trial record available for the jury to consider; (b) use the journal entries during Chamblee's cross-examination --- confronting Chamblee with the dated entries recording the figures he reported to Movant and establishing through his own testimony under oath that he was the source of the financial information Movant recorded and transferred into QuickBooks; (c) examine Movant about her journal entries during direct examination, using Defense Ex. 82 to establish that contemporaneous, pre-litigation records documented what she was told by Chamblee, what she understood at the time, and the circumstances under which she acted; (d) use specific journal entries to corroborate the timing of relevant communications and instructions from Chamblee, connecting the journal record to the transactions and communications the Government attributed to Movant as evidence of knowing fraud; and (e) present the journals as evidence that Movant's trial account was not self-serving reconstruction after the fact but was supported by records she made during the relevant period --- directly

answering any suggestion that her testimony was uncorroborated. Lewis did none of these things. She never offered Defense Ex. 82 into evidence. She never used it during Chamblee's cross-examination. She conducted Movant's entire direct examination without asking a single question about the journal entries. McKinnon Decl. ¶49.

With respect to the recorded-conversation transcription evidence, competent trial counsel was required to: (a) use the transcription materials Movant had provided to develop and corroborate the substance of what Chamblee told her --- not simply decline to use them based on the unsupported assumption that the prosecution would argue they were fabricated; (b) if counsel was genuinely concerned about the authenticity challenge, obtain the cellular telephone records that would have independently corroborated the dates and times of the recorded calls --- an objective, third-party source that the prosecution could not credibly dismiss as "made up" --- and use those records in connection with the transcriptions to establish their reliability; (c) once Movant testified at PageID #1797 that she had recorded the conversations and transcribed them, develop that testimony by connecting it to the available corroborating records rather than leaving the jury with a bare reference to recordings that were never documented in the record. Lewis's stated reason for declining to use the transcriptions --- that the prosecution would argue they were fabricated --- does not constitute a reasonable strategic basis for abandoning the corroborating evidence entirely. McKinnon Decl. ¶44. Competent counsel does not abandon available corroborating evidence because of a potential challenge to that evidence; competent counsel uses independent corroboration to answer that challenge. The phone records were available for that purpose. The decision not to seek them, and not to develop the transcription evidence, reflects a deficiency in trial preparation and execution rather than a reasoned strategic choice. See Wiggins v. Smith, 539 U.S. 510, 521 (2003).

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

All of the evidence identified in this entry was either in Lewis's possession or available to her through standard investigative steps before and during Movant's testimony. Defense Ex. 82 / Movant Ex. 45 --- the journal materials --- had been marked as a defense exhibit, meaning Lewis had identified, labeled, and retained them for potential trial use. McKinnon Decl. ¶47. No further investigation or procurement was required; Lewis needed only to offer them into evidence and use them. She did neither. The transcription materials had been provided to Lewis by Movant before trial. McKinnon Decl. ¶42. Lewis had actual possession of those materials. Her decision not to use them was made in advance of trial, not in response to any ruling or circumstance that arose at trial. Id. The cellular telephone records that could have independently corroborated the recorded-call dates and times were available through a standard third-party subpoena --- a routine investigative step counsel had the means and the obligation to take, particularly after Movant specifically requested it. McKinnon Decl. ¶44.

Lewis also had direct, explicit notice from Movant throughout the pretrial period and at trial that both the journals and the recorded-conversation transcription materials were important to her defense. Movant identified these materials as bearing on her state of mind, her reliance on Chamblee-supplied information, and her lack of knowledge that the information was false. McKinnon Decl. ¶¶40--50. Movant also specifically requested that Lewis obtain the phone records. McKinnon Decl. ¶44. That request constituted direct, specific notice of the evidentiary relevance of the phone-record corroboration --- notice that Lewis received and did not act on. The Government's rebuttal argument --- which exploited the absence of documentary corroboration for Movant's account --- was foreseeable before it was made. Chamblee's role as an information supplier had been contested throughout trial, and the Government's closing

framework made clear that it intended to argue the absence of documentary proof. App. B, G1-RA-013. Counsel had notice, from the trial record as it developed, that the contemporaneous corroborating materials were directly needed to answer that argument --- and had those materials available to admit and use.

MATERIALITY / PREJUDICE:

There is a reasonable probability that competent development and use of the journal and recorded-conversation transcription evidence would have produced a different result. Strickland, 466 U.S. at 694. The prejudice from Lewis's failure is most precisely demonstrated by the Government's rebuttal argument and the evidentiary gap it exploited. At Trial Tr., ECF No. 179, PageID #1894, the Government argued that there was "not a shred of proof" and not "a single item of proof" in the records, emails, or documents showing that Chamblee provided McKinnon information for the financial documents. App. B, G1-RA-013. That argument was delivered to the jury after Movant had testified --- including testimony at PageID #1797 that she had recorded conversations with Chamblee and transcribed them --- but while the jury had received no organized, documentary corroboration of that testimony. The Government's argument succeeded because counsel had not offered the journals into evidence, had not used them during Chamblee's cross-examination or Movant's direct examination, had not presented the transcription materials, and had not corroborated the recordings through phone records.

The result was that the jury was asked to evaluate Movant's state-of-mind testimony against the Government's argument that no documentary proof supported it --- when documentary proof existed, was marked and in counsel's possession, and was never offered into evidence or used. Had Lewis offered Defense Ex. 82 into evidence and examined Movant about the journal entries during direct examination, the jury would have received specific, entry-dated, pre-litigation

corroboration of Movant's account of what she was told, when she was told it, and what she understood. The journal entries could not credibly be dismissed as self-serving post-hoc reconstruction --- they were records Movant made during the relevant period, before she was charged, before she had any litigation incentive to create a favorable narrative. McKinnon Decl. ¶48. Had Lewis further used Defense Ex. 82 during Chamblee's cross-examination --- confronting him with the dated entries and establishing through his own testimony that he was the source of the figures Movant recorded and transferred into QuickBooks --- the Government's "shred of proof" argument would have been answered both by the journal exhibits themselves and by Chamblee's own cross-examination testimony. Had Lewis presented the transcription materials --- supported by phone records corroborating the dates and times of the calls --- the jury would have had objective, third-party-verifiable corroboration that the recorded conversations occurred as Movant described. That corroboration would have directly answered the prosecution's "made up" argument, which Lewis accepted as a sufficient reason to abandon the evidence rather than refute it. McKinnon Decl. ¶44.

The prejudice from this failure reinforces and compounds the prejudice from G3-RA-003 (Chamblee cross-examination failure) and G3-RA-001 (framework failure). Together, those entries describe a trial in which the Government argued Chamblee's role as an information supplier was entirely undocumented, while counsel simultaneously failed to use Defense Ex. 82 to cross-examine Chamblee about the source of the QuickBooks figures, failed to offer the journal corroboration into evidence, failed to use the journals during Movant's direct examination, and failed to present the recorded-conversation transcription evidence that would have corroborated Movant's account. The Government's "shred of proof" argument was the capstone of that attribution failure --- and it succeeded because counsel had left the corroborating

record marked, unused, and unadmitted. McKinnon Decl. ¶50. There is a reasonable probability that at least one juror would have evaluated Movant's knowledge, intent, reliance, and credibility differently had the jury received the organized, contemporaneous corroboration that Lewis failed to admit and use. McKinnon Decl. ¶¶56--58; Strickland, 466 U.S. at 694.

CROSS-GROUND NOTATION:

Ground Three — PRIMARY (Appendix D): Trial IAC — failure to use Defense Ex. 82 / Movant Ex. 45 (contemporaneous journals) and the recorded-conversation transcription evidence at trial; Defense Ex. 82 was marked for identification — Lewis had identified and labeled it for potential trial use — but was never offered into evidence, never used during Movant's direct examination, and never used during Chamblee's cross-examination; Lewis also declined to use the transcription materials Movant had provided before trial

Ground One (Appendix B): Napue/Giglio — G1-RA-003 (Chamblee supplied QuickBooks sales information; the Government possessed Movant Ex. 45 / Defense Ex. 82 in discovery yet argued in rebuttal that no documentary proof existed for the Chamblee-source defense; the trial IAC failure to admit and use Defense Ex. 82 created the documentary void the Government's rebuttal mischaracterization exploited — a mischaracterization that could not have been made had the journals been in evidence); G1-RA-013 (Government rebuttal "not a shred of proof" / "not a single item of proof" / "not a single email or document" — the three successive rebuttal formulations succeeded precisely because the journals were marked, in counsel's possession, and never admitted)

Ground Two (Appendix C): Pretrial IAC — G2-RA-003 (failure to develop the Chamblee-source state-of-mind defense; failure to organize the contemporaneous journal and recording evidence before trial; the trial execution failure to use Defense Ex. 82 is the downstream consequence of the pretrial failure to develop and corroborate the Chamblee-source theory with the available documentary record)

G3-RA-009 — Failure to Organize and Use Defense Exhibits / Failure to Subpoena Available Witnesses

RECORD CITATION / SOURCE:

McKinnon Decl. ¶¶18, 21–24, 51–55, 76–77; Movant Ex. 9 (Gov't Ex. 501); Movant Ex. 14 (Gov't Ex. 507); Movant Ex. 15 (Gov't Ex. 508); Movant Ex. 17 (Gov't Ex. 717); Movant Ex. 41 (Defense Ex. 76); Movant Ex. 72 (Gov't Ex. 201); BATES USA-00049465 (Smith 302 — Movant Ex. 1); App. B, G1-RA-005; App. B, G1-RA-007; App. C, G2-RA-001; App. C, G2-RA-010; G3-RA-004

EXACT QUOTE OR RECORD LANGUAGE:

McKinnon Decl. ¶18: "Throughout the pretrial period, I made numerous specific requests of Lewis, including: (a) retaining an investigator to examine Gary Chamblee's background and prior

FBI involvement; (b) retaining a forensic accountant to reconstruct the flow of funds and challenge the Government's financial narrative; (c) subpoenaing specific witnesses including Alan Rolfes, Joan Faybik, Shannon Wells, Richard Phillips, David Smith, Dell Jaggers, Ken McCoy, and Jeff Dimick; and (d) subpoenaing the Brand Bank records for the NGEP account. Lewis either declined or failed to follow through on each of these requests." McKinnon Decl. ¶21: "Lewis had virtually no support staff assigned to assist with my case. Lewis admitted to me that she did not have time to review all of the approximately 50,000 documents in the Government's discovery file and asked me to identify key evidence." McKinnon Decl. ¶22: "Lewis required me to perform the following trial preparation tasks that, in my understanding, are the responsibility of defense counsel: (a) organizing copies of the Government's exhibits; (b) creating exhibit binders for the defense, prosecution, and the Court; (c) preparing a master list identifying and explaining each exhibit; (d) drafting lines of direct examination questioning for each witness; and (e) identifying which exhibits to use at trial. Lewis admitted to me that she had never worked with exhibits before and did not know how to apply exhibit numbers." McKinnon Decl. ¶23: "Lewis discarded dozens of exhibits I had identified as important before trial, without explanation, even though I believed those exhibits would have provided the jury with a more complete and accurate picture of the facts." McKinnon Decl. ¶24: "During witness examinations at trial, Lewis required me — rather than an assistant or staff member — to physically locate exhibits during testimony, causing me to miss critical portions of witness testimony." McKinnon Decl. ¶53: "Counsel did not use many of the records I identified. Counsel also discarded or failed to use exhibits I believed were important to presenting a complete and accurate picture of the facts. As a result, the jury did not hear the defense in the way I believed the records supported." McKinnon Decl. ¶55: "Had counsel properly reviewed, organized, and used the records I

identified, the defense could have shown that the Government's broad references to 'Nex-Gen,' 'Vance and McKinnon,' ownership, control, bank access, and intent were misleading. The records would have helped separate my actual role from the conduct and accounts controlled by others." McKinnon Decl. ¶76: "Joan Faybik never met me in person, never spoke with me by telephone, email, text, social media, or any electronic means, and did not rely on any documents provided by me before deciding to invest funds with Vance." Faybik Declaration ¶12: "It was my desire to testify in the trial proceeding or the evidentiary hearing at sentencing to set the record straight regarding my voluntary investments with Doug Vance. However, I was never called as a witness." McKinnon Decl. ¶77: Movant reviewed the Government's complete discovery production and found "no FBI 302 report, interview memorandum, or other documented statement attributed to or derived from an interview of Richard Phillips. I have no knowledge of Agent Hubbuch or any other Government agent ever having conducted an interview with Richard Phillips."

RECORD-PROOF POINT:

This entry establishes two analytically distinct trial-execution failures that share a common thread: counsel's failure to organize and deploy the evidentiary resources — exhibits and witnesses — that Movant had identified, organized, and communicated to counsel before and during trial. Part A: Failure to Organize and Use Defense Exhibits. The record establishes that by the time trial began, Movant had performed the exhibit organization and identification work that competent counsel would ordinarily do — creating exhibit binders, preparing a master exhibit list, identifying which exhibits to use at trial, and organizing the Government's discovery materials. McKinnon Decl. ¶22. Despite receiving this organized work product directly from Movant, Lewis discarded dozens of the exhibits Movant had identified as important, without

explanation. McKinnon Decl. ¶23. During witness examinations at trial, Lewis delegated the physical task of locating exhibits to Movant herself, causing Movant to miss critical portions of witness testimony while searching for documents in real time. McKinnon Decl. ¶24. The exhibits Movant had identified and that Lewis failed to use included records bearing directly on the entity-distinction, account-access, and attribution issues central to the Government's case. McKinnon Decl. ¶¶51–55. These included the entity formation records and operating agreements establishing separate ownership, membership, and control structures among NGI, NGEP, V4 Carbon, and Carbon Holdings (Movant Exs. 14/15/17/41 / Gov't Exs. 507/508/717/76); the Bank of America NGEP account records identifying Chamblee and Hogan as signers — not Movant — directly relevant to Movant's lack of account-access-based ability to independently verify Chamblee-reported sales (Movant Ex. 72 / Gov't Ex. 201; App. B, G1-RA-002); and the financial-summary materials bearing on the scope and completeness of the Government's financial reconstruction (Movant Ex. 9 / Gov't Ex. 501; App. B, G1-RA-005). Had counsel used these exhibits in an organized, cross-examination-supported framework, the jury would have received the documentary basis for evaluating the entity-distinction and account-access arguments that were central to the defense. McKinnon Decl. ¶55. The cross-witness documentary issues available for development also included the Carbonox purchase-order evidence — admitted as Defense Ex. 85 / Gov't Ex. 604. Government witness Tim Surmeier of Carbonox confirmed at Trial Tr., ECF No. 177, PageID ##1392–1407, that Gov't Ex. 604 was a Carbonox purchase order directed to Nex-Gen, establishing that at least one documented commercial purchase relationship between Nex-Gen and an outside buyer existed in the trial record and was available for development at trial. The failure to locate and use these exhibits — including Movant Exs. 1, 8, 14, and 15 — also forms the trial-IAC dimension of the Napue violation

independently established in App. B, G1-RA-007, where the Government's knowing elicitation of false "company never created" testimony while possessing its own exhibits proving V4 Carbon and Carbon Holdings were formed, and while Agent Hubbuch had omitted all V4 references from the typed Smith 302 despite recording them in his handwritten interview notes (BATES USA-00011554 / Movant Ex. 8 [Tab 14] — Agent Hubbuch's handwritten interview notes; Government discovery production; not admitted at trial), is fully documented.

Part B: Failure to Subpoena and Call Available Witnesses. The record establishes that Movant made specific, itemized requests during the pretrial period for Lewis to subpoena eight identified witnesses: Alan Rolfes, Joan Faybik, Shannon Wells, Richard Phillips, David Smith, Dell Jaggers, Ken McCoy, and Jeff Dimick. McKinnon Decl. ¶18. Lewis either declined or failed to follow through on each of those requests. Id. None of these witnesses was called at trial. Each had relevant knowledge that bore on the Government's attribution theory, on Movant's knowledge, intent, and reliance, or on the reliability of the Government's financial reconstruction and victim-status framing. David Smith's pre-trial FBI 302 statement (BATES USA-00049465) documented that he told Agent Hubbuch that Deware "had control and was signatory on the NexGen account for the Kentucky business." App. B, G1-RA-007; G3-RA-004. His live testimony would have provided sworn, in-court corroboration of that account-access and signatory fact, directly contradicting Deware's broad "no access" impression and correcting the attribution of account control to Movant. Joan Faybik was a Government-identified investor whose sworn post-trial declaration stated she never met Movant in person, never communicated with her through any means, and did not rely on any documents Movant provided before deciding to invest with Vance. McKinnon Decl. ¶76; Faybik Decl. ¶¶12–15. Faybik herself expressed a desire to testify at trial to correct the victim-attribution record. Faybik Decl. ¶12.

Dell Jaggers was the recipient of the June 26, 2017 email underlying Count 6. His testimony could have corroborated the timing of that communication relative to when Movant learned Chamblee's sales were false, and established whether Jaggers understood it as a representation of Movant's independent knowledge. McKinnon Decl. ¶8; App. C, G2-RA-010. Richard Phillips was identified as a potential witness in the Government's investigation, yet Movant's review of the complete Government discovery production revealed no FBI 302 report or interview memorandum attributed to any interview of Phillips. McKinnon Decl. ¶77. That evidentiary gap — a witness identified but never interviewed by the Government — bore on the completeness of the investigation and the Government's ability to fully account for all relevant business participants and their knowledge. Alan Rolfes, Shannon Wells, Ken McCoy, and Jeff Dimick each had knowledge bearing on the business operations, financial structure, or conduct attributed to Movant and Vance; their potential testimony was identified by Movant as relevant to presenting a complete defense, and Lewis declined to subpoena any of them. McKinnon Decl. ¶18.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

Under Strickland v. Washington, 466 U.S. 668, 690–91 (1984), the trial-execution duty measured in this entry is distinct from the pretrial investigation duty captured in App. C, G2-RA-001. The pretrial dimension — Lewis's failure to investigate entity structure, account access, and witness backgrounds before trial began — is addressed in Ground Two. This entry captures the trial-execution dimension: the failure to organize and use the exhibits that were already in the trial record and in counsel's possession, and the failure to call available witnesses whose relevance was known before trial began. Part A: Exhibit Organization and Use. Competent trial counsel Brandi N. Lewis was required to: (a) review, organize, and use the entity formation

records, operating agreements, and bank account materials that Movant had identified — specifically, Movant Exs. 14/15/17/41/72 (Gov't Exs. 507/508/717/76/201) — to present the jury with a documentary, organized counter-narrative to the Government's generalized "Nex-Gen" attribution framework; (b) not discard exhibits identified by Movant as important without a documented, legally reasoned basis — McKinnon Decl. ¶23 establishes that dozens of identified exhibits were discarded without explanation, with no strategic rationale provided; (c) conduct witness examinations using organized exhibit materials without delegating the physical task of locating exhibits during testimony to Movant — McKinnon Decl. ¶24 establishes that this delegation caused Movant to miss critical trial testimony in real time; and (d) use the available cross-witness documentary evidence — the financial-summary limitations (Movant Ex. 9 / Gov't Ex. 501), signatory distinctions (Movant Exs. 14/15 / Gov't Exs. 507/508), and Bank of America NGEP account materials (Movant Ex. 72 / Gov't Ex. 201) — in a disciplined, cross-examination-supported framework that required the jury to evaluate the Government's attribution theory against the complete documentary record. App. B, G1-RA-005; G1-RA-007. Lewis failed on all of these requirements. Lewis admitted she had never worked with exhibits before and did not know how to apply exhibit numbers. McKinnon Decl. ¶22. She delegated the exhibit organization function to Movant — the defendant — then discarded the organized results without explanation. McKinnon Decl. ¶¶22–23. She further delegated the exhibit-retrieval function to Movant during live witness examinations. McKinnon Decl. ¶24. These are not strategic choices; they are the product of a preparation and trial-management failure that deprived Movant of a competently organized evidentiary presentation on the central issues of entity structure, account access, and attribution. Part B: Witness Subpoena and Call Failures. Competent trial counsel was required to evaluate the eight witnesses Movant specifically

requested and, where the legal and factual basis for calling them existed, to subpoena and call them. With respect to the most significant witnesses: Counsel was required to call David Smith, whose pre-trial FBI 302 statement (BATES USA-00049465) documented his knowledge of Deware's account control and signatory status on the Kentucky NexGen account — facts directly relevant to the Deware impeachment issue developed in G3-RA-004. That statement was in Government-produced discovery in Lewis's possession. Counsel was required to call Joan Faybik, who was a willing, available witness who would have testified — as she later declared under oath — that she never met Movant, never communicated with her through any means, and did not rely on any documents Movant provided before deciding to invest with Vance. McKinnon Decl. ¶76; Faybik Decl. ¶¶12–15. Faybik herself sought to testify at trial to correct the record. Faybik Decl. ¶12. The pre-trial no-contact order governing communication between co-defendants and with government-identified victims placed the exclusive responsibility for investigating Faybik's potential testimony on defense counsel. Movant could not contact Faybik; Vance could not contact Faybik; only Lewis could do so. The no-contact constraint underscores rather than excuses the deficiency: the investigation Lewis failed to conduct was one that only Lewis could have conducted. Counsel's failure to call a willing, relevant witness who would have directly challenged the Government's victim-attribution framing cannot be explained as a reasonable strategic choice. Counsel was required to evaluate whether to call Dell Jaggers on the Count 6 communication — specifically, whether Jaggers understood it as a representation of Movant's independent knowledge, and whether it was sent before Movant learned Chamblee's sales were false. McKinnon Decl. ¶8; App. C, G2-RA-010. With respect to all eight requested witnesses, Lewis either declined or failed to follow through without providing a reasoned legal basis for declining. McKinnon Decl. ¶18. The failure to evaluate, investigate, and call available

witnesses with specific, identified relevance to the charged conduct — including one witness who sought to testify favorably and another whose FBI statement was in Government discovery — constitutes deficient performance under Strickland. See Wiggins v. Smith, 539 U.S. 510, 521 (2003).

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

All exhibits identified in this entry were in the trial record or in Government-produced discovery in Lewis's possession. Movant Exs. 14/15/17/41/72 (Gov't Exs. 507/508/717/76/201) were Government exhibit materials available in the trial record. Movant Ex. 9 (Gov't Ex. 501) was the Government's own financial summary exhibit. Lewis had direct possession of the organized exhibit materials Movant had prepared before trial — she received those materials from Movant, used them as a starting point, and then discarded many of them without explanation. McKinnon Decl. ¶¶21–23. The Smith 302 (BATES USA-00049465) was in Government-produced discovery in Lewis's possession as part of the approximately 50,000-page discovery production. App. B, G1-RA-007. Whether Lewis reviewed it is unknown, but it was in the discovery materials she had received. All eight witnesses Movant requested were known to Lewis before trial. Their identities, their general areas of relevant knowledge, and their significance to the defense were communicated to Lewis by name during the pretrial period. McKinnon Decl. ¶18. Lewis therefore had specific, itemized, named notice of every witness Movant requested — not a general description but an explicit list provided directly by her client. With respect to Faybik specifically: Faybik was a Government-identified investor/victim identifiable from the Government's own case materials. Her potential testimony — that she had no direct dealings with Movant — was information Movant had communicated to Lewis, and a reasonable investigation of the Government's witness and victim list would have confirmed it. With respect

to Jaggers: Jaggers was the named recipient of the Count 6 email that was a charged count — the most directly identifiable witness on Count 6. His identity and relevance were apparent from the face of the Government's own indictment and exhibit materials. Movant's direct, specific, itemized communication of all eight witness requests — including names and their areas of relevant knowledge — provided Lewis with all the notice she needed to evaluate whether to subpoena them. Lewis did not need to independently discover these witnesses; Movant had already identified them. McKinnon Decl. ¶18.

MATERIALITY / PREJUDICE:

There is a reasonable probability that competent exhibit organization and use — and the calling of available witnesses with specific relevance to the charged conduct — would have produced a different result. Strickland, 466 U.S. at 694. The exhibit-use prejudice connects directly to the Government's attribution theory and to the "shred of proof" rebuttal argument that succeeded at Trial Tr., ECF No. 179, PageID #1894. App. B, G1-RA-013. The exhibits Movant had identified — the entity formation records, operating agreements, and bank account materials — were the documentary foundation of the entity-distinction and account-access defense that counsel failed to present throughout trial. McKinnon Decl. ¶55. Had counsel used those exhibits in an organized, cross-examination-supported framework, the jury would have received document-supported evidence separating Movant's administrative and bookkeeping role from the ownership, account control, and financial authority the Government attributed to her. That evidence directly answered the Government's attribution theory and the rebuttal argument that no documentary support existed for Movant's account. Without it, the jury evaluated the case through the Government's generalized attribution narrative rather than through the complete documentary record that was available, organized, and unused. The witness-call prejudice is

independently material for each of the most significant witnesses. David Smith's live testimony would have provided sworn, in-court corroboration of the account-access and signatory evidence already established through his 302 (BATES USA-00049465). App. B, G1-RA-007; G3-RA-004. Had Smith testified, the jury would have received not merely a documentary reference to his prior statement but a live witness establishing Deware's account control and signatory status on the Kentucky NexGen account — directly contradicting Deware's broad "no access" impression and requiring the jury to evaluate Deware's credibility against Smith's testimony. Joan Faybik's testimony would have directly challenged the Government's victim-attribution framing by establishing that she never met or communicated with Movant and did not rely on Movant for her investment decisions. McKinnon Decl. ¶76; Faybik Decl. ¶¶12–15. If a Government-identified investor/victim would have testified she had no direct dealings with Movant and does not consider herself Movant's victim, the jury's evaluation of Movant's fraudulent-intent attribution across all counts would have been materially affected. Faybik's express desire to testify at trial and correct the record — a willing, available, favorable witness who was never called — amplifies the prejudice from Lewis's failure to call her. Faybik Decl. ¶12. Dell Jaggers's potential testimony bore directly on Count 6 — the count grounded in the June 26, 2017 communication Movant sent before learning Chamblee's sales were false. McKinnon Decl. ¶8. His testimony on whether he understood that communication as Movant's independent representation, and whether he relied on it as such, was directly relevant to Count 6's attribution and knowledge elements. App. C, G2-RA-010. The cumulative prejudice from both parts of this entry — the unused exhibits and the uncalled witnesses — reinforces the framework failure identified in G3-RA-001 and the specific impeachment failures identified in G3-RA-002 through G3-RA-006. Together they describe a trial in which the available defense

evidence was neither organized and used by counsel nor corroborated by available witnesses, leaving the Government's attribution theory to stand against a defense that was simultaneously unprepared and under-resourced at the trial-execution stage. McKinnon Decl. ¶¶56–58; Strickland, 466 U.S. at 694.

CROSS-GROUND NOTATION:

Ground Three — PRIMARY (Appendix D): Trial IAC — two-part failure: (Part A) failure to organize and use the defense exhibits Movant had identified, organized, and provided to counsel — including entity formation records, operating agreements, signatory-card materials, and financial-summary limitation evidence — counsel discarded dozens of exhibits without explanation and delegated exhibit-retrieval during live testimony to Movant herself; (Part B) failure to subpoena and call eight available witnesses Movant specifically identified by name before trial, including Joan Faybik (willing, available, favorable witness who sought to testify), David Smith (FBI 302 in Government discovery), and Dell Jaggers (Count 6 recipient whose timing testimony was never developed)

Ground Two (Appendix C): Pretrial IAC — G2-RA-001 (pretrial investigation framework anchor; counsel acknowledged she had never worked with exhibits before and relied on Movant to organize discovery — the trial exhibit-organization failure is rooted in the same pretrial preparation failure that underlies the entire Ground Two analysis); G2-RA-010 (pretrial failure to interview KRP representatives and subpoena Jaggers; the trial-level failure to call Jaggers as a defense witness is the trial-execution dimension of the pretrial KRP witness failure)

Ground One (Appendix B): Napue/Giglio — G1-RA-007 (the "company never created" Napue violation; David Smith's live testimony would have corroborated the account-access and signatory evidence in his FBI 302 (BATES USA-00049465), providing sworn in-court corroboration that Deware had control and signatory authority — directly contradicting Deware's broad "no access" impression in a way the documentary citation alone could not achieve); G1-RA-005, Sub-entry 3 (the Gov't Ex. 501 financial-summary limitation evidence was among the exhibits Movant had identified and organized; counsel's failure to use it left McCracken's and Hubbuch's false completeness representations unchallenged)

G3-RA-010 — Day 6 Collapse / Absence of Alternative Framework / Failure to Preserve Proffer Issues

RECORD CITATION / SOURCE:

Trial Tr., ECF No. 179, PageID ##1762, 1765, 1770, 1771–1774, 1775–1776, 1780, 1863; McKinnon Decl. ¶¶29–31; Gov't Ex. 401 (Vance/Hubbuch recorded interview, December 2018); Movant Ex. C (McKinnon Letter); Movant Ex. F (DOJ/FBI transcript of Gov't Ex. 401); Sent'g Tr., ECF No. 235, PageID #2352

EXACT QUOTE OR RECORD LANGUAGE:

McKinnon Decl. ¶29: "On the final day of trial, after the Court ruled that I had not satisfied the prima facie burden required to present a duress defense, Lewis had no alternative defense theory prepared. I was given approximately ten minutes to consult with Lewis before being called to testify. Those ten minutes were entirely inadequate to prepare me to testify about any aspect of my defense other than the duress narrative that had just been eliminated by the Court's ruling." McKinnon Decl. ¶30: "Lewis did not request a continuance after the Court eliminated the duress defense. Lewis did not object on the record to the ten-minute limitation as constitutionally inadequate preparation time. Lewis did not request a mistrial. I was required to take the oath and testify with no alternative framework and no guidance from counsel on how to present my testimony effectively." McKinnon Decl. ¶31: "Lewis did not make an adequate offer of proof after the Court excluded the McKinnon Letter from the jury's consideration, did not seek admission of the letter on any alternative evidentiary basis, and did not preserve the distinction between a complete duress defense and independently relevant state-of-mind evidence. Lewis also did not object on the record to the exclusion's prejudicial effect on my ability to present my defense." Trial Tr., ECF No. 179, PageID #1762: Government raised the Sixth Circuit proffer requirement before Movant testified. Trial Tr., ECF No. 179, PageID ##1771–1774: Court ruled that Movant had not satisfied the prima facie burden required to present a complete duress defense. Trial Tr., ECF No. 179, PageID #1765: Counsel's own proffer included a corrected timing statement regarding the Count 6 communication. Trial Tr., ECF No. 179, PageID #1770: The Government used the corrected timing statement from counsel's own proffer against Movant. Trial Tr., ECF No. 179, PageID ##1775–1776, 1780: After the ruling, counsel received only approximately ten minutes of additional consultation time before Movant was required to

testify. Sent'g Tr., ECF No. 235, PageID #2352: The sentencing court found that McKinnon's testimony, if believed, "would have affected the outcome of the case."

RECORD-PROOF POINT:

This entry captures the specific Day 6 procedural failures — the discrete acts counsel failed to take during and immediately after the restriction ruling — that are analytically distinct from the framework preparation failure documented in G3-RA-001 and the McKinnon Letter proffer failure documented in G3-RA-007. G3-RA-001 established WHY the Day 6 crisis materialized: counsel had no alternative framework prepared because the entire defense had been built on a single duress track. G3-RA-007 established the specific three-part failure regarding the McKinnon Letter. This entry establishes WHAT specific procedural acts counsel failed to perform at the precise moment the crisis arrived, and the concrete harms that flowed from each omission. The Day 6 record documents a sequential chain of procedural failures that compounded the preparation failure in real time. First: the corrected timing statement harm. When the Government raised the Sixth Circuit proffer requirement at PageID #1762, counsel responded with a proffer that included a corrected timing statement regarding the Count 6 communication at PageID #1765. That corrected timing statement was then used by the Government against Movant at PageID #1770. This is a specific, documentable harm generated by the inadequate proffer itself — not by the Court's restriction ruling. Counsel's own unprepared, in-the-moment proffer produced an inadvertent evidentiary concession that the Government immediately exploited. A proffer prepared in advance, organized around the available state-of-mind evidence and the independent admissibility of the McKinnon Letter, would not have contained a corrected statement that could be turned against Movant. Second: the ten-minute consultation inadequacy and the absence of any protective record. After the Court's

ruling at PageID ##1771–1774, counsel received only approximately ten minutes to consult with Movant before she was required to testify. Trial Tr., ECF No. 179, PageID ##1775–1776, 1780; McKinnon Decl. ¶29. Ten minutes was not a reasonable substitute for the prepared alternative framework that should already have existed. But the specific procedural omissions at that juncture compounded the inadequacy: counsel did not object to the ten-minute limitation as constitutionally inadequate preparation time, did not request a continuance, and did not move for a mistrial. McKinnon Decl. ¶30. Each of those omissions was a discrete procedural failure at a precisely identifiable moment — not a strategic choice made after deliberation, but an absence of protective action when the duty to act was clearest. Third: the continuance and mistrial omissions. The Court's restriction eliminated the primary defense framework at the moment Movant was about to testify. The procedural responses available to competent counsel at that moment — a continuance request to allow reorganization of the defense around available alternative evidence, and a mistrial motion as a preservation fallback — were neither made nor preserved. McKinnon Decl. ¶30. The absence of those motions from the record meant that the trial record, and the appellate record, did not reflect that counsel recognized the constitutional inadequacy of the situation and sought relief. The Government's closing argument at Trial Tr., ECF No. 179, PageID #1863 establishes the direct attribution and intent consequence of the Day 6 procedural failures. Immediately after displaying Gov't Ex. 202B [Tab 29] — the Count 2 ACH deposit — AUSA Chapman argued: "But ladies and gentlemen, it is not consistent with a good faith defense for the defendants to make those material misrepresentations to lenders and to investors. Instead, when you lie to people, that is consistent with an intent to defraud." That statement was the Government's direct closing argument on element 3 (intent to defraud) and functioned as the capstone attribution argument asking the jury to equate the making of material

misrepresentations with fraudulent intent. The Day 6 procedural failures identified in this entry — the absence of a continuance request, the absence of a mistrial motion, the failure to make an adequate offer of proof on independent state-of-mind admissibility, and the corrected timing statement harm — left Movant without a preserved, organized alternative state-of-mind framework capable of answering that argument in the trial record or on appellate review. Fourth: the broader preservation failures. The record further establishes that counsel's preservation failures extended beyond the McKinnon Letter issue captured in G3-RA-007 to include: failure to seek clarification of the Court's restriction ruling so its precise scope was established on the record; failure to request curative relief for the Government's use of generalized entity language — "Nex-Gen," "Vance and McKinnon," and related attribution shorthand — that blurred legally significant distinctions among entities, accounts, signatories, and roles throughout trial; and failure to object to or correct misleading attribution arguments where the Government supplied inferential links not established by the testimony the jury had actually received. These preservation failures meant that the trial record reaching the Sixth Circuit on direct appeal did not contain the objections, corrections, curative requests, and offers of proof necessary to allow appellate review of the constitutional errors that had occurred.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

Under Strickland v. Washington, 466 U.S. 668, 690–91 (1984), the trial-execution duty measured in this entry is the duty to take specific protective procedural actions at precisely identifiable moments when the constitutional obligation to act was clear and the means to act were available. This entry does not re-argue the preparation failure captured in G3-RA-001 or the McKinnon Letter proffer failure captured in G3-RA-007. It captures the specific, discrete acts counsel Brandi N. Lewis was required to perform during and after the Day 6 proceedings

and failed to perform. Competent trial counsel was required to: (a) Prepare and deliver an adequate proffer in response to the Government's Sixth Circuit proffer requirement at PageID #1762. A competent proffer was required to be organized and developed before Day 6 — not constructed under pressure in real time — and to accurately and completely represent the content of the restricted evidence without including corrected statements that could be turned against Movant. The corrected timing statement at PageID #1765, which the Government used against Movant at PageID #1770, was not generated by the Court's ruling; it was generated by counsel's own inadequate, unprepared proffer. A proffer prepared in advance, built around the available state-of-mind evidence and organized to argue the independent admissibility of the McKinnon Letter's contents, would not have supplied the Government with an evidentiary concession at the precise moment the defense was most vulnerable. (b) Object on the record to the ten-minute consultation limitation as constitutionally inadequate preparation time. McKinnon Decl. ¶30. When a defendant is allowed only ten minutes to reorganize her entire trial presentation after the primary defense theory is restricted by the Court, the minimum competent response is to object that the preparation time is constitutionally inadequate — preserving the issue for appellate review and creating a record of the inadequacy. Lewis did not object. (c) Request a meaningful continuance after the ruling at PageID ##1771–1774. The Court's restriction eliminated the primary defense framework at the moment Movant was about to testify. Competent counsel was required to request a continuance of sufficient length to reorganize the defense presentation around the available independent state-of-mind evidence — evidence that existed in the trial record and was known to counsel, requiring not new investigation but only adequate preparation time. A continuance request would have either secured needed time or preserved the denial for appellate review as a concrete, record-supported constitutional issue. Lewis did not request one.

McKinnon Decl. ¶30. (d) Move for a mistrial if the continuance was denied. If the Court required Movant to testify immediately with no prepared alternative framework, the competent response was to move for a mistrial on the ground that Movant was being required to testify without constitutionally effective assistance at the most critical moment of her trial. That motion would have preserved the constitutional issue and created a record establishing that counsel recognized the inadequacy and sought relief. Lewis did not move for a mistrial. McKinnon Decl. ¶30. (e) Seek clarification of the Court's restriction ruling to establish its precise scope on the record — specifically, whether the restriction applied only to the complete affirmative duress defense or also to independently admissible state-of-mind evidence on the knowledge and intent elements the Government was required to prove. Without that clarification on the record, the scope of the restriction was left undefined, allowing the practical effect of the ruling to be broader than its legal reach. (f) Request curative relief for the Government's use of generalized entity language throughout trial — "Nex-Gen," "Vance and McKinnon," and related collective attribution shorthand — that blurred legally significant distinctions among entities, accounts, signatories, roles, and time periods. Each use of that language was a moment at which competent counsel could have objected, requested a curative instruction, or sought clarification; Lewis did not. (g) Object to or correct misleading attribution arguments where the Government supplied inferential links — attributing ownership, control, and intent to Movant — not established by the testimony the jury had actually received. Lewis's failures were not strategic choices made after reasonable deliberation. McKinnon Decl. ¶¶29–31 documents with specificity each discrete omission at the Day 6 proceedings. The corrected timing statement harm, the absence of a continuance request, the absence of a mistrial motion, the absence of an objection to the ten-minute limitation, and the absence of the broader preservation measures are affirmative omissions at precisely identifiable

procedural moments when the duty to act was unambiguous. See Wiggins v. Smith, 539 U.S. 510, 521 (2003).

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

The procedural tools available to counsel at the Day 6 juncture were not dependent on additional investigation or discovery. They were standard trial preservation mechanisms — a continuance request, a mistrial motion, an objection to inadequate preparation time, a structured offer of proof, a curative instruction request — available to any trial attorney at any point in a federal criminal trial and requiring nothing beyond counsel's decision to use them. With respect to the corrected timing statement harm: Lewis had full knowledge of the content of her own proffer before she delivered it. The risk that a corrected timing statement in counsel's proffer could be used against Movant was foreseeable — the Government was present at the proffer, and any factual correction made during a proffer is available for the Government's use. The harm at PageID #1770 was therefore a foreseeable consequence of delivering an unprepared, in-the-moment proffer. Lewis also had direct notice, from Movant's own communications before and during trial, of the Count 6 timing issue and its significance to the defense — making the corrected timing statement's susceptibility to Government use apparent in advance. McKinnon Decl. ¶8. With respect to the continuance and mistrial failures: Lewis had direct, real-time knowledge of the facts giving rise to both motions. She knew at the moment the Court ruled that she had no alternative framework prepared. McKinnon Decl. ¶29. She knew that ten minutes was inadequate preparation time to reorganize Movant's entire trial presentation. McKinnon Decl. ¶29. The legal basis for a continuance request and a mistrial motion was apparent from the record in the moment — no additional research, investigation, or preparation was required. The failure to make either motion was not a product of insufficient information; it was the absence of

protective action when the constitutional obligation to act had arrived. With respect to the broader preservation failures: The Government's generalized entity language — "Nex-Gen," "Vance and McKinnon," and related attribution shorthand — was visible to Lewis in real time throughout every day of trial. Each use of that language was contemporaneous notice that an objection or curative instruction request might be appropriate. Lewis was present for every attribution argument the Government made, heard every inferential step the Government offered, and had the procedural tools to object or seek clarification at each moment. The failure to use those tools was not a product of ignorance of the record; it was a failure of trial execution throughout the proceedings. McKinnon Decl. ¶¶51–55

MATERIALITY / PREJUDICE:

There is a reasonable probability that the specific Day 6 procedural failures identified in this entry — independent of, and in addition to, the framework preparation failure in G3-RA-001 — would have produced a materially different result if corrected. Strickland, 466 U.S. at 694. The corrected timing statement prejudice is the most precisely documentable harm in this entry. The Government's use of the corrected timing statement from counsel's own proffer at PageID #1770 was not a consequence of the Court's restriction ruling; it was a harm generated by counsel's inadequate, unprepared proffer response. The corrected statement bore directly on the Count 6 timing issue — specifically, the timing of the June 26, 2017 communication Movant sent before learning Chamblee's reported sales were false. McKinnon Decl. ¶8. A prepared proffer would not have contained that statement. There is a reasonable probability that, absent that inadvertent concession, the Government's ability to use that timing qualification against Movant at trial would not have existed. The Government's closing argument on intent to defraud at Trial Tr., ECF No. 179, PageID #1863 reinforces the materiality of those failures. Delivered immediately

after the Government's display of the Count 2 exhibit, the closing argument directly foreclosed any good-faith defense by arguing that making material misrepresentations is per se inconsistent with good faith and consistent with fraudulent intent. That argument succeeded at the jury-facing level because the Day 6 procedural failures left no preserved, organized alternative state-of-mind counter-narrative in the record. A continuance securing adequate preparation time, a preserved offer of proof on independent state-of-mind admissibility, and the Chamblee-source cross-examination developed in G3-RA-003 would collectively have supplied the jury with the counter-narrative that PageID #1863's attribution argument exploited in its absence. The prejudice from the Day 6 failures is therefore traceable not only to the "shred of proof" rebuttal arguments at PageID ##1894, 1898, but also to the Government's earlier closing attribution argument equating misrepresentation with intent — an argument the jury heard against a record that had been left, through counsel's failures, without the documentary and testimonial framework needed to answer it.

The continuance and mistrial prejudice operates at both the trial and appellate levels. Had Lewis requested a continuance and the Court granted it, Movant would have had adequate time to reorganize her defense presentation around the available independent state-of-mind evidence — the same evidence the sentencing court later recognized as material to the outcome of the case. Sent'g Tr., ECF No. 235, PageID #2352. Had Lewis requested a continuance and the Court denied it, the denial would have been preserved as a specific, record-supported constitutional issue for the Sixth Circuit on direct appeal — inadequate preparation time for a defendant to reorganize her entire defense following a Day 6 restriction. The appellate court would have had a concrete ruling to evaluate rather than an unpreserved issue without the underlying record support needed to evaluate it. App. F (Ground Five). The same dual benefit applies to the

mistrial motion: either the relief itself, or a preserved appellate record establishing that counsel recognized and sought relief from the constitutional inadequacy. The absence of both motions from the record allowed the Day 6 sequence to appear, on the appellate record, as a contested ruling handled by counsel — rather than a procedural crisis in which counsel failed to take the most basic protective measures available. The objection-to-preparation-time prejudice reinforces the appellate record gap. Lewis's failure to object to the ten-minute limitation as constitutionally inadequate preparation time meant that the trial record did not reflect what actually occurred: Movant was required to testify without constitutionally adequate preparation time following the restriction ruling. That omission from the record directly undermined the ability to raise the issue on direct appeal and in this § 2255 proceeding, because the absence of the objection made the issue appear unpreserved. App. F (Ground Five). The broader preservation failures — failure to seek clarification of the restriction ruling's scope, failure to request curative relief for entity conflation language, failure to object to attribution arguments without record support — compounded the prejudice identified in G3-RA-002, G3-RA-007, and throughout the Ground Three analysis. Without those objections and curative relief requests in the trial record, the Sixth Circuit on direct appeal reviewed a record that appeared to reflect counsel's acquiescence in the Government's attribution framework across the entirety of the trial — rather than a contested record in which counsel had challenged those arguments at each turn and preserved the issues for appellate review. App. B, G1-RA-001; G3-RA-002. The sentencing court's finding that Movant's testimony, if believed, "would have affected the outcome of the case," Sent'g Tr., ECF No. 235, PageID #2352, confirms that the Day 6 procedural sequence was outcome-material. The specific procedural failures identified in this entry — which occurred at the moment when Movant's testimony was about to be given — are directly tied to that materiality finding. Had competent

counsel secured adequate preparation time, delivered a prepared proffer that did not generate additional harm, objected to the ten-minute limitation, and made a mistrial motion as a preservation fallback, there is a reasonable probability that the trial record, the appellate record, and the post-conviction record would each have been materially different. McKinnon Decl. ¶¶56–58; Strickland, 466 U.S. at 694.

CROSS-GROUND NOTATION:

Ground Three — PRIMARY (Appendix D): Trial IAC — specific Day 6 procedural failures: the inadequate proffer generating the corrected timing statement at PageID #1765 (which the Government used against Movant at PageID #1770); the absence of an objection to the ten-minute preparation limitation; the absence of a continuance request; the absence of a mistrial motion; the failure to seek clarification of the restriction ruling's scope; the failure to request curative relief for entity conflation language; and the failure to object to attribution arguments without record support — each a discrete procedural omission at a precisely identifiable moment

Ground Two (Appendix C): Pretrial IAC — G2-RA-004 (failure to develop the McKinnon Letter independent admissibility strategy; the inadequate Day 6 proffer was the direct consequence of the absence of a pretrial-prepared independent admissibility theory for the letter's contents); G2-RA-005 (failure to develop an independent state-of-mind defense; the Day 6 collapse occurred because no alternative framework had been prepared — the direct consequence of counsel's pretrial advice that only duress and jury nullification were viable defenses); G2-RA-009 (failure to provide competent strategic advice; deficient pretrial trial strategy advice narrowed the defense to a single track that had no planned response when the Court restricted it)

Ground One (Appendix B): Napue/Giglio — G1-RA-008 through G1-RA-013 (McKinnon Letter Napue sequence; the inadequate proffer at PageID #1765 — which supplied the Government with a corrected timing statement used against Movant at PageID #1770 — was a direct, documentable harm generated by the absence of a prepared proffer strategy, independent of and in addition to the harms arising from the court's restriction ruling itself)

Ground Five (Appendix F): Appellate IAC — G5-RA-001 (framework anchor); G5-RA-009 (clearly-stronger issue comparison); G5-RA-010 (appellate relief theory); the Day 6 preservation failures — the absence of a continuance request, a mistrial motion, an objection to inadequate preparation time, and curative-relief requests for entity conflation language — meant the Sixth Circuit reviewed a record that appeared to reflect counsel's acquiescence rather than a contested record with preserved constitutional issues; the absence of those preserved issues from the appellate record directly strengthened the case that the omitted Napue/prosecutorial-misconduct claim was a clearly stronger appellate ground than the issues Napolitano raised

G3-RA-011 — Cumulative Trial Prejudice Anchor

RECORD CITATION / SOURCE:

Sent'g Tr., ECF No. 235, PageID #2352; McKinnon Decl. ¶¶56–59; App. B, G1-RA-013; G1-RA-014; G1-RA-015; App. C, G2-RA-012; G3-RA-001 (framework / state-of-mind defense failure); G3-RA-002 (entity-conflation failure); G3-RA-003 (Chamblee impeachment failure); G3-RA-004 (Deware impeachment failure); G3-RA-005 (Hubbuch impeachment failure); G3-

RA-006 (failure to impeach Francis — financial-role, business-distress, payroll, and red-flag testimony); G3-RA-007 (McKinnon Letter / proffer / preservation failure); G3-RA-008 (journal / recorded-conversation / transcription failure); G3-RA-009 (exhibit organization / witness subpoena failure); G3-RA-010 (Day 6 procedural preservation failures)

EXACT QUOTE OR RECORD LANGUAGE:

McKinnon Decl. ¶56: "The missing state-of-mind evidence was important because intent and knowledge were central issues at trial. I did not dispute that certain emails or records existed. The issue was whether I knowingly and intentionally participated in fraud. The jury needed to understand what I knew, what I did not know, what information I relied on, and what role I actually played." McKinnon Decl. ¶57: "Counsel's failure to prepare and present this evidence left the jury without the full context necessary to evaluate my intent. The jury heard the Government's interpretation of emails, accounting entries, financial records, and business activity, but did not hear the full defense explanation supported by my firsthand knowledge and contemporaneous records." McKinnon Decl. ¶58: "If counsel had properly prepared me, preserved the state-of-mind issue, used the McKinnon Letter, developed the recorded-conversation evidence, used the journals, and presented the entity/control distinctions, there is a reasonable probability that at least one juror would have viewed the Government's intent theory differently." McKinnon Decl. ¶59: "I make these statements based on my own personal knowledge, my communications with trial counsel, my understanding of my role in the businesses, the information supplied to me by others, the records I maintained, and my experience preparing for and testifying at trial." Sent'g Tr., ECF No. 235, PageID #2352: The sentencing court found that McKinnon's testimony, if believed, "would have affected the outcome of the case." Trial Tr., ECF No. 179, PageID ##1894, 1898: Government argued in

rebuttal that there was "not a shred of proof" and not "a single item of proof" in the records, emails, or documents showing that Chamblee provided McKinnon information for the financial documents, and later that the jury would not see "a single email or document" supporting Chamblee's involvement. App. B, G1-RA-013.

RECORD-PROOF POINT:

This entry functions as the cumulative anchor for Ground Three. It does not repeat the full record analysis developed in G3-RA-001 through G3-RA-010; it consolidates the ten trial-execution failures into a unified Strickland prejudice showing and ties that showing to the sentencing court's outcome-materiality finding. The ten preceding entries establish a coherent, interlocking pattern of trial-execution failure — not a collection of isolated omissions — that operated together to prevent the jury from evaluating the central issue in the case: whether Movant knowingly and intentionally participated in fraud. G3-RA-001 established that counsel's entire trial presentation was built on a single defense track — duress — with no alternative state-of-mind framework prepared. When the Court restricted that track on Day 6, no coherent, alternative defense existed for the jury to evaluate. G3-RA-002 established that the entity formation records, operating agreements, and signature-card materials necessary to separate Movant's administrative role from the ownership, account control, and financial authority the Government attributed to her were available in the trial record and were not used. G3-RA-003 established that the cross-examination tools necessary to develop Chamblee's role as the supplier of financial information --- the core of Movant's knowledge and intent defense --- were available to counsel and were not used. Specifically: Movant maintained a contemporaneous journal in which she recorded, in real time and in her own hand, the sales figures and balance information that Chamblee reported to her by telephone, later transferring those figures into QuickBooks.

Defense Ex. 82 --- those dated, contemporaneous journal entries --- was marked as a defense exhibit, meaning Lewis had identified and labeled it for potential trial use. Lewis never offered Defense Ex. 82 into evidence, never sought its admission, and never used it at any point during Chamblee's cross-examination. Lewis also never asked Chamblee a single question about the source of the figures Movant entered into QuickBooks. Chamblee did not testify at any point during trial that he supplied sales figures or balance information to Movant --- because Lewis never asked him. The cross-examination tool to establish that foundational fact was marked, labeled, and in counsel's hands. The Government's rebuttal argument that there was "not a shred of proof" supporting the Chamblee-source defense succeeded not because no proof existed --- it existed in Defense Ex. 82 and in the questions Lewis never asked Chamblee --- but because Lewis never created the cross-examination record that would have answered it. G3-RA-004 established that the Smith 302 and signature-card evidence directly contradicting Deware's broad "no access" impression were in the trial record and Government discovery and were not used to impeach Deware. G3-RA-005 established that the fuller Gov't Ex. 401 / Movant Ex. F context documenting Hubbuch's knowledge of the McKinnon Letter, its possible exculpatory significance, and his stated intent to involve the AUSA in obtaining it was available for cross-examination and was not developed. G3-RA-006 established that counsel failed to contextualize Francis as an interpretive witness and failed to challenge the basis and limitations of her financial characterizations using the available entity and account-structure evidence. G3-RA-007 established the three-part failure regarding the McKinnon Letter — the failure to develop a pre-Day 6 evidentiary strategy for the letter, the failure to make an adequate offer of proof after the restriction ruling, and the failure to preserve the legally critical distinction between the restricted complete duress defense and independently admissible state-of-mind evidence. G3-RA-008

established that the journal materials --- marked for identification as Defense Ex. 82 / Movant Ex. 45 but never admitted into evidence and never used at any point during trial --- and the recorded-conversation transcription evidence Movant provided to counsel were available contemporaneous corroborating records that counsel failed to develop and use. Lewis conducted Movant's entire direct examination without asking a single question about the journal entries, without offering Defense Ex. 82 into evidence, and without using the transcription materials Movant had provided before trial --- leaving the Government's "shred of proof" rebuttal argument unanswered by the contemporaneous corroborating evidence that would have directly refuted it. G3-RA-009 established that counsel discarded dozens of exhibits Movant had identified as important without explanation, delegated exhibit-retrieval during live testimony to Movant herself, and failed to subpoena and call eight available witnesses — including Joan Faybik, who sought to testify favorably and whose testimony would have directly challenged the Government's victim-attribution framing, and David Smith, whose testimony would have corroborated the account-access and signatory evidence established through his FBI 302. G3-RA-010 established the specific Day 6 procedural failures — the corrected timing statement harm generated by counsel's own unprepared proffer, the absence of a continuance request, the absence of a mistrial motion, the absence of an objection to the ten-minute preparation limitation, and the failure to seek clarification of the restriction ruling's scope, request curative relief for entity conflation language, or object to attribution arguments without record support. Together, these ten failures describe a trial in which the Government's attribution theory — that Movant's administrative work, bookkeeping activity, email transmissions, and association with Vance and "Nex-Gen" entities established her ownership, control, account access, and fraudulent intent — was tested only at the margins rather than challenged at its foundation. The available

documentary, testimonial, and contemporaneous corroborating evidence needed to answer that theory was in the trial record. Counsel had it, organized in many cases by Movant herself. The jury never received it in a coherent, organized form. McKinnon Decl. ¶¶51–58; App. B, G1-RA-015.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

Under Strickland v. Washington, 466 U.S. 668, 690–91 (1984), deficient performance is evaluated against the standard of a reasonably competent attorney. The cumulative deficiency established across G3-RA-001 through G3-RA-010 is not ten independent failures measured against ten separate standards. It is one trial — one defense presented by one counsel — measured against the single standard of reasonable professional competence applied to the complete trial presentation. The pattern that emerges from the ten entries is not the product of strategic choices made after reasonable deliberation. G3-RA-001: No alternative framework despite the foreseeability of the duress restriction. G3-RA-002: Organized entity evidence available and unused without strategic explanation. G3-RA-003: Defense Ex. 82 --- the marked but never admitted contemporaneous journal --- available to use on Chamblee's cross-examination and not used; Lewis never asked Chamblee a single question about the source of the QuickBooks figures; the cross-examination record needed to establish the Chamblee-source theory was never created. G3-RA-004: Smith 302 in Government discovery and not used to impeach Deware. G3-RA-005: Fuller Gov't Ex. 401 context in Movant Ex. F and not developed on cross-examination of Hubbuch. G3-RA-006: Admitted entity and account-structure evidence available and not used to contextualize Francis. G3-RA-007: McKinnon Letter in counsel's possession throughout trial, no proffer strategy prepared, no offer of proof made after restriction. G3-RA-008: Defense Ex. 82 / Movant Ex. 45 marked for identification but never admitted and

unused during Movant's direct examination; transcription materials in counsel's possession and declined on a basis that was itself deficient. G3-RA-009: Dozens of identified exhibits discarded without explanation; eight identified witnesses not subpoenaed; exhibit-retrieval function delegated to Movant during live testimony; counsel admitted she had never worked with exhibits before. G3-RA-010: No continuance request, no mistrial motion, no objection to ten-minute preparation limitation, corrected timing statement supplied to the Government through counsel's own proffer. The uniform thread across all ten failures is the same: available evidence, available witnesses, available procedural tools — not used, not called, not invoked. The deficiency in each entry is not merely that counsel made a suboptimal choice; it is that the minimum competent response to each situation required action that Lewis did not take. Wiggins v. Smith, 539 U.S. 510, 521 (2003). Cumulatively assessed, the pattern confirms that Movant did not receive the constitutionally required trial presentation on the central elements of knowledge, intent, account access, entity structure, attribution, and witness credibility that the Government's case directly put at issue.

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

The available evidence and notice to counsel are fully established in G3-RA-001 through G3-RA-010 and are incorporated here by cross-reference. The consolidated notice point is this: Lewis received direct, specific, itemized notice — from Movant, from the trial record, and from Government-produced discovery — of every category of evidence and every witness identified in the ten preceding entries. Movant organized the exhibits, identified the witnesses by name, communicated the Chamblee-source theory throughout trial preparation, provided the transcription materials to counsel before trial, identified the McKinnon Letter as central to her defense, and specifically requested that counsel obtain the phone records, subpoena the eight

named witnesses, and use the entity and account-structure evidence she had organized. McKinnon Decl. ¶¶18, 21–24, 32–39, 40–50, 51–55. The Government's own trial presentation — its daily use of generalized "Nex-Gen" attribution language, its witness testimony, its exhibits, and its rebuttal argument — provided Lewis with real-time, contemporaneous notice each day of trial that the available corrective evidence was needed and not being used. App. B, G1-RA-001; G1-RA-013. Lewis was not a counsel without notice of the available defense record. She had it, identified by her client, organized for her use, and present in the trial record. The deficiency was not the absence of notice. It was the failure to act on notice that was specific, repeated, and direct. McKinnon Decl. ¶55.

MATERIALITY / PREJUDICE:

There is a reasonable probability that a competent trial presentation of the available defense would have produced a different result. Strickland, 466 U.S. at 694. The sentencing court's finding that Movant's testimony, if believed, "would have affected the outcome of the case," Sent'g Tr., ECF No. 235, PageID #2352, is the strongest available judicial corroboration of cumulative Strickland prejudice for Ground Three. That finding was made by the same judge who presided over the trial, who observed the Day 6 restriction in real time, and who recognized that the state-of-mind defense Movant sought to present was outcome-material — even having seen it presented in its most underdeveloped, last-minute form. App. C, G2-RA-012. The prejudice from the 10 trial-execution failures must be evaluated cumulatively, not in isolation. Strickland prejudice does not require that any single failure, standing alone, would have changed the result; it requires a reasonable probability that the errors, considered together, undermine confidence in the outcome. Strickland, 466 U.S. at 694. The ten failures identified in this appendix were not independent events — they were mutually reinforcing omissions that operated

together to prevent the jury from receiving the coherent, organized defense the available trial record supported. The framework failure in G3-RA-001 set the conditions for every other failure: without an organized alternative state-of-mind framework, the evidence developed or left unused in G3-RA-002 through G3-RA-009 had no coherent structure within which the jury could evaluate it. The Day 6 failures in G3-RA-010 ensured that the evidentiary gap was not corrected at the last available opportunity, and that the appellate record did not preserve the issues for Sixth Circuit review. The interaction among the failures is most clearly visible at the Government's rebuttal argument — the capstone of the attribution theory. The Government argued that there was "not a shred of proof" and not "a single item of proof" showing Chamblee supplied information to Movant, and that the jury would not see "a single email or document" supporting Chamblee's involvement. Trial Tr., ECF No. 179, PageID ##1894, 1898; App. B, G1-RA-013. That argument succeeded because: the Chamblee cross-examination had not developed his own admissions into an organized Chamblee-source foundation (G3-RA-003); the journal materials had not been used during Movant's direct examination to provide contemporaneous corroboration (G3-RA-008); the transcription materials had been declined by counsel (G3-RA-008); the McKinnon Letter had not been adequately profferred or argued for independent admissibility (G3-RA-007); and no organized, exhibit-supported entity and account-access framework had been presented to the jury that would have required the Government to answer the documentary defense rather than exploit its absence (G3-RA-002; G3-RA-009). The "shred of proof" argument was not a comment on the weakness of Movant's actual defense. It was an accurate observation about the defense counsel had presented — because the defense counsel should have presented never reached the jury. The prejudice analysis also encompasses the appellate record. The preservation failures in G3-RA-007 and G3-RA-010 — the absence of an

adequate offer of proof, the absence of a continuance request, the absence of a mistrial motion, the absence of objections to the restriction's scope, and the absence of curative-relief requests for entity conflation language — meant that the Sixth Circuit on direct appeal reviewed a record that did not contain the preserved constitutional issues that would have allowed it to grant relief. Those preservation failures are a direct predicate to the appellate-counsel failure identified in Ground Five and addressed in Appendix F. McKinnon Decl. ¶58 expressly identifies the cumulative probability: "If counsel had properly prepared me, preserved the state-of-mind issue, used the McKinnon Letter, developed the recorded-conversation evidence, used the journals, and presented the entity/control distinctions, there is a reasonable probability that at least one juror would have viewed the Government's intent theory differently." That statement is not a legal conclusion; it is Movant's firsthand account of the connection between the failed defense presentation and the jury's inability to evaluate her knowledge, intent, reliance, and credibility against the complete available record. Considered together, the ten failures in G3-RA-001 through G3-RA-010 undermine confidence in the verdict. The Government's attribution theory depended on the jury accepting inferences from administrative work, bookkeeping activity, email transmissions, and association with others as proof of knowing, intentional fraud. Competent counsel would have met that theory with the available counter-evidence: the entity formation records separating Movant's role from ownership and control; the account-access evidence eliminating her ability to independently verify Chamblee-reported sales; Chamblee's own admissions on cross; Deware's documented signatory role; the admitted journals corroborating Movant's contemporaneous state of mind; the McKinnon Letter establishing her pre-indictment account of her limited role and lack of knowledge; the recorded-conversation evidence corroborating what Chamblee told her; and the available witnesses whose testimony would have

directly challenged the Government's victim-attribution framing and account-control narrative. That defense was available. It was in the trial record. Counsel had it organized and identified for her. The jury did not receive it. There is a reasonable probability that a jury that received the complete, organized, available defense would have evaluated knowledge, intent, attribution, account access, entity structure, and witness credibility differently — and that at least one juror would have reached a different conclusion. Strickland, 466 U.S. at 694; McKinnon Decl. ¶¶56–59; App. B, G1-RA-014; G1-RA-015.

CROSS-GROUND NOTATION:

Ground Three — PRIMARY (Appendix D): Trial IAC — cumulative trial prejudice anchor for G3-RA-001 through G3-RA-010; the ten trial-execution failures were not isolated omissions but mutually reinforcing failures that operated together to prevent the jury from evaluating the central issue — whether Movant knowingly and intentionally participated in fraud — through the coherent, organized defense the available trial record supported; the sentencing court's finding that Movant's testimony, if believed, "would have affected the outcome of the case" (Sent'g Tr., ECF No. 235, PageID #2352) is the strongest available judicial corroboration of cumulative Strickland prejudice

Ground Two (Appendix C): Pretrial IAC — G2-RA-012 (cumulative pretrial-IAC prejudice anchor; App C, G2-RA-012 is the controlling pretrial-IAC prejudice anchor cross-referenced in this entry; the sentencing court's outcome-materiality finding confirms that the defense the ten trial-execution failures prevented from reaching the jury traces to the same pretrial investigation failures documented in G2-RA-001 through G2-RA-012; the pretrial and trial IAC failures are analytically inseparable — each trial-execution failure is the downstream consequence of a corresponding pretrial investigation failure)

Ground One (Appendix B): Napue/Giglio — G1-RA-014 (cumulative prejudice — letter/rebuttal sequence); G1-RA-015 (capstone cumulative materiality anchor); the cumulative trial-IAC prejudice documented in this entry is analytically reinforcing with the cumulative prosecutorial-misconduct prejudice documented in App B — both sets of failures operated on the same trial, the same jury, and the same elements of knowledge, intent, attribution, and credibility; neither can be fully evaluated in isolation from the other

Ground Five (Appendix F): Appellate IAC — G5-RA-008 (materiality and verdict-integrity prejudice anchor); G5-RA-009 (clearly-stronger issue comparison); G5-RA-010 (appellate relief theory); the cumulative trial-IAC failures also produced the underdeveloped, unpreserved appellate record that is the predicate for the appellate-IAC analysis; the verdict-integrity question that a Napue/prosecutorial-misconduct claim would have presented to the Sixth Circuit is the same verdict-integrity question the ten trial-IAC failures left unaddressed in the record the appellate court reviewed on direct appeal

G3-RA-012 — Complete Failure to Subject the Government's Core Attribution, Intent, and State-of-Mind Case to Meaningful Adversarial Testing

RECORD CITATION / SOURCE:

Trial Tr., ECF Nos. 174–179 (complete six-day trial record); *United States v. Cronic*, 466 U.S. 648, 659 (1984); *Strickland v. Washington*, 466 U.S. 668, 687–94 (1984); G3-RA-001 through G3-RA-011 (cross-reference — each individual entry documents a specific failure

that was itself unaccompanied by any objection, motion to strike, or request for curative instruction).

EXACT QUOTE OR RECORD LANGUAGE:

Review of the complete trial record across Trial Tr., ECF Nos. 174 through 179 — encompassing six days of testimony, Government and defense exhibits, opening statements, closing arguments, and rebuttal — reflects that trial counsel Lewis made ten (10) objections across the entirety of the six-day trial proceedings. All ten (10) were overruled. Not one of the ten objections challenged the Government's core attribution and intent theory — the theory that McKinnon knowingly and willfully created, transmitted, and concealed fraudulent financial documents with intent to defraud lenders and investors.

The ten objections, in their entirety, were as follows:

(1) Day 1, Trial Tr., ECF No. 174: One procedural objection; overruled.

(2) Day 2, Trial Tr., ECF No. 175: Two procedural stipulation objections; both overruled.

(3) Day 3, Trial Tr., ECF No. 176: Two procedural stipulation objections; both overruled.

(4) Day 4, Trial Tr., ECF No. 177, PageID #1328: Objection to admission of Gov't Ex. 153 (Vance-to-Jaggers email with falsified bank statements) — "Same objection from yesterday" — Yahoo stipulation; overruled.

(5) Day 4, Trial Tr., ECF No. 177, PageID #1330: Objection to admission of Gov't Ex. 159 (Vance-to-Jaggers, Nex-Gen financing request) — same standing objection; overruled.

(6) Day 4, Trial Tr., ECF No. 177, PageID #1333: Objection to admission of Gov't Ex. 124 (Vance-to-Jaggers, "KRP Investment" email) — same standing objection; overruled.

(7) Day 4, Trial Tr., ECF No. 177, PageID #1366: Foundation objection to Gov't Ex. 171 (McKinnon-to-Severson email with Nex-Gen customer list, shown to Chmielewski) — "I'll object to it because he's not on this email"; overruled per stipulation.

(8) Day 4, Trial Tr., ECF No. 177, PageID #1477: Objection to "broad and loose" entity terminology during Severson redirect; overruled as "sufficiently clear." Entity distinction was never developed into any attribution challenge.

(9) Day 4, Trial Tr., ECF No. 177, PageID ##1376–1381: *Bruton* motion in limine as to Gov't Ex. 401 (Vance FBI recording implicating McKinnon) — filed and WITHDRAWN same day. Court: "Withdrawn is withdrawn." No substitute protection, redaction request, or limiting instruction sought. Gov't Ex. 401 was admitted and played to the jury without limitation.

(10) Day 6, Trial Tr., ECF No. 179, PageID #1817: "Asked and answered" objection to Chapman's repetitive cross-examination questioning of McKinnon; overruled.

No objection was raised to: (1) the Government's opening statement; (2) the direct testimony of Nancy Gates (Washington Mills General Counsel), Tim Surmeier (Carbonox), Adam Horrex (Nucor melt shop manager), or Troy McCracken (FBI forensic accountant; (3) the admission of Government exhibits bearing McKinnon's name and implying knowing document fabrication to her; (4) any portion of Hubbuch's extended redirect examination; or (5) the Government's rebuttal argument at Trial Tr., ECF No. 179, PageID #1894 — "not a shred of proof," "not a single item of proof," "a single email or document" — which the Government knew to be false when delivered.

RECORD-PROOF POINT:

This entry does not equate meaningful adversarial testing with counsel's physical presence, the asking of some questions, or the delivery of opening and closing arguments. Cronic asks whether the prosecution's case was required to survive the crucible of meaningful adversarial testing. The record alleged here shows that counsel's formal participation never became a functioning adversarial challenge to the Government's core attribution, intent, and state-of-mind case. Counsel did not know how to present and use exhibits already marked for admission; abandoned marked defense exhibits rather than establishing their foundation and relevance; failed to use witness questions Movant had prepared; treated lines of examination as unavailable because the Government had not first raised the subject; failed to connect cross-examination to the elements and available documentary record; and, when the duress framework was restricted, proceeded without an alternative theory, meaningful preparation time, or protective motion. McKinnon Decl. ¶¶21–25, 29–39, 40–55.

The constitutional question is functional, not numerical. Activity is not the same as testing, and testing peripheral matters is not meaningful testing of the prosecution's case. Although Lewis spoke, objected occasionally, and questioned some witnesses, counsel's failure was complete as to the defense function that mattered: requiring the Government to prove that Movant knowingly and intentionally joined the fraud rather than acting as an administrative employee who lacked account access, relied on Chamblee-supplied information, acted at others' direction, and possessed contemporaneous corroboration. The Government's proof on that theory was never subjected to a coherent documentary, testimonial, elemental, or preservation-based challenge.

The objection pattern is evidence of the breakdown, but it is not the theory by itself. The more significant facts are what counsel failed to do with the defense already placed in her hands. Movant organized exhibits, prepared extensive lines of questioning for witnesses, identified the records that answered the Government's attribution theory, and asked counsel to use them. McKinnon Decl. ¶¶21–24. Counsel admitted that she had never worked with exhibits and did not know how to apply exhibit numbers; required Movant to locate exhibits during testimony; discarded or failed to use exhibits Movant had identified; and did not use the prepared witness questions. Id. According to Movant, counsel also treated subjects as unavailable when the prosecutor had not first broached them, rather than using cross-examination and the defense case to develop admissible facts independently. Those failures left the Government's central proof untouched even when counsel was speaking.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

Under Cronic, 466 U.S. at 659, prejudice is presumed when counsel entirely fails to subject the prosecution's case to meaningful adversarial testing. Movant does not contend that silence is the only form such a failure can take. A lawyer may be present, speak, ask questions, and give arguments while still failing to perform the adversarial function if those acts do not test the prosecution's case on the disputed elements. The asserted failure here was complete in functional terms: counsel never converted the available defense into evidence and advocacy capable of testing the Government's proof of Movant's knowledge, intent, attribution, role, account control, and credibility. The following findings show that the breakdown extended across the whole defense function, not merely isolated points in an otherwise functioning representation.

FINDING 1 — Defense Strategy Failure: Unsupported As Presented / Counsel's Preparation and Experience Deficit :

The duress defense as presented by counsel was legally unsupported because counsel failed to develop the factual predicate necessary to satisfy the Singleton elements — a failure rooted in counsel's preparation deficit and complete absence of federal criminal trial experience, not in any inherent impossibility of a coercion-based defense on the underlying facts.

Lewis had limited or no federal criminal defense experience before this proceeding. Her prior practice was in family court. This was her first complex financial fraud case. That foundational inexperience is essential to understanding why the defense strategy collapsed structurally: a competent federal criminal defense attorney would have recognized before trial that satisfying Singleton required specific, corroborated factual development — the timing and escalation of Chamblee's threats, McKinnon's documented initial refusal, the weeks of stalling she endured before complying, and the specific coercive acts that drove her eventual compliance.

The factual predicate necessary to support a coercion-based defense existed and was documented. Chamblee's threats escalated to include physical harm and the complete destruction of McKinnon's home by fire — an act Chamblee implied to McKinnon he had arranged. Mendie Hogan, acting on behalf of the Shumard/Chamblee group, specifically directed McKinnon to remove all NGEP business information from her laptop, transfer it to a flash drive, and destroy all paper copies — a direction McKinnon followed because she was an employee acting under the authority of the people who controlled the entity and its accounts. Every one of those facts was documented in the Hogan email, or the pre-indictment

McKinnon Letter, written before any investigation began and before McKinnon had any reason to construct a litigation narrative.

Lewis built the trial around a theory she had not adequately investigated, had little or no federal criminal experience to evaluate, and could not legally satisfy as presented. The Court's rejection of the proffer reflects counsel's preparation and experience failure — not the unavailability of a viable coercion-based defense on the facts this record contains.

FINDING 2 — Wholesale Failure to Object to Direct Attribution Evidence — Including Materiality:

Across six days of trial, Lewis permitted the Government to admit exhibits implying McKinnon's knowing document fabrication without raising a single objection. No objection was made to attribution language, to the foundation for any exhibit, to any witness characterization of those documents as McKinnon's independent fabrications, or to whether the Government had established that those documents were transmitted to and relied upon by any investor or lender.

That absence of challenge was not a strategic decision made by an experienced federal criminal advocate. Her practice background was in family court. An attorney with federal financial fraud trial experience would have recognized that wire fraud requires materiality as a proven element — that a false statement must be capable of influencing the decision of the person to whom it was directed. Neder v. United States, 527 U.S. 1, 16 (1999). A document no investor ever received and no lender ever relied upon cannot satisfy that element regardless of its content.

Lewis permitted the Government to build its attribution case from exhibits without ever challenging the chain from document to transmission to victim reliance. The jury evaluated

those exhibits as evidence of knowing fraud in a vacuum — without understanding whether any of those documents left McKinnon's possession in a direction that reached a person who acted on them. That foundational challenge was available, was legally required by the materiality element, and was never made.

Finding 3 — No Cross-Examination of Key Government Witnesses — Materiality Questions Never Asked:

Lewis conducted zero cross-examination of Nancy Gates (Washington Mills), Adam Horrex (Nucor), Tim Surmeier (Carbonox), or Troy McCracken (FBI forensic accountant) — the four witnesses whose combined testimony supplied the Government's entire attribution, directed-creation, and loss case. Gates established that McKinnon personally authored two fraudulent Washington Mills purchase orders. Horrex established that the Nucor specification sheets were not genuine Nucor documents. Surmeier established that the Carbonox purchase order was never fulfilled. McCracken presented the financial reconstruction the Government relied on for every attribution and loss figure the jury received. Taken together, these four witnesses built and closed the Government's case against McKinnon. Lewis crossed none of them. That complete absence of adversarial challenge across every witness responsible for proving transmission, reliance, directed-creation context, and loss was not the product of informed judgment — it was a wholesale failure of the defense function at the stage of trial where the Government was most constitutionally required to prove its case.

The failure to cross-examine Gates and Horrex was not a challenge to McKinnon's authorship of those documents — McKinnon created them. The failure was the complete absence of any challenge to what happened to those documents after they were created, and what McKinnon understood about their purpose when she created them. Those two questions

were the ones the Government was constitutionally required to answer to prove wire fraud. Lewis asked neither.

Wire fraud is not proven by showing that a false document was made. It is proven by showing that the document was transmitted to a real person, that the person received it, and that the person relied on it in making a financial decision they would not otherwise have made. *Neder*, 527 U.S. at 16. Lewis never asked Gates whether the Washington Mills purchase orders left McKinnon's possession and reached any investor or lender, or whether any investor or lender made a financing decision based on them. Lewis never asked Horrex whether the Nucor specification sheets were transmitted to anyone or relied upon by any person in making a financial decision. The Government established that those documents existed and that McKinnon created them. It was never required to establish what happened next — because Lewis never asked.

The intent question was equally unaddressed. McKinnon created those documents within an operational structure Gary Chamblee directed and controlled — a fact documented in the pre-indictment McKinnon Letter, written before any investigation and before McKinnon had any litigation motive to construct that narrative. Creating a document at the direction of the person who controls the entity and its accounts is not the same as knowingly participating in a scheme to defraud. Those documents were not McKinnon's independent fraudulent scheme. They were documents created at another person's explicit direction, within a structure McKinnon did not control, by a person who had no account access, no ownership authority, and no ability to independently verify any of the financial representations the Government attributed to her conduct.

Chamblee testified as a Government witness and as a self-described victim of the alleged fraud. The Government used his direct examination to pre-empt the directed-creation challenge: Chapman asked Chamblee directly whether he had ever directed McKinnon to falsify documents, and Chamblee denied it. Lewis did not challenge that denial on cross-examination. She did not ask Chamblee what specific instructions he gave McKinnon regarding the Washington Mills purchase orders or the Nucor specification sheets — not what the documents were for, not what McKinnon was told about their purpose, not whether those documents were created within an operational structure Chamblee directed, and not whether those documents were ever transmitted to any investor or lender who relied on them in making a financial decision. Lewis asked about Washington Mills only in the context of whether Chamblee told McKinnon about Washington Mills having product to bring to the plant for redrying — a question entirely unrelated to who directed the creation of the purchase orders the Government attributed to McKinnon as independent fraud. The unchallenged denial that Chamblee directed document creation stood as established fact before the jury, and the operational context that would have reframed McKinnon's authorship as directed compliance rather than independent criminal fabrication was never developed.

Lewis never asked Gates or Horrex whether the documents were created within a structure Chamblee controlled or whether McKinnon's authorship reflected directed compliance rather than independent criminal intent. The jury evaluated McKinnon's authorship as proof of knowing fraud — without ever being asked to consider whether authorship at another person's explicit direction, within a structure McKinnon did not control, carried the same legal weight as independent document fabrication.

The failure to cross-examine Surmeier was the most consequential mischaracterization Lewis permitted to go unchallenged. The Carbonox purchase order was not a fraudulent document. Carbonox operated as a commercial middleman representing a buyer. The purchase order went unfulfilled because Vance could not manufacture the product to meet the buyer's specifications at the price Carbonox required — a standard commercial outcome that occurs when a seller cannot meet a buyer's price and specification requirements. The transaction did not close because the economics of production did not work. That is not fraud. It is a failed business negotiation.

Lewis never asked Surmeier a single question that would have placed the Carbonox PO in its actual commercial context. She never asked why the order went unfulfilled, what Vance's production limitations were, what specifications the buyer required, or what price point Carbonox needed to make the transaction viable. She never asked whether Carbonox and Vance had a legitimate ongoing commercial relationship. She permitted the Government to present a failed middleman transaction — one with an entirely lawful explanation — as evidence of McKinnon's knowing participation in a fraudulent scheme. The jury never heard the explanation because Lewis never provided it. That is not a strategic decision. It is the failure of an attorney without federal financial fraud experience to recognize that an unfulfilled commercial purchase order requires context before it becomes evidence of criminal intent — and that providing that context was her job.

The failure to cross-examine McCracken left unchallenged the only organized financial reconstruction the Government presented. McCracken processed bank records through BankScan software and compiled them into spreadsheets for Hubbuch — an intermediary step material to every attribution and loss figure the jury received. Lewis never asked

McCracken which accounts were included, which were excluded, what methodology governed the selection, or whether the compiled reconstruction was complete as to all accounts underlying the charged counts. A forensic accountant retained with adequate funding under 18 U.S.C. § 3006A would have identified those gaps before trial. Lewis neither retained a forensic accountant nor questioned McCracken about the gaps without one.

Lewis had virtually no federal financial fraud trial experience before this proceeding. Her practice background was in family court. The complete absence of cross-examination across all four witnesses responsible for attribution, directed-creation, and loss was not the product of informed tactical judgment. An experienced federal financial fraud advocate assesses the risks and benefits of each cross-examination and makes deliberate decisions about which examinations to conduct and which to forgo. That is not what occurred here. Lewis did not forgo these examinations after weighing their strategic value. She lacked the federal criminal trial experience necessary to recognize that the Government's attribution theory required affirmative challenge on materiality, directed-creation context, and financial-reconstruction completeness — and she lacked the forensic preparation to conduct those challenges effectively even had she recognized the need.

The result was a wholesale absence of adversarial testing at the most critical stage of the proceeding. The Government presented four witnesses who together established every element of attribution and loss the jury relied upon. Not one of them was cross-examined. Not one materiality question was asked. Not one directed-creation question was asked of Chamblee on cross-examination — his unchallenged denial that he directed McKinnon to create those documents stood before the jury as established fact. Not one methodology question was asked of McCracken. The jury received the Government's case in its entirety —

unchallenged, uncontested, and untested. *United States v. Cronic*, 466 U.S. 648, 659 (1984) ("[I]f counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, then there has been a denial of Sixth Amendment rights that makes the adversary process itself presumptively unreliable."). Where the failure is wholesale rather than the product of a specific tactical error, prejudice is presumed — McKinnon is not required to demonstrate that any individual cross-examination would have produced a different verdict. The adversarial process failed structurally, and the conviction that resulted from it cannot stand on the basis that sufficient other evidence existed. The question under *Cronic* is not whether McKinnon can prove a different outcome — it is whether the proceeding was reliable. It was not.

Finding 4 — Motion In Limine as to Gov't Ex. 401 Filed and Withdrawn Same Day Without Substitute Protection; McKinnon's Letter References Played to Jury Without Limitation; Attorney-Client Miscommunication Regarding Purpose of Withdrawal; and Structural Abandonment of a Meritorious Constitutional Protection

On Day 4 of trial, Lewis filed ECF No. 123 — a motion in limine specifically identifying the 'letter from Molly' reference passages in Gov't Ex. 401 as constitutionally problematic under the Bruton/Confrontation Clause framework. Lewis withdrew the motion the same day, Trial Tr., ECF No. 177, PageID ## 1423, 1480–1481, without presenting the McKinnon Letter's substance to the jury, without securing substitute protection through redaction, a limiting instruction, or an alternative evidentiary vehicle, and in circumstances McKinnon understood to mean the withdrawal would create an occasion to present the letter's contents — an understanding contrary to the withdrawal's actual legal effect.

The filing and same-day withdrawal of the only substantive constitutional motion Lewis filed during the six-day trial illustrates two independent failures. First, by withdrawing without

substitute protection after having already identified and formally documented the constitutional problem, Lewis eliminated the one procedural vehicle that had specifically flagged the letter reference as constitutionally infirm. Second, the communication failure regarding the withdrawal's practical consequences deprived McKinnon of the ability to object in real time to a decision that would have lasting consequences for the defense.

An attorney with federal criminal trial experience would have recognized that withdrawing a Bruton motion without securing substitute protection — particularly one already filed and identifying a specific constitutional problem — foreclosed an entire category of appellate preservation. The decision to withdraw reflected not a reasoned tactical judgment but the absence of the federal criminal procedural knowledge necessary to evaluate the trade-offs of motion practice in a complex federal fraud trial. Lewis had no prior federal financial fraud criminal trial experience from which to draw that judgment.

Finding 5 — Failure to Proactively Address Damaging Evidence on Direct Examination — Coercion, Destruction Order, and Directed-Creation Context Never Elicited:

Lewis conducted twenty-two pages of direct examination of McKinnon without asking a single question about the coercion narrative, the initial refusal, the weeks of stalling, the escalating threats, or the specific physical coercive acts that drove McKinnon's eventual compliance. That omission was not a strategic choice. It was the direct consequence of a defense built entirely on a single duress track that had collapsed before McKinnon testified, leaving no prepared alternative framework and no organized questioning structure for any other theory.

The admissions the Government extracted on cross-examination — that McKinnon knew she was falsifying bank statements, that she created certain documents the Government

characterized as fraudulent, that she transmitted financial information that turned out to be incorrect, that she caused the deletion of business records — each had a complete, corroborated, documentary answer that Lewis never elicited on direct examination because no alternative framework had been prepared.

The bank statement admission. McKinnon's acknowledgment that she knew she was falsifying bank statements was an admission of an act performed under specific, escalating, documented threats after months of initial refusal and stalling. Chamblee's threats included physical harm and the complete destruction of McKinnon's home by fire — an act Chamblee implied he had arranged. Those threats, the timeline of McKinnon's initial refusal, and the specific circumstances of her eventual compliance were documented in the McKinnon Letter — a pre-indictment record written before any investigation, before any charges, and before McKinnon had any litigation motive. Lewis asked no questions about the threats, the fire, the initial refusal, or the coercive circumstances on direct examination. The jury therefore evaluated the admission as knowing and voluntary without the specific, documented context necessary to assess whether it was either.

The document creation admissions. McKinnon's acknowledgment that she created the Nucor specification sheets and other documents the Government characterized as fraudulent were admissions of acts performed at Gary Chamblee's explicit direction. The McKinnon Letter specifically addressed those documents and the circumstances under which they were prepared. Lewis never asked McKinnon on direct examination who directed the creation of any document the Government labeled fraudulent. She never asked any Government witness whether those documents were transmitted to any investor or lender, or whether any person who provided financing made a decision based on them. Because those questions were never

asked, the jury evaluated document-creation as standalone evidence of knowing fraud — stripped of the directed-creation context that would have fundamentally altered the significance of the admissions.

The record-destruction evidence. The Government's presentation permitted the jury to draw an adverse inference from the deletion of NGEP business records. What the jury never heard — because Lewis never asked — was that Mendie Hogan, acting on behalf of the Shumard/Chamblee group, specifically directed McKinnon to remove all NGEP business information from her laptop, transfer it to a flash drive, and destroy all paper copies. McKinnon was following an explicit instruction from a person the Government itself identified as part of the NGEP enterprise. The deletion of those records was not McKinnon concealing evidence of her own independent wrongdoing — it was McKinnon following orders from the people who controlled the entity's accounts and operations. Lewis asked no questions on direct examination about who gave that instruction, when, or in what circumstances.

Each of those failures traces to the same root cause: Lewis had no prepared alternative framework because she had never tried a federal criminal case, had spent approximately one half-day preparing McKinnon's testimony focused almost entirely on the eliminated duress theory, and had no federal criminal trial experience from which to construct an alternative examination structure in real time after the Day 6 ruling. The ten-minute consultation period before McKinnon testified was constitutionally inadequate and was never objected to as such.

Finding 6 — McKinnon Letter Four-Layer Procedural Loss — Directed-Creation Context and Inexperience Integrated:

The McKinnon Letter — Movant Ex. C — was a contemporaneous, pre-indictment document written before any investigation, before any charges, and before McKinnon had any litigation motive. It documented Chamblee's specific threats; McKinnon's initial refusal to comply; the weeks of stalling she endured; the escalating coercive acts including the destruction of her home by fire; her limited role; her lack of ownership or account control; the directed-creation context for the documents the Government later characterized as fraudulent, including the Nucor specification sheets created at Chamblee's explicit direction; and the specific circumstances that ultimately caused her to comply. It was the single most important piece of evidence bearing on the knowing and voluntary elements the Government was required to prove. Lewis lost access to it at every available juncture through four compounded procedural failures.

Layer 1 — Bruton Motion Filed and Withdrawn Same Day. Lewis filed ECF No. 123 on Day 4, specifically identifying the 'letter from Molly' reference passages in Gov't Ex. 401 as constitutionally problematic. She withdrew the motion the same day without presenting the letter's substance, without securing substitute protection, and contrary to McKinnon's understanding of the withdrawal's purpose. The motion's filing established formal notice of the constitutional problem; the withdrawal eliminated the vehicle for resolving it without substitute.

Layer 2 — Rule 16 Pre-Trial Default. Lewis failed to produce the McKinnon Letter in reciprocal pre-trial discovery under Federal Rule of Criminal Procedure 16. That failure was the but-for cause of the Government's successful Day 6 objection when co-defendant Vance's counsel sought to reopen his case and introduce the letter. The Rule 16 default was

identifiable and avoidable; a competent defense attorney preparing for trial would have produced the letter in initial pre-trial disclosure.

Layer 3 — Failure to Cure Through Rule 16(c) Mid-Trial Supplemental Disclosure. Federal Rule of Criminal Procedure 16(c) imposes a continuing disclosure obligation expressly extending through trial. Lewis retained the ability to tender the letter as a supplemental disclosure at any point during the six-day trial. She never did. A competent attorney with federal criminal trial experience would have recognized the Rule 16(c) remedy and used it when the significance of the letter became apparent during the Government's case-in-chief. Lewis had no federal criminal trial experience and no familiarity with federal procedural remedies she was not already using.

Layer 4 — Failure to Elicit the Coercion and Directed-Creation Narrative Through Direct Examination. The Court's ruling at Trial Tr., ECF No. 179, PageID ## 1776–1779 barred the McKinnon Letter as a document and prohibited counsel from discussing the letter in closing argument. It did not bar McKinnon from testifying about her own personal experiences — the threats she received, her initial refusal, the months she stalled, the destruction of her home, the specific acts that drove her eventual compliance, and who directed the creation of the documents the Government characterized as fraudulent. A document-exclusion order bars the document; it does not bar the document's author from testifying about the events and facts the document records. Lewis apparently misunderstood the scope of the ruling and treated it as barring McKinnon's personal testimony about those events. Lewis conducted twenty-two pages of direct examination without asking McKinnon a single question about Chamblee's threats, the fire, her initial refusal, the months of stalling, Hogan's destruction directive, or who directed the creation of any document the Government

characterized as fabricated. None of that testimony required the letter as an exhibit. It required only questions about McKinnon's own personal knowledge and experience. The misunderstanding of the Court's order's scope is not protected as a strategic choice — it is an error in foundational evidence law that a competent attorney, and particularly any attorney with federal criminal trial experience, would not have made.

Finding 7 — Closing Argument Failed to Address Admitted Conduct — Coercion and Materiality Context Never Provided:

After McKinnon's on-stand admissions on cross-examination — that she knew she was falsifying bank statements, that she created documents the Government characterized as fraudulent, that she transmitted financial information that turned out to be incorrect — Lewis's closing argument made no attempt to rehabilitate or contextualize any of those admissions within the coercion and directed-creation framework the available record fully supported.

Each admission had a complete, available, documentary answer that the closing argument never provided:

The admission that McKinnon knew she was falsifying bank statements was an admission of an act performed under specific, escalating, documented threats — threats that included physical harm and the complete destruction of her home by fire — after months of initial refusal and stalling. The McKinnon Letter documented that entire timeline in a pre-indictment record written before any investigation. The closing addressed none of it.

The admission that McKinnon created the Nucor specification sheets and other characterized-as-fraudulent documents was an admission of acts performed at Chamblee's

explicit direction. The McKinnon Letter specifically addressed those documents. The closing addressed none of that directed-creation context.

The evidence the Government used to suggest McKinnon destroyed records — the direction from Hogan to remove NGEP business data from her laptop, transfer it to a flash drive, and destroy paper copies — was an instruction McKinnon followed from a person the Government identified as part of the enterprise. The closing addressed none of that context.

Beyond the failure to address the admitted conduct in context, Lewis's closing argument failed to challenge the Government on the foundational materiality question the wire fraud charges required it to answer: who received these documents, and who relied on them in making a financial decision? See Neder v. United States, 527 U.S. 1, 16 (1999). That challenge had nothing to do with McKinnon's admissions — it was available regardless of anything McKinnon said on the witness stand. The Government was permitted to argue fraudulent intent from documents without being required, in closing argument or anywhere else in the trial, to establish that those documents reached a victim or produced reliance. Lewis never made that argument.

The Court's good-faith jury instruction applied to McKinnon's decontextualized admissions — admissions the jury received without the coercion narrative, without the directed-creation context, without the materiality challenge, and without the pre-indictment documentary record that gives those admissions their full and accurate meaning. A closing argument that had provided that context — all of it available in the McKinnon Letter, in McKinnon's own testimony, and through the questions Lewis never asked the Government's witnesses — would have presented the jury with a fundamentally different picture of what McKinnon's admissions actually meant for the knowing and voluntary elements the Government was

required to prove. Lewis had the material. She had the authority to make those arguments. She made none of them.

COMPLETE FUNCTIONAL FAILURE, NOT MERE POOR PERFORMANCE:

The central point is not that counsel performed the defense badly. It is that the defense function was abandoned whenever knowledge, preparation, or procedural competence was required to convert the available defense into admissible evidence and meaningful advocacy. Counsel did not merely choose weak questions over stronger ones. She failed to use the questions Movant prepared. She did not merely make an unsuccessful exhibit choice. She did not know how to present marked exhibits and abandoned them. She did not merely lose a legal argument. She treated lines of inquiry as unavailable because the prosecution had not first raised them, failed to preserve the McKinnon Letter and state-of-mind distinction, and proceeded after the Day 6 collapse without time, motion, proffer, or alternative plan. The Government's case therefore encountered a lawyer but not a functioning adversarial defense on the controlling issues.

SCOPE OF THIS ENTRY:

Cronic is the primary theory for G3-RA-012 only. This entry does not convert every failure in G3-RA-001 through G3-RA-010 into a separate Cronic violation and does not displace Strickland as the independent framework governing those entries. G3-RA-001 through G3-RA-010 remain independently actionable under Strickland, and G3-RA-011 remains the cumulative Strickland-prejudice anchor. G3-RA-012 draws on the combined and functional effect of the documented failures to plead the additional conclusion that the Government's core case was never subjected to meaningful adversarial testing. If the Court rejects that aggregate characterization under Cronic, each underlying failure and their cumulative effect

remain subject to the deficient-performance and prejudice analysis in G3-RA-001 through G3-RA-011.

MATERIALITY / PREJUDICE:

Under Cronic, prejudice is presumed because the asserted failure was complete in functional terms. Counsel's occasional objections, questions, opening, and closing did not require the Government's core theory to survive meaningful testing. The same attribution and intent theory passed through the trial without an organized challenge from the available exhibits, prepared witness questions, entity and account records, contemporaneous journals and recordings, McKinnon Letter, direct examination, preservation motions, or closing framework. The formal acts of advocacy did not confront the prosecution's proof on the disputed elements and therefore did not supply the adversarial testing the Sixth Amendment requires.

Under Strickland, and in the alternative if the Court concludes that counsel's formal participation removes G3-RA-012 from Cronic, the same facts establish cumulative deficient performance and actual prejudice. Bell v. Cone requires a complete failure rather than omissions confined to particular points. 535 U.S. 685, 696–98 (2002). G3-RA-012 satisfies that distinction by alleging a complete functional failure across preparation, exhibit use, witness examination, Movant's testimony, preservation, and closing, all directed to the prosecution's central theory. If the Court classifies those failures as specific attorney errors rather than a Cronic breakdown, their cumulative effect still undermines confidence in the verdict under Strickland, particularly in light of the sentencing court's finding that Movant's

testimony, if believed, "would have affected the outcome of the case." Sent'g Tr., ECF No. 235, PageID #2352.

CROSS-GROUND NOTATION:

Ground Three — G3-RA-012 THEORY:

Complete functional failure to subject the Government's core attribution, intent, and state-of-mind case to meaningful adversarial testing. Cronic is the primary theory for this entry because the failures, considered collectively and functionally, left the Government's central case without meaningful adversarial testing. This entry does not assert that each failure in G3-RA-001 through G3-RA-010 independently constitutes a Cronic violation. Strickland remains the governing independent framework for G3-RA-001 through G3-RA-010; G3-RA-011 remains the cumulative Strickland-prejudice anchor; and Strickland is pleaded alternatively within G3-RA-012 if the Court determines that counsel's formal participation forecloses presumed prejudice under Cronic.

Ground One (Appendix B): Napue/Giglio — G1-RA-013; G1-RA-015:

The failure to object to the Government's rebuttal argument — "not a shred of proof," "not a single item of proof," and "a single email or document" — is analytically continuous with the Ground One prosecutorial-misconduct theory. Counsel's failure to challenge or seek correction of that argument allowed the Government to exploit the documentary and testimonial void created by the unused journals, undeveloped recordings, restricted McKinnon Letter, and unorganized Chamblee-source evidence.

Ground Two (Appendix C): Pretrial IAC — G2-RA-001; G2-RA-003 through G2-RA-005; G2-RA-008 through G2-RA-011:

The trial failures consolidated in G3-RA-012 were downstream consequences of the absence of a pretrial-developed state-of-mind framework, witness plan, exhibit strategy, forensic review, and McKinnon Letter admissibility strategy. Those pretrial failures remain independently governed by Strickland.

Ground Five (Appendix F): Appellate IAC — G5-RA-001; G5-RA-007; G5-RA-009; G5-RA-010:

The trial-stage failure to preserve objections, offers of proof, curative requests, the McKinnon Letter issue, and the independent state-of-mind theory produced an appellate record lacking the developed rulings necessary for meaningful direct review and contributed to the selection or omission of appellate issues.

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Movant: Molly Irene McKinnon, Register No. 23265-032

APPENDIX E - Ground Four Record-Proof Appendix

Sentencing Ineffective Assistance of Counsel

SCOPE AND SELECTION OF RECORD EVIDENCE

Ground Four and this Appendix plead the post-trial and sentencing-stage ineffective-assistance claim, its operative factual theories, and the principal record evidence supporting relief. Counsel's failures involved more available factual corrections, objections, investigation, mitigation evidence, and challenges to the Government's presentation than could practicably be reproduced and analyzed in this Appendix. The entries below identify the clearest and most consequential instances establishing deficient performance and the resulting individual and cumulative prejudice. Additional instances reflected in the record are not unpleaded claims or separate grounds for relief; they provide further evidence supporting the Ground Four claim and factual theories pleaded in the Motion. If an evidentiary hearing is granted, Movant may present additional record-based and testimonial evidence supporting those pleaded allegations, subject to the scope of the Court's hearing order and applicable evidentiary requirements.

G4-RA-001 — Framework: Sentencing IAC / Hayworth's Critical-Stage Failure at Sentencing

RECORD CITATION / SOURCE:

McKinnon Decl. ¶¶60–63; Culberson Decl. ¶¶3–22; Strickland v. Washington, 466 U.S. 668, 690–91 (1984); Glover v. United States, 531 U.S. 198, 203–04 (2001)

EXACT QUOTE OR RECORD LANGUAGE:

McKinnon Decl. ¶60: "Following trial, I requested that Lewis withdraw due to a complete breakdown in communication and trust. I then retained Attorney Dan Carman ('Carman'), who,

despite being paid, failed to prepare for sentencing. The day before the sentencing hearing, I moved for the appointment of new counsel."

McKinnon Decl. ¶61: "The Court appointed George Scott Hayworth ('Hayworth') on the day before my original sentencing hearing in February 2023. On that date, Hayworth and I met for the first time and spoke briefly for approximately five minutes. My original sentencing hearing was continued and rescheduled to August 21, 2023."

McKinnon Decl. ¶62: "During the approximately six months between his appointment and the sentencing hearing, Hayworth met with me on only three occasions: August 3, 2023, August 8, 2023, and August 16, 2023 — all immediately before the hearing. These meetings are documented in a notarized letter I authored on August 14, 2023, and had notarized on August 16, 2023, while incarcerated at the Grayson County Detention Center."

McKinnon Decl. ¶63: "On August 8, 2023, I provided Hayworth with a comprehensive list of more than 25 specific objections to the Presentence Investigation Report ('PSR'). Hayworth disregarded substantially all of those objections. Hayworth filed only three perfunctory objections to the PSR and implied in filings that objections had already been raised by prior counsel Carman, even though, to my knowledge, many of the objections I identified had not been raised."

Culberson Decl. ¶5: "Based on my review of my sent email folder and related email chains, I estimate that I emailed Mr. Hayworth more than 50 times from February 2023 through August 2023. Many of these emails did not receive a response, and I often sent follow-up emails after receiving no response."

Culberson Decl. ¶10: "Because McKinnon reported that she could not reliably communicate directly with Mr. Hayworth by electronic messaging or by phone, I was forced to forward her

questions and requests to Mr. Hayworth by copying and pasting her messages into my emails. McKinnon's questions and requests were normally very detailed in what she needed from him to prepare for sentencing. Mr. Hayworth was normally non-responsive, and rarely answered any of her questions or requests for assistance in preparing for sentencing."

RECORD-PROOF POINT:

This entry functions as the framework anchor for Ground Four. The record establishes that sentencing was a critical stage at which Movant faced a guideline-calculated imprisonment term, mandatory objections to the PSR, and the only opportunity to present mitigation, allocution, and sentencing-specific corrections to the factual record. The constitutional obligation at sentencing is analytically distinct from the pretrial and trial obligations: by the time sentencing arrived, the duty was to review the PSR, develop and raise objections, challenge the guideline calculation, correct factual mischaracterizations, present mitigation, protect allocution, and communicate with the client about all critical sentencing decisions before and during the hearing.

The record establishes a cascade of structural failures that defines the Ground Four framework. First, a chaotic counsel transition — Lewis, then Carman, then Hayworth — in which Hayworth was appointed on the date of Movant's original February 2023 sentencing hearing, met Movant for the first time on that date in an approximately five-minute exchange, and then engaged in virtually no substantive preparation or client communication during the six months before the rescheduled August 21, 2023 sentencing hearing. McKinnon Decl. ¶¶60–62.

Second, a six-month preparation period in which Hayworth met with Movant on only three occasions, all immediately before the hearing, and failed to establish reliable communication channels — including failing to accept the electronic messaging invitation that would have allowed Movant to communicate with him while in custody. Culberson Decl. ¶6.

Third, the failure to act on the comprehensive list of more than 25 specific PSR objections Movant provided on August 8, 2023, resulting in only three perfunctory objections filed. McKinnon Decl. ¶63.

The individual failures identified in G4-RA-002 through G4-RA-010 each document a distinct sentencing-stage default: failure to challenge the loss calculation and 16-level enhancement (G4-RA-004, G4-RA-005); failure to object to the obstruction enhancement (G4-RA-006); failure to object to the "Ponzi-style returns" exhibit framing (G4-RA-007); failure to correct the ownership/role mischaracterization (G4-RA-008); failure to present meaningful mitigation and protect allocution (G4-RA-009); and failure to obtain informed consent before recommending a psychological evaluation (G4-RA-010). Each of those failures is documented by Movant's Declaration and the Culberson Declaration and traces to the same root cause: the complete absence of a prepared sentencing defense.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

Under Strickland v. Washington, 466 U.S. 668, 690–91 (1984), competent sentencing counsel is required to investigate the sentencing record, review the PSR, identify and raise objections, challenge the guideline calculation, correct factual mischaracterizations, present mitigation bearing on the § 3553(a) factors, protect the client's allocution rights, and communicate with the client about all critical sentencing decisions throughout the preparation period — not merely at the hearing itself. That is the complete duty at sentencing. Hayworth failed on every foundational requirement.

He was appointed the day before Movant's original February 2023 sentencing hearing — a replacement posture that required exceptional diligence to compensate for the structural disadvantage the transition had created — yet after a brief approximately five-minute exchange

on the appointment date, did not meet with Movant again until August 3, August 8, and August 16, 2023, the three meetings clustered in the eighteen days immediately before the final August 21, 2023 sentencing hearing. McKinnon Decl. ¶¶60–62. During the six-month preparation period, he failed to establish electronic messaging with Movant while she was in custody, rarely answered her phone calls, and did not respond substantively to more than 50 emails Culberson transmitted on Movant's behalf. Culberson Decl. ¶¶5–22. When Movant provided a comprehensive list of more than 25 specific PSR objections on August 8, 2023 — thirteen days before sentencing — Hayworth disregarded substantially all of them and filed only three perfunctory objections. McKinnon Decl. ¶63.

These foundational failures are not strategic choices made after reasonable investigation and deliberation. They reflect the complete absence of the investigation, preparation, and client communication that competent sentencing representation requires. See Wiggins v. Smith, 539 U.S. 510, 521 (2003). Because the preparation deficit was total, each of the specific individual failures documented in G4-RA-002 through G4-RA-010 was a direct and foreseeable consequence of the foundational failure to prepare — not an independent tactical choice.

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

All of the sentencing issues Hayworth failed to raise were available to him throughout the six-month preparation period and were specifically placed before him before the hearing. Movant provided Hayworth with a comprehensive list of more than 25 specific PSR objections on August 8, 2023. McKinnon Decl. ¶63. Culberson transmitted sentencing-related materials — including PSR corrections, drum-dryer valuation quotes, and character letters — to Hayworth in the weeks before the hearing. Culberson Decl. ¶¶18–19. Hayworth received the PSR by or around August 1, 2023 and had access to the trial record, Government exhibits, the sentencing

record, and Government-produced materials. Culberson Decl. ¶¶14–18. The sentencing record and Government's sentencing memorandum were filed in the ordinary course of the criminal docket and available for Hayworth's review throughout his appointment. Movant also provided Hayworth with a detailed notarized letter documenting meeting notes, recaps, and outstanding sentencing concerns, executed on August 14, 2023 and notarized on August 16, 2023. McKinnon Decl. ¶62. Every issue identified in G4-RA-003 through G4-RA-010 was a matter within the PSR, the sentencing record, or the materials Movant and Culberson provided directly to Hayworth before the hearing. Counsel had both notice and time to act; his failure was not caused by lack of available information.

MATERIALITY / PREJUDICE:

Under Glover v. United States, 531 U.S. 198, 203–04 (2001), any increase in actual imprisonment caused by counsel's errors satisfies the Strickland prejudice standard — no threshold minimum is required. At sentencing, Movant faced a guideline calculation built on a disputed loss amount; a 16-level enhancement premised on a threshold the available loss-offset evidence could have challenged; an obstruction enhancement premised primarily on a finding that McKinnon's trial testimony about duress was perjured — despite this Court having prohibited that very testimony before it was given — and secondarily on a disputed CFO-title characterization that the entity formation records and NGI account signature evidence directly contradicted; a "Ponzi-style returns" exhibit for which no Ponzi scheme was charged; and a Government sentencing memorandum attributing an ownership interest to Movant that Government exhibits contradicted. Had counsel successfully challenged any one of those issues, the advisory guideline range or the § 3553(a) analysis could have been materially different — and under Glover, any resulting reduction in imprisonment satisfies prejudice.

The prejudice is not limited to guideline calculations. At the sentencing hearing, the Court engaged directly with Hayworth's mitigation presentation, asking him to identify evidentiary support — police reports, court documents, or other documentation — for the abuse and background claims, and to explain how that history was causally connected to the § 3553(a) analysis. Sent'g Tr., ECF No. 235, PageID §§2355–2357. The Court specifically asked whether the claimed abuse history caused McKinnon to be more inclined to commit criminal conduct, or whether it bore only on rehabilitation — questions that a competent, prepared attorney would have anticipated and addressed with developed, documented mitigation. Id. Hayworth acknowledged he had no court documents, only letters from McKinnon's sisters, and was unable to establish the evidentiary foundation or causal connection the Court sought. Id. Hayworth's refusal to submit Movant's sentencing letter — drafted at his own request — and his failure to present meaningful mitigation deprived the Court of that very information at the precise moment the Court affirmatively sought it. McKinnon Decl. ¶68. There is a reasonable probability that a properly prepared, record-corrected, mitigation-supported sentencing presentation — one in which the guideline calculation was contested, the factual mischaracterizations were corrected, and the Court received Movant's voice and background — would have produced a materially different sentence under Strickland and Glover. Because the failures documented in G4-RA-002 through G4-RA-010 all trace to the same foundational deficit — the complete absence of a prepared sentencing defense — the prejudice from each individual failure is both independently sufficient and cumulatively reinforcing. See G4-RA-011 (cumulative sentencing prejudice anchor).

CROSS-GROUND NOTATION:

Ground Two (App. C, G2-RA-009): The Ground Two sentencing-framework anchor cross-references this entry directly — both entries establish that sentencing constituted a critical constitutional stage at which Movant faced a guideline-calculated imprisonment term, mandatory PSR objections, and the sole opportunity for

mitigation, allocution, and correction of the factual record; the sentencing-IAC framework in Ground Four is analytically distinct from, and cumulative with, the trial-IAC sentencing deficiencies documented in Ground Two. See App. C, G2-RA-009.

Ground Three (App. D, G3-RA-001): The Ground Three sentencing-framework anchor documents the constitutional critical-stage obligations applicable to Hayworth's sentencing representation — the Strickland duty to investigate, prepare, communicate, and present a competent sentencing defense bridges the pretrial-IAC failures in Ground Three to the sentencing-IAC failures in Ground Four. See App. D, G3-RA-001.

Ground One (App. B, G1-RA-001): The foundational IAC framework anchor establishes the Strickland performance and prejudice standards applicable across pretrial, trial, and sentencing stages and provides the evidentiary and attribution baseline on which the Ground Four sentencing-framework analysis rests. See App. B, G1-RA-001.

G4-RA-002 — Critical-Stage Failure: Counsel Transition and Last-Minute Appointment (Lewis → Carman → Hayworth)

RECORD CITATION / SOURCE:

McKinnon Decl. ¶¶60–63; Culberson Decl. ¶¶3–22; Strickland v. Washington, 466 U.S. 668, 690–91 (1984); Glover v. United States, 531 U.S. 198, 203–04 (2001)

EXACT QUOTE OR RECORD LANGUAGE:

McKinnon Decl. ¶60: "Following trial, I requested that Lewis withdraw due to a complete breakdown in communication and trust. I then retained Attorney Dan Carman ('Carman'), who, despite being paid, failed to prepare for sentencing. The day before the sentencing hearing, I moved for the appointment of new counsel."

McKinnon Decl. ¶61: "The Court appointed George Scott Hayworth ('Hayworth') on the day before my original sentencing hearing in February 2023. On that date, Hayworth and I met for the first time and spoke briefly for approximately five minutes. My original sentencing hearing was continued and rescheduled to August 21, 2023."

McKinnon Decl. ¶62: "During the approximately six months between his appointment and the sentencing hearing, Hayworth met with me on only three occasions: August 3, 2023, August 8, 2023, and August 16, 2023 — all immediately before the hearing. These meetings are

documented in a notarized letter I authored on August 14, 2023, and had notarized on August 16, 2023, while incarcerated at the Grayson County Detention Center."

Culberson Decl. ¶6: "During this period, McKinnon's ability to communicate while in custody was limited. She could communicate through attorney telephone calls or video calls. Electronic messaging (emails) required Mr. Hayworth to complete required steps before electronic messaging could occur. McKinnon repeatedly relayed to me that Mr. Hayworth neglected to setup or accept the 'invitation' to set up email messaging with her."

Culberson Decl. ¶7: "My first communication with Mr. Hayworth was on February 6, 2023. . . . In his email reply dated February 6, 2023, Mr. Hayworth stated that McKinnon is 'always free to call my cell number at any time and I will take her call if I am able.' To my knowledge, Mr. Hayworth rarely if ever accepted McKinnon's phone calls during the 6 months preceding her sentencing on August 21, 2023."

Culberson Decl. ¶8: "On April 13, 2023, I emailed Mr. Hayworth regarding communication issues and forwarded a message from McKinnon. In that email I wrote, among other things: 'Molly has no way to email you her concerns and requests since you have not accepted her "invite" to be on the approved list for emails. She has not been able to reach you via phone either. And I believe you have spoken with her only once since 2/3/23.'"

Culberson Decl. ¶12: "On June 12, 2023, Mr. Hayworth replied by email stating: 'Barb — I am still Molly's atty & I will be talking to her soon.' No meetings or phone calls between Mr. Hayworth and McKinnon occurred in June or July."

Culberson Decl. ¶21: "McKinnon told me that she had no direct communication with Mr. Hayworth between May 11, 2023 and the in-person visit referenced in Mr. Hayworth's August 2, 2023 email (visit planned for August 3, 2023)."

RECORD-PROOF POINT:

The record establishes a three-stage counsel-transition cascade — Lewis, then Carman, then Hayworth — that culminated in Movant appearing at the August 21, 2023 sentencing hearing with an attorney who, despite having been appointed on the original February 2023 sentencing date, had engaged in virtually no substantive preparation or client communication during the six-month intervening period. McKinnon Decl. ¶¶60–62. On the original February 2023 sentencing date, Hayworth and Movant met for the first time and spoke briefly for approximately five minutes — an exchange that did not constitute any meaningful sentencing preparation and was the entirety of Hayworth's client contact until August 3, 2023.

The original sentencing date was continued and rescheduled to August 21, 2023, providing Hayworth with approximately six months in which a diligent replacement counsel could have established reliable communication with a detained client, obtained and reviewed the sentencing record, identified and developed objections to the PSR, and prepared the defense the counsel-transition cascade had left incomplete. The record establishes that Hayworth used none of it. Instead of using the six-month appointment period to investigate, prepare, and communicate, Hayworth met with Movant on only three occasions, all clustered in the eighteen-day window immediately before the August 21, 2023 sentencing hearing. McKinnon Decl. ¶62.

The Culberson Declaration independently corroborates the preparation failure through a documented contemporaneous email record. Culberson transmitted more than 50 emails to Hayworth between February and August 2023 — many of which went unanswered — relaying Movant's detailed questions, requests for basic case materials, PSR objections, and sentencing concerns. Culberson Decl. ¶5. Hayworth never accepted the electronic messaging invitation that would have allowed Movant to communicate directly with him while in custody, leaving

Culberson as the relay intermediary for Movant's communications throughout the preparation period. Culberson Decl. ¶6. As of April 13, 2023 — five months before sentencing — the documented record reflects that Hayworth had spoken with Movant only once since his appointment in early February. Culberson Decl. ¶8. No meetings or calls occurred in June or July 2023. Culberson Decl. ¶12.

As of August 1, 2023, Movant had not yet received the PSR — a foundational sentencing document — despite Hayworth's appointment having begun approximately six months earlier. Culberson Decl. ¶¶14–18. The chronological record is precise: Movant first received the PSR approximately August 1, received it with the trial transcript available only in part because the detention facility refused to provide the transcript due to its size (Culberson Decl. ¶16), provided Hayworth with comprehensive PSR corrections and objections on August 8 (McKinnon Decl. ¶63; Culberson Decl. ¶18), met with Hayworth in person on August 3, August 8, and August 16 (McKinnon Decl. ¶62), and appeared at sentencing on August 21, 2023. That thirteen-day window between receiving the PSR and appearing at sentencing — with a detained client who lacked reliable direct communication access — was constitutionally inadequate preparation time for a sentencing proceeding at which Movant faced a disputed 16-level guideline enhancement, a contested obstruction enhancement, a challenged ownership mischaracterization, and a loss amount the available evidence could have contested.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

Under Strickland, 466 U.S. at 690–91, the standard of competence applies equally to replacement counsel. A court-appointed replacement attorney is not excused from the constitutional obligation to investigate, prepare, and communicate simply because the transition that preceded the appointment was disruptive. To the contrary, the replacement posture required

Hayworth to work with heightened urgency — to establish communication immediately, obtain the PSR and trial record promptly, identify objections early in the appointment period, and provide Movant with the sustained preparation necessary to contest a guideline calculation, correct factual mischaracterizations, and present mitigation.

Hayworth failed on every foundational requirement of that heightened obligation. He did not accept the electronic messaging invitation that would have allowed Movant to communicate with him while in custody throughout the preparation period. Culberson Decl. ¶6. He rarely accepted her phone calls. Culberson Decl. ¶7. He did not meet with Movant in the first five months of his appointment — a period during which Movant's detailed questions and sentencing concerns were going unanswered despite more than 50 transmitted emails. Culberson Decl. ¶¶5, 8, 12. He did not ensure Movant received the PSR until approximately August 1, 2023. Culberson Decl. ¶¶14–18. He did not meet with Movant in June or July 2023. Culberson Decl. ¶12. He did not act on the comprehensive list of more than 25 specific PSR objections Movant provided on August 8, 2023. McKinnon Decl. ¶63.

These failures are not attributable to the transition cascade itself — they are attributable to Hayworth's failure to take the basic, affirmative steps that competent replacement counsel must take upon appointment: establish a communication channel, obtain the record, identify objections, meet with the client in a timely and sustained manner, and prepare adequately for the hearing. None of those steps required special resources or favorable circumstances. They required sustained, diligent effort that Hayworth did not provide.

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

Hayworth had access to the full sentencing record throughout his appointment. The criminal docket, Government's sentencing memorandum, PSR, trial transcripts, and Government exhibits

were available to him from the date of his appointment. Culberson began communicating with Hayworth on February 6, 2023 — the same month as his appointment — and consistently transmitted Movant's detailed sentencing concerns, objections, and requests for materials throughout the preparation period. Culberson Decl. ¶¶3–22. The communication barriers Hayworth created — by failing to accept the electronic messaging invitation and rarely accepting Movant's phone calls — were within his direct control to resolve at any time. Culberson Decl. ¶6. As of April 13, 2023, Hayworth had received written documentation of the communication failures and explicit notice that Movant had no reliable direct channel to reach him. Culberson Decl. ¶8. Hayworth had more than five months from that notice to correct the communication deficiency before sentencing. He did not do so. By August 8, 2023, Hayworth had received Movant's notarized letter documenting meeting notes and sentencing concerns (McKinnon Decl. ¶62), a comprehensive list of more than 25 specific PSR objections (McKinnon Decl. ¶63), drum-dryer valuation quotes supporting the loss-offset theory (Culberson Decl. ¶18), and the PSR itself (Culberson Decl. ¶18). Every piece of information needed to conduct a competent sentencing defense was in Hayworth's possession thirteen days before the hearing. The preparation failure was not caused by unavailability of information; it was caused by Hayworth's failure to act on the information he received throughout the six-month appointment period.

MATERIALITY / PREJUDICE:

Under Glover, 531 U.S. at 203–04, any increase in actual imprisonment attributable to counsel's errors satisfies Strickland prejudice. The preparation failure documented in this entry is not an abstract deficiency — it is the direct structural cause of each of the specific sentencing-stage failures identified in G4-RA-003 through G4-RA-010. Hayworth's failure to establish communication, meet with Movant in a sustained and timely manner, and act on the objections

and materials provided to him meant that the loss-calculation challenge was never developed (G4-RA-004, G4-RA-005), the obstruction enhancement was never contested (G4-RA-006), the "Ponzi-style returns" exhibit was never challenged (G4-RA-007), the ownership mischaracterization was never corrected (G4-RA-008), meaningful mitigation and the sentencing letter were never presented (G4-RA-009), and the psychological evaluation was authorized without Movant's informed consent (G4-RA-010). Each of those individual failures independently satisfies Glover prejudice because each contributed to a sentencing outcome that may have been materially different with competent preparation. The cumulative prejudice from all of them — flowing directly from the foundational communication and preparation failure documented here — is analyzed in G4-RA-011. There is a reasonable probability that a competent replacement attorney — one who established communication promptly, met with the client in a sustained manner throughout the preparation period, and acted on the comprehensive PSR objections and supporting materials provided — would have presented a materially different sentencing defense and produced a materially different result. Strickland, 466 U.S. at 694; Glover, 531 U.S. at 203–04.

CROSS-GROUND NOTATION:

Ground Three (App. D, G3-RA-001): The Ground Three sentencing-framework anchor documents the constitutional obligation applicable to replacement counsel — Hayworth's duty upon appointment was heightened precisely because the Lewis-Carman-Hayworth transition cascade created structural disadvantages that only accelerated, diligent preparation could overcome; that obligation is the same critical-stage standard established in Ground Three. See App. D, G3-RA-001.

Ground Two (App. C, G2-RA-009): The Ground Two sentencing-framework anchor cross-references G4-RA-001, which functions as the overarching framework anchor for the counsel-transition and preparation failures documented in this entry and in G4-RA-003 through G4-RA-010. See App. C, G2-RA-009 (via G4-RA-001).

G4-RA-003 — Failure to Investigate, Prepare, and Communicate: Hayworth's Sentencing Preparation Deficiency

RECORD CITATION / SOURCE:

McKinnon Decl. ¶¶62–63, 67, 69–72; Culberson Decl. ¶¶5–22; Movant Ex. 24 [Tab 30] (McKinnon Notarized Letter 08/16/2023 — notarized letter authored August 14, 2023, notarized August 16, 2023, containing meeting notes and recaps of Movant's meetings with Hayworth and depicting months-long delays and Hayworth's deficient sentencing preparation); Movant Ex. E [Tab 5] (Culberson Declaration)

EXACT QUOTE OR RECORD LANGUAGE:

McKinnon Decl. ¶62: "During the approximately six months between his appointment and the sentencing hearing, Hayworth met with me on only three occasions: August 3, 2023, August 8, 2023, and August 16, 2023 — all immediately before the hearing. These meetings are documented in a notarized letter I authored on August 14, 2023, and had notarized on August 16, 2023, while incarcerated at the Grayson County Detention Center. That letter also contains my meeting notes and recaps for each of the three meetings."

McKinnon Decl. ¶63: "On August 8, 2023, I provided Hayworth with a comprehensive list of more than 25 specific objections to the Presentence Investigation Report ('PSR'). Hayworth disregarded substantially all of those objections. Hayworth filed only three perfunctory objections to the PSR and implied in filings that objections had already been raised by prior counsel Carman, even though, to my knowledge, many of the objections I identified had not been raised."

McKinnon Decl. ¶67: "I requested that Hayworth file a motion for release due to my inability to prepare adequately for sentencing while incarcerated. Hayworth refused, stating his belief that Judge Reeves would deny it."

McKinnon Decl. ¶70: "Hayworth told me he would not request downward departures and refused to argue for mitigation related to diminished intent, coercion, or my personal history.

Hayworth stated that he did not believe Judge Reeves would grant such requests. His refusal was based not on legal merit but on his personal assessment of the judge's likely reaction."

McKinnon Decl. ¶71: "Hayworth told me that Judge Reeves 'automatically' applies the obstruction-of-justice enhancement to all defendants who proceed to trial. That representation was incorrect. Hayworth made no objection to the enhancement at sentencing."

McKinnon Decl. ¶72: "I repeatedly requested that Hayworth obtain the transcript of the hearing regarding Carman's unpreparedness and withdrawal. Hayworth refused, stating that it was 'illegal' for him to obtain or provide the transcript. That statement was incorrect, and Hayworth's refusal deprived me of access to a record that could have supported my post-conviction claims."

Culberson Decl. ¶18: "On August 8–9, 2023, I emailed Mr. Hayworth sentencing-related materials on McKinnon's behalf, which included a scanned copy of McKinnon's original PSR with dozens of McKinnon's hand-written corrections/objections and questions on it. Mr. Hayworth replied on August 9, 2023, stating: 'Hi Barbara — I can't open this. Please reformat & send again.' The document I sent him was a simple .pdf file that could be opened with any PDF reader."

Culberson Decl. ¶19: "A week before sentencing, on August 15, 2023, I received an email request from Mr. Hayworth asking me to provide character letters for McKinnon's sentencing. On August 15, 2023, I responded and provided character letters as attachments, stating that the letters had been provided months earlier to prior counsel."

Culberson Decl. ¶18: "In that same email [August 8–9, 2023], I also stated that I was attaching quotes for drum dryers . . . and that the Shumard Group and possibly Deware had possession of the equipment. The drum dryer quotes were from 2 different companies: Vulcan Drying Systems and Surplus Record Dealer. The quotes represented a cross section of 3 different manufacturers

of drum dryers: Vulcan, Sprout, and Earth Care Products. The quotes had company names and contact information on them that Mr. Hayworth could use to easily obtain his own independent quotes."

Sent'g Tr., ECF No. 235, PageID §2350: At the commencement of the sentencing hearing, the Court stated: "The Court previously resolved a number of objections that affected the guideline calculations in the case. I believe there are no other objections remaining to be resolved with respect to the guideline issues; therefore, I will adopt the findings that are contained in the report as well as those guideline calculations." This confirms on the transcript record that Hayworth had raised no pending guideline objections at or before the sentencing proceeding, and that all PSR guideline calculations were adopted without challenge.

Sent'g Tr., ECF No. 235, PageID §2403: At the close of the sentencing hearing, when the Court asked counsel to state any additional objections to the sentence or under United States v. Bostic, Hayworth responded: "Your Honor, no legal objections, no Bostic objections, and we do not request additional findings of fact." This confirms on the transcript record that Hayworth raised zero objections to any component of the sentence — no guideline objections, no enhancement objections, no mitigation-related objections, and no Bostic preservation of any issue for appeal.

RECORD-PROOF POINT:

The record establishes the specific content of Hayworth's preparation failure during the six-month period preceding sentencing. This entry documents what Hayworth failed to do with the time and materials he had — distinct from the structural transition failures documented in G4-RA-002. The record identifies five specific and documentable categories of preparation failure. First, the 25-objection disregard. Movant provided Hayworth with a comprehensive list of more than 25 specific PSR objections on August 8, 2023. McKinnon Decl. ¶63. Hayworth filed only

three perfunctory objections and falsely implied in filings that prior counsel Carman had already raised others — a misrepresentation that, if accurate, foreclosed objections Movant specifically identified and that had not in fact been raised. Id. The 25+ objection list encompassed the loss-calculation challenge, the obstruction enhancement, the ownership mischaracterization, the "Ponzi-style returns" characterization, and additional factual inaccuracies across the sentencing record. Each of those issues is separately documented in G4-RA-004 through G4-RA-008.

Second, the failure to act on the drum-dryer valuation evidence. Culberson transmitted drum-dryer quotes to Hayworth on August 8–9, 2023, specifically identifying the quotes as reflecting the value of equipment that could offset victim losses, providing company names and contact information Hayworth could use to obtain independent verification, and identifying the Shumard Group and possibly Deware as having possession of the equipment. Culberson Decl. ¶18. Hayworth received that documentation and took no action on the loss-offset theory at sentencing. McKinnon Decl. ¶69.

Third, the last-minute character-letter request. Hayworth did not request character letters until August 15, 2023 — six days before sentencing — despite having been appointed approximately six months earlier. Culberson Decl. ¶19. Culberson's response confirmed the letters had been provided to prior counsel months earlier. Id. The last-minute request reflects the absence of mitigation preparation throughout the appointment period.

Fourth, the incorrect legal representations. Hayworth told Movant that the obstruction-of-justice enhancement was "automatically" applied by Judge Reeves to all defendants who proceeded to trial — a representation that was incorrect and that caused Movant to understand a meritorious objection as legally foreclosed. McKinnon Decl. ¶71. Hayworth refused downward departure and mitigation arguments based on his personal assessment of the judge's likely reaction rather than

any legal evaluation of the arguments' merits. McKinnon Decl. ¶70. Hayworth told Movant it was "illegal" for him to obtain the Carman withdrawal hearing transcript — also incorrect. McKinnon Decl. ¶72. Each misrepresentation deprived Movant of an informed basis on which to evaluate her sentencing position and options.

Fifth, the PDF refusal. Hayworth claimed he could not open a standard PDF file containing Movant's PSR corrections and objections — a document Culberson had prepared for transmittal — and requested reformatting rather than immediately resolving the issue by any available means. Culberson Decl. ¶18. This technical barrier, however minor in isolation, further delayed Hayworth's receipt of the comprehensive PSR objection record in the thirteen-day window between Movant's provision of the materials and the sentencing hearing.

Hayworth's failure to raise any objection to the obstruction enhancement is confirmed on the transcript record by both the sentencing court's statement that there was "not a specific objection to that enhancement" at PageID §2352, and by Hayworth's own statement at the close of the hearing that he had "no legal objections, no Bostic objections." Sent'g Tr., ECF No. 235, PageID §§2352, 2403.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

Under Strickland, 466 U.S. at 690–91, competent sentencing counsel is required to conduct a reasonable investigation of the PSR, the guideline calculation, the Government's sentencing memorandum, and the available factual and legal objection bases — and to make decisions about which objections to raise after that investigation, not in lieu of it. Hayworth did not conduct a reasonable investigation. The record establishes that his preparation was reactive, compressed into the final thirteen days before sentencing, and reliant on Movant and Culberson to supply the

materials and objections that competent counsel was obligated to independently identify and develop.

Competent sentencing counsel was required to: (a) independently review the PSR upon receipt, identify all legally supportable objections, and raise them in a timely manner rather than relying on a client-generated objection list as a substitute for independent preparation; (b) investigate the loss-calculation issue using the drum-dryer valuation documentation and NGEP Operating Agreement liquidation obligation provided by Movant and Culberson, obtain independent verification if needed, and present the loss-offset theory at sentencing; (c) prepare and organize mitigation materials throughout the six-month appointment period — not request character letters six days before the hearing; (d) provide Movant with legally accurate representations about the obstruction enhancement, downward departures, and the availability of hearing transcripts so that Movant could make informed decisions about her sentencing strategy; and (e) preserve all meritorious objections on the record — including the obstruction enhancement, the "Ponzi-style returns" framing, and the ownership mischaracterization — regardless of counsel's personal assessment of the judge's likely response, because the obligation to raise and preserve meritorious objections is not conditioned on a favorable prediction of outcome.

Hayworth failed on each of these requirements. His representations about obstruction being "automatic," about downward departures being futile, and about obtaining the Carman transcript being "illegal" were each factually incorrect — and each had the direct effect of preventing Movant from making informed decisions about her sentencing options. An attorney's personal assessment that a judge will rule unfavorably is not a legally adequate basis for failing to raise a meritorious objection, because that decision belongs to the defendant after receiving competent

legal advice, not to counsel after receiving none. See Strickland, 466 U.S. at 690–91; Wiggins v. Smith, 539 U.S. 510, 521 (2003).

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

Every category of sentencing objection Hayworth failed to raise was available to him in the materials already in his possession before the hearing. The PSR was provided to Movant approximately August 1, 2023, and was available to Hayworth throughout his appointment. Culberson Decl. ¶¶14–18. The 25+ specific PSR objections were transmitted to Hayworth on August 8, 2023 — thirteen days before sentencing — in detailed written form with Movant's hand-written corrections on the PSR itself. McKinnon Decl. ¶63; Culberson Decl. ¶18. The drum-dryer valuation quotes supporting the loss-offset theory were transmitted to Hayworth on August 8–9, 2023 with company names, contact information, and an explanation of the liquidation context. Culberson Decl. ¶18. The Government's sentencing memorandum and sentencing exhibits — including the "Ponzi-style returns" exhibit — were filed on the criminal docket and available to Hayworth in the ordinary course of the proceeding. The trial record underlying the Court's actual obstruction finding — which rested on the Court's characterization of Movant's testimony regarding duress and coercion at trial, Sent'g Tr., ECF No. 235, PageID §2352, not the CFO-title premise identified in PSR ¶36 — was available in the trial transcript Hayworth received or had access to. Culberson Decl. ¶¶14–18. The NGEP Operating Agreement (Movant Ex. 20 [Tab 26] / Gov't Ex. 703) and entity formation records contradicting the 49% ownership premise were Government exhibit materials available in the trial record. Hayworth also had direct notice from Culberson's ongoing email communications throughout the preparation period that Movant had extensive, specific sentencing concerns requiring preparation

and response. Culberson Decl. ¶¶5–22. No information needed to conduct a competent sentencing defense was unavailable to Hayworth before the hearing.

MATERIALITY / PREJUDICE:

Under Glover, 531 U.S. at 203–04, any increase in actual imprisonment attributable to counsel's errors satisfies prejudice. The preparation failure documented in this entry is the operational cause of every specific sentencing-stage failure identified in G4-RA-004 through G4-RA-010. Had Hayworth investigated and acted on the 25+ PSR objections Movant provided, developed the loss-offset theory from the drum-dryer documentation provided, raised the obstruction objection rather than misrepresenting it as automatic, sought downward departures and mitigation rather than foreclosing them based on a personal judicial prediction, and correctly advised Movant about the legal availability of sentencing options and records — there is a reasonable probability that the advisory guideline range, the § 3553(a) analysis, or the ultimate sentence would have been materially different.

The incorrect legal representations Hayworth made are independently material to the prejudice analysis because each deprived Movant of an informed basis on which to evaluate and direct her sentencing defense. When counsel's misrepresentation of law causes a defendant to forgo a meritorious option, the resulting prejudice is not merely speculative — it is a direct consequence of constitutionally deficient advice at a critical stage. Hayworth's statement that obstruction was "automatic" for trial defendants was incorrect; his statement that pursuing downward departures was futile was not a legal evaluation but a personal prediction made without meaningful preparation; and his statement that obtaining the Carman withdrawal transcript was "illegal" was simply false. McKinnon Decl. ¶¶70–72. Any one of those misrepresentations, had it been corrected, could have altered the sentencing record and outcome. Taken together — and

evaluated cumulatively alongside the individual failures in G4-RA-004 through G4-RA-010 — they establish a reasonable probability that a competent, prepared sentencing defense would have produced a materially different result. Strickland, 466 U.S. at 694; Glover, 531 U.S. at 203–04. See G4-RA-011 (cumulative sentencing prejudice anchor).

CROSS-GROUND NOTATION:

Ground Three (App. D, G3-RA-001): The Ground Three sentencing-framework anchor establishes the Strickland obligation of competent investigation, preparation, and client communication at sentencing — the five specific categories of preparation failure documented in this entry (25-objection disregard, drum-dryer evidence, last-minute character-letter request, incorrect legal representations, PDF refusal) each reflect the absence of the investigation that the same constitutional standard required. See App. D, G3-RA-001.

Ground Two (App. C, G2-RA-009): The Ground Two sentencing-framework anchor cross-references this entry's foundational companion, G4-RA-001 — the preparation failures documented here are the operational cause of every specific sentencing-stage failure identified in G4-RA-004 through G4-RA-010. See App. C, G2-RA-009 (via G4-RA-001).

G4-RA-004 — Failure to Challenge Loss Calculation and 16-Level Enhancement ($2,479,240.90 / $1,500,000 Threshold)

RECORD CITATION / SOURCE:

McKinnon Decl. ¶¶63, 69; Culberson Decl. ¶18; Movant Ex. 71 [Tab 77] (Rotary Drum Dryer Quotes); Movant Ex. 20 (Gov't Ex. 703 — NGEP Operating Agreement); PSR ¶¶33, 41; Sent'g Tr., ECF No. 235, PageID §2351; Strickland v. Washington, 466 U.S. 668, 690–91 (1984); Glover v. United States, 531 U.S. 198, 203–04 (2001)

EXACT QUOTE OR RECORD LANGUAGE:

McKinnon Decl. ¶69: "I provided Hayworth with documentation supporting a loss-calculation objection — specifically, several quotes for comparable rotary drum dryers reflecting the value of equipment that was to be liquidated pursuant to the Operating Agreement. Hayworth failed to raise this argument at sentencing, even though it could have reduced the loss calculation below the $1,500,000 threshold and avoided or reduced the 16-level enhancement."

McKinnon Decl. ¶63: "On August 8, 2023, I provided Hayworth with a comprehensive list of more than 25 specific objections to the Presentence Investigation Report ('PSR'). Hayworth disregarded substantially all of those objections. Hayworth filed only three perfunctory objections to the PSR and implied in filings that objections had already been raised by prior counsel Carman, even though, to my knowledge, many of the objections I identified had not been raised."

Culberson Decl. ¶18: "In that same email [August 8–9, 2023], I also stated that I was attaching quotes for drum dryers, which was the type of equipment Vance built and was used to make bio-char, calcined coal, and related products for the business. I stated the dryers were worth '1.5 Million on the low end and probably 4–5 million on the high end,' and that the Shumard Group and possibly Deware had possession of the equipment. The drum dryer quotes were from 2 different companies: Vulcan Drying Systems and Surplus Record Dealer. The quotes represented a cross section of 3 different manufacturers of drum dryers: Vulcan, Sprout, and Earth Care Products. The quotes had company names and contact information on them that Mr. Hayworth could use to easily obtain his own independent quotes."

Culberson Decl. ¶18: "On August 8–9, 2023, I emailed Mr. Hayworth sentencing-related materials on McKinnon's behalf, which included a scanned copy of McKinnon's original PSR with dozens of McKinnon's hand-written corrections/objections and questions on it."

PSR ¶¶33, 41: The PSR attributed a total loss amount of $2,479,240.90 and applied a 16-level upward adjustment because the loss exceeded $1,500,000.

Sent'g Tr., ECF No. 235, PageID §2351: The sentencing court applied the PSR's guideline loss calculation at sentencing.

RECORD-PROOF POINT:

The record establishes two distinct and independently documentable components of the loss-calculation failure: the guideline-threshold structure that made the loss objection outcome-material, and the documentary basis for the loss-offset theory that Hayworth received and failed to use.

On the first component, the PSR attributed a total loss amount of $2,479,240.90 and applied a 16-level upward guideline adjustment based on the loss exceeding $1,500,000. PSR ¶¶33, 41. The sentencing court applied that guideline calculation. Sent'g Tr., ECF No. 235, PageID §2351. The 16-level enhancement is not a minor guideline adjustment — it is a major upward driver of the advisory range. The loss threshold structure meant that a successful challenge reducing the attributable loss below $1,500,000 would have eliminated or materially reduced the 16-level enhancement, producing a lower advisory guideline range before any § 3553(a) analysis. The loss-calculation issue was therefore not collateral — it was the single most structurally significant component of the guideline calculation Movant faced.

On the second component, the documentary basis for the loss-offset theory was in Hayworth's possession before the hearing. Movant specifically identified the loss-calculation objection as one of the 25+ issues she provided to Hayworth on August 8, 2023. McKinnon Decl. ¶63. Culberson transmitted drum-dryer valuation quotes on August 8–9, 2023, identifying the equipment as worth between $1,500,000 on the low end and $4–5 million on the high end, identifying the Shumard Group and possibly Deware as having possession of the equipment, and providing company names and contact information Hayworth could use to obtain independent verification. Culberson Decl. ¶18. The NGEP Operating Agreement (Movant Ex. 20 / Gov't Ex. 703) provided the contractual basis for the liquidation obligation — the agreement's terms required Chamblee to liquidate company assets, establishing the legal mechanism by which the

equipment's value was relevant to the loss calculation. McKinnon Decl. ¶69. The rotary drum dryer quotes (Movant Ex. 71) provided comparable market-value documentation for the equipment itself. Id. The offset theory was therefore not speculative — it was grounded in a specific contractual obligation, specific equipment in identified possession, and specific valuation documentation, all of which was transmitted to Hayworth before the sentencing hearing.

The sentencing court's adoption of all guideline calculations at the commencement of the hearing without any pending objection confirms that Hayworth presented no loss-calculation challenge. Sent'g Tr., ECF No. 235, PageID §2350.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

Under Strickland, 466 U.S. at 690–91, competent sentencing counsel is required to investigate the PSR's loss calculation, identify legally supportable objections to the loss amount and applicable guideline enhancements, and present those objections at sentencing — not merely defer to the PSR's figures without inquiry. Where the client has provided specific documentation supporting a loss-offset theory capable of moving the loss below a guideline threshold, the failure to investigate and present that theory is not a strategic choice — it is the failure to investigate that the Strickland standard directly addresses. See Wiggins v. Smith, 539 U.S. 510, 521 (2003).

Competent sentencing counsel was required to: (a) independently review the PSR's loss calculation and identify the $1,500,000 threshold as the critical guideline breakpoint — the point at which a successful offset challenge would eliminate or materially reduce the 16-level enhancement; (b) investigate the loss-offset theory using the drum-dryer valuation documentation Culberson transmitted on August 8–9, 2023, including the company contact

information Hayworth could use to obtain independent verification of comparable equipment values; (c) review the NGEP Operating Agreement (Movant Ex. 20 / Gov't Ex. 703) to identify and develop the contractual liquidation obligation that provided the legal basis for the offset theory; (d) raise a specific, documented loss-calculation objection at sentencing challenging the PSR's $2,479,240.90 figure and arguing that the attributable loss should be reduced by the value of equipment subject to liquidation under the Operating Agreement; and (e) present the rotary drum dryer quotes (Movant Ex. 71) and the NGEP Operating Agreement (Movant Ex. 20) as the evidentiary and contractual basis for the offset, giving the sentencing court a documentary record on which to evaluate the objection.

Hayworth failed on every one of these requirements. He received the documentation supporting the loss-offset theory on August 8–9, 2023, had thirteen days before sentencing to investigate and develop it, and raised no meaningful loss-calculation objection at sentencing. McKinnon Decl. ¶69. The failure was not a reasonable strategic judgment — it was the failure to investigate and act on specific, concrete documentation the client had provided.

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

The entire documentary basis for the loss-offset theory was in Hayworth's possession before the sentencing hearing. Culberson transmitted the drum-dryer valuation quotes on August 8–9, 2023, with an explanation of the equipment type, the valuation range ($1,500,000 low end to $4–5 million high end), the identity of the parties in possession of the equipment (Shumard Group and possibly Deware), and the names and contact information of the quote-source companies available for independent follow-up. Culberson Decl. ¶18. The NGEP Operating Agreement (Movant Ex. 20 / Gov't Ex. 703) — the Government's own trial exhibit — was in the trial record and available to Hayworth, and its liquidation obligation terms directly supported the offset

theory's legal basis. The rotary drum dryer quotes (Movant Ex. 71) were transmitted to Hayworth as attachments to Culberson's August 8–9, 2023 email. Id. Movant specifically identified the loss-calculation objection as part of the 25+ specific PSR objections she provided on August 8, 2023. McKinnon Decl. ¶¶63, 69. Hayworth therefore had: specific notice that Movant identified the loss calculation as a meritorious objection; the contractual basis for the offset theory in the form of a Government trial exhibit; the market-value documentation in the form of comparable equipment quotes from identifiable sources; and contact information to independently verify the valuation if he chose to do so. No additional investigative step was required beyond the reasonable review of materials already in his possession.

MATERIALITY / PREJUDICE:

Under Glover, 531 U.S. at 203–04, any increase in actual imprisonment caused by counsel's errors satisfies Strickland prejudice. The loss-calculation failure is the most structurally significant of the Ground Four failures because it directly determined the advisory guideline range through the 16-level enhancement. A successful challenge reducing the attributable loss below $1,500,000 would have eliminated that enhancement and produced a materially lower advisory range before any § 3553(a) analysis — a result that, under Glover, satisfies prejudice regardless of whether the Court would ultimately have sentenced within or below the corrected range.

The valuation evidence Hayworth received supports a credible offset argument. Culberson's transmitted documentation placed the comparable equipment value at $1,500,000 on the low end and $4–5 million on the high end. Culberson Decl. ¶18. If the sentencing court had credited even a portion of that offset against the PSR's $2,479,240.90 loss figure, the resulting attributable loss could have fallen below the $1,500,000 threshold, eliminating the 16-level enhancement entirely.

PSR ¶¶33, 41. Even a partial reduction in the enhancement — for example, from the 16-level bracket to a lower loss bracket — would have produced a lower advisory range and, under Glover, satisfies the prejudice standard.

The prejudice is further reinforced by the relationship between the loss calculation and the § 3553(a) analysis. A lower advisory range anchors the § 3553(a) analysis at a different starting point, and a sentencing court that begins from a lower guidelines range is presented with a materially different sentencing picture. The failure to challenge the most outcome-significant component of the guideline calculation — with documentary evidence in hand — is prejudicial on its own and reinforces the cumulative sentencing prejudice analyzed in G4-RA-011. Strickland, 466 U.S. at 694; Glover, 531 U.S. at 203–04.

CROSS-GROUND NOTATION:

Ground Two (App. C, G2-RA-008): This entry is cross-referenced by the Ground Two loss-calculation anchor — the $2,479,240.90 loss figure, the $1,500,000 threshold, and the 16-level enhancement documented here are the same record components established in Ground Two as a critical failure at the trial and pretrial stage; the sentencing failure in this entry compounds and is cumulative with the Ground Two trial-IAC loss-calculation deficiency. See App. C, G2-RA-008.

Ground One (App. B, G1-RA-005 Sub-3): The Ground One 16-level enhancement and sentencing-stage record anchor documents the loss-calculation evidence baseline applicable to the enhancement challenge that Hayworth failed to present. See App. B, G1-RA-005 Sub-3.

Ground One (App. B, G1-RA-006): The Ground One LOC / secured-conversion anchor documents the financial evidence and Chamblee investment-relationship records bearing on the loss-offset theory that Hayworth received and failed to use at sentencing. See App. B, G1-RA-006.

G4-RA-005 — Failure to Develop Loss-Offset Theory: Rotary Drum Dryer Valuation Evidence and NGEP Operating Agreement Liquidation Obligation

RECORD CITATION / SOURCE:

McKinnon Decl. ¶69; Culberson Decl. ¶18; Movant Ex. 71 (Rotary Drum Dryer Quotes — Vulcan Drying Systems and Surplus Record Dealer, cross-section of Vulcan, Sprout, and Earth Care Products manufacturers); Movant Ex. 20 (Gov't Ex. 703 — NGEP Operating Agreement);

App. B, G1-RA-001; App. C, G2-RA-006; G4-RA-004; Strickland v. Washington, 466 U.S. 668, 690–91 (1984); Glover v. United States, 531 U.S. 198, 203–04 (2001)

EXACT QUOTE OR RECORD LANGUAGE:

McKinnon Decl. ¶69: "I provided Hayworth with documentation supporting a loss-calculation objection. In addition, at my request, Barbara Culberson provided quotes for comparable rotary drum dryers reflecting the value of equipment that was to be liquidated pursuant to the Operating Agreement. Hayworth failed to raise this argument at sentencing, even though it could have reduced the loss calculation below the $1,500,000 threshold and avoided or reduced the 16-level enhancement. Culberson Decl. ¶18: "In that same email [August 8–9, 2023], I also stated that I was attaching quotes for drum dryers, which was the type of equipment Vance built and was used to make bio-char, calcined coal, and related products for the business. I stated the dryers were worth '1.5 Million on the low end and probably 4–5 million on the high end,' and that the Shumard Group and possibly Deware had possession of the equipment. The drum dryer quotes were from 2 different companies: Vulcan Drying Systems and Surplus Record Dealer. The quotes represented a cross section of 3 different manufacturers of drum dryers: Vulcan, Sprout, and Earth Care Products. The quotes had company names and contact information on them that Mr. Hayworth could use to easily obtain his own independent quotes."

Movant Ex. 20 (Gov't Ex. 703 — NGEP Operating Agreement): The NGEP Operating Agreement identified the contractual liquidation obligation applicable to company assets, including equipment, establishing that Chamblee was obligated under the agreement's terms to liquidate company assets and that the recoverable value of those assets was legally relevant to the loss calculation. NGEP Operating Agreement § 15.3(a) (BATES USA-00011430): "The Manager shall immediately proceed to wind up the affairs of the Company." § 15.3(b)(i): "If the

Company is dissolved and its affairs are to be wound up, the Manager shall: (i) sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent the Manager may determine to distribute any assets to the Members in kind)." § 15.3(e) (BATES USA-00011431): "The Manager shall comply with the requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets." Chamblee was designated as one of the two initial Managers of NGEP under § 6.2 of the Operating Agreement (BATES USA-00011415), establishing the contractual liquidation obligation applicable to company assets — including the rotary drum dryer equipment in Chamblee's and the Shumard Group's possession — as applicable to Chamblee in his capacity as Manager.

RECORD-PROOF POINT:

This entry documents the specific evidentiary components of the loss-offset theory that G4-RA-004 establishes Hayworth failed to raise. Where G4-RA-004 addresses the guideline-threshold structure and the overall failure to challenge the loss calculation, this entry separates the two distinct documentary components of the offset theory and establishes what each proved and why each served an independent evidentiary function.

The first component is the rotary drum dryer valuation evidence. Movant Ex. 71 consists of comparable market-value quotes for rotary drum dryer equipment — the type of equipment Vance built and used in the business for bio-char, calcined coal, and related products. Culberson Decl. ¶18. The quotes were obtained from Vulcan Drying Systems and Surplus Record Dealer and represented a cross-section of three manufacturers: Vulcan, Sprout, and Earth Care Products. Id. Culberson's transmittal to Hayworth identified the equipment value as $1,500,000 on the low end and $4–5 million on the high end. Id. The valuation documentation served a specific and

independent evidentiary function: it established the recoverable market value of the equipment — the dollar figure that, if credited against the PSR's loss amount, could move the total attributable loss below the $1,500,000 guideline threshold.

The second component is the NGEP Operating Agreement liquidation obligation. Movant Ex. 20 (Gov't Ex. 703) is the NGEP Operating Agreement — a Government trial exhibit — whose terms included a contractual obligation requiring Chamblee to liquidate company assets. McKinnon Decl. ¶69. That obligation served a distinct and independent evidentiary function: it established the legal mechanism by which the equipment's recoverable value was relevant to the loss calculation — not merely as a background asset, but as an asset subject to a specific contractual duty of liquidation that, if performed, would have generated proceeds available to offset victim losses.

The two components are not interchangeable and are not cumulative — they serve different functions in the loss-offset argument. The drum dryer quotes establish what the equipment was worth. The NGEP Operating Agreement establishes why that value was legally cognizable as a loss offset — because Chamblee was contractually obligated to liquidate those assets and the resulting proceeds would have been available to reduce net losses to victims. Together, the two components provided Hayworth with a complete, documentable, and contractually grounded loss-offset theory that required no new investigation beyond organizing and presenting materials already in his possession.

Critically, the equipment was in Chamblee's and the Shumard Group's possession — not Movant's. Culberson Decl. ¶18. That possession fact reinforced the offset theory's legal relevance: the assets subject to the liquidation obligation were under the control of parties other than Movant, further supporting the argument that the full PSR loss amount was not properly

attributable to Movant's conduct without accounting for the recoverable value of assets controlled by the parties whose sales and financial representations drove the loss.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

Under Strickland, 466 U.S. at 690–91, competent sentencing counsel is required to investigate and present specific, documentable loss-offset evidence that the client has identified and transmitted before the sentencing hearing. The obligation is not merely to consider such evidence in the abstract — it is to review it, assess its legal basis, develop it into a coherent objection, and present it at sentencing with the supporting documentation. Hayworth failed to develop either component of the loss-offset theory.

Competent sentencing counsel was required to: (a) review the rotary drum dryer quotes (Movant Ex. 71) transmitted by Culberson on August 8–9, 2023, assess whether the comparable market values supported a credible offset argument against the PSR's loss figure, and, if independent verification was needed, use the company contact information provided in the transmittal to obtain it; (b) review the NGEP Operating Agreement (Movant Ex. 20 / Gov't Ex. 703) to identify the contractual liquidation obligation and develop the legal argument that the recoverable value of assets subject to that obligation was cognizable as a loss offset under the applicable sentencing guidelines; (c) present both components together at sentencing as a coordinated loss-offset argument — the valuation documentation establishing the equipment's worth and the Operating Agreement establishing the contractual mechanism by which that value was recoverable — supported by the specific exhibit materials already in the trial record; (d) identify the $1,500,000 guideline threshold as the critical analytical breakpoint and frame the offset argument in terms of its guideline-range consequence; and (e) recognize and present the possession fact — that the equipment was held by Chamblee and the Shumard Group, not by Movant — as further support

for the argument that the PSR's unadjusted loss figure overstated Movant's attributable loss by failing to account for assets controlled by other parties and subject to a contractual recovery obligation.

Hayworth received both components of the offset theory on August 8–9, 2023, and had thirteen days to develop and present them. McKinnon Decl. ¶69; Culberson Decl. ¶18. He presented no meaningful loss-calculation objection at sentencing. The failure to use specific, transmitted, contractually grounded, market-value-documented offset evidence is not a strategic judgment — it is the failure to investigate that the Strickland standard directly addresses. See Wiggins v. Smith, 539 U.S. 510, 521 (2003).

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

Both components of the loss-offset theory were in Hayworth's possession before the sentencing hearing and required no new investigation beyond reviewing and organizing materials already provided. The rotary drum dryer quotes (Movant Ex. 71) were transmitted as attachments to Culberson's August 8–9, 2023 email, with a written explanation of the equipment type, the valuation range, the parties in possession, and the names and contact information of the source companies. Culberson Decl. ¶18. The NGEP Operating Agreement (Movant Ex. 20 / Gov't Ex. 703) was a Government trial exhibit available in the trial record throughout Hayworth's appointment. Movant specifically identified the loss-calculation objection — including the drum dryer offset theory — as one of the 25+ specific PSR objections she provided to Hayworth on August 8, 2023, with an explicit statement that the objection could reduce the loss below the $1,500,000 threshold. McKinnon Decl. ¶69. Hayworth therefore had: the valuation documentation establishing the equipment's market value; the Government exhibit establishing the contractual liquidation obligation; the possession identification confirming the equipment

was held by Chamblee and the Shumard Group; a client-generated identification of the issue as outcome-material; the company contact information necessary for independent verification if he chose to pursue it; and the guideline-threshold context making the offset's legal significance explicit. No additional investigative resource was required. The entire documentary basis for a complete, two-component loss-offset argument was assembled, transmitted, and explained to Hayworth in a single email exchange thirteen days before sentencing.

MATERIALITY / PREJUDICE:

Under Glover, 531 U.S. at 203–04, any increase in actual imprisonment attributable to counsel's errors satisfies Strickland prejudice. The loss-offset theory documented in this entry is the evidentiary foundation of the guideline-threshold challenge identified in G4-RA-004. The prejudice analysis for both entries is therefore closely related, but the specific prejudice here is the failure to present a two-component, contractually grounded, market-value-documented offset argument that gave the sentencing court a concrete, exhibit-supported basis on which to reduce the attributable loss below the $1,500,000 threshold.

The valuation evidence alone — placing the comparable equipment value at $1,500,000 on the low end — identified a recoverable asset whose credited value could have moved the PSR's $2,479,240.90 loss figure to or below the guideline threshold. Culberson Decl. ¶18; PSR ¶¶33, 41. The Operating Agreement component reinforced that offset by providing the legal basis — a contractual liquidation obligation — for why the equipment's value was cognizable as a credit against victim losses rather than merely a background asset. McKinnon Decl. ¶69. The possession fact further supported the offset by establishing that the assets were held by parties other than Movant — an argument that the unadjusted loss figure overstated Movant's attributable loss in a manner the guidelines were designed to correct.

The two-component structure of the available offset evidence meant that Hayworth was not asking the sentencing court to accept a speculative or undocumented loss reduction — he was presenting a contractually grounded, market-value-supported, possession-identified offset argument backed by a Government trial exhibit and independently sourced valuation documentation. A sentencing court presented with that argument could have credited all or part of the offset, and under Glover, any resulting reduction in the advisory range or ultimate sentence satisfies prejudice. The failure to present this specific, documentable, two-component offset theory — with all supporting materials in hand — reinforces the cumulative sentencing prejudice analyzed in G4-RA-011. Strickland, 466 U.S. at 694; Glover, 531 U.S. at 203–04.

CROSS-GROUND NOTATION:

Ground Two (App. C, G2-RA-008, Sub-Entry 1): This entry is cross-referenced by the Ground Two Sub-Entry on loss calculation and LOC secured conversion — the rotary drum dryer valuation documentation and NGEP Operating Agreement liquidation obligation documented here are the same two-component offset theory identified in Ground Two as evidence Hayworth failed to investigate and present; the failure is analytically continuous across the trial-IAC and sentencing-IAC grounds. See App. C, G2-RA-008, Sub-Entry 1.

Ground Two (App. C, G2-RA-006): The Ground Two financial-investigation and Hubbuch-testimony entry documents the investigative foundation connecting the loss-calculation evidence to the broader financial-summary theory, providing additional context for the offset theory's record basis. See App. C, G2-RA-006.

Ground One (App. B, G1-RA-001): The foundational Ground One attribution and evidence anchor establishes the loss-calculation and NGEP record baseline applicable to the offset theory's contractual and valuation components documented in this entry. See App. B, G1-RA-001.

G4-RA-006 — Failure to Object to Obstruction Enhancement: Court-Prohibited Duress Testimony Treated as Perjury at Sentencing (Primary Basis); CFO-Title Premise and Role Mischaracterization (Secondary Basis)

RECORD CITATION / SOURCE:

McKinnon Decl. ¶¶4–6, 36, 71; PSR ¶36; Sent'g Tr., ECF No. 235, PageID §2352; Trial Tr., ECF No. 179, PageID §§1762–1774 (duress proffer proceedings and Court's ruling prohibiting duress testimony before jury); Trial Tr., ECF No. 179, PageID §§1782–1793, 1802–1804; Trial Tr., ECF No. 176, PageID §§1186–1187; Movant Ex. 19 [Tab 25] (Gov't Ex. 617); Movant Ex.

20 (Gov't Ex. 703); Movant Ex. 72 [Tab 78] (Gov't Ex. 201); App. B, G1-RA-001; App. D, G3-RA-002; G4-RA-003; G4-RA-008; Strickland v. Washington, 466 U.S. 668, 690–91 (1984); Glover v. United States, 531 U.S. 198, 203–04 (2001)

EXACT QUOTE OR RECORD LANGUAGE:

Trial Tr., ECF No. 179, PageID §§1762–1769 (Day 6, October 12, 2022 — before jury, Court requires duress proffer): The Court required Lewis to proffer, outside the jury's presence, what McKinnon's proposed testimony would be on each of the five Singleton elements required to establish a duress/justification defense. Lewis proffered testimony including: Chamblee's first demand on June 16, 2017 to change QuickBooks records and alter bank statements for Mendie Hogan; Chamblee sending McKinnon three photographs of her via text on June 27, 2017 — one in her car, one asleep in her bed, one outside — establishing that someone had been inside her home; a second demand approximately one month later; a September 1, 2017 phone call in which Chamblee threatened to "punch her in the face" if she did not comply; McKinnon's September 21, 2017 mugging by an unidentified person; the June 3, 2018 fire at her home and Chamblee's subsequent statement that "I will make sure you're in the house next time"; an assault at her hotel room in Hazard, Kentucky three days after the fire; and Chamblee grabbing McKinnon by the throat at the plant in June 2018. Trial Tr., ECF No. 179, PageID §§1765–1769. At no point during the proffered period did McKinnon report any of these incidents to law enforcement. Her only contact was with her husband, former law enforcement, who told her "You can't trust the FBI." Trial Tr., ECF No. 179, PageID §1767.

Trial Tr., ECF No. 179, PageID §1771 (Court's ruling — legal insufficiency on Singleton elements 3 and 5): "Based on my review of the case law, it's my determination that the defendant

has not met the very low burden of establishing prime facia evidence or case to justify or allow a justification defense under 6.07, the pattern jury instructions."

Trial Tr., ECF No. 179, PageID §1772 (Court on element three): "With regard to the third element, the issue would be whether Ms. McKinnon has — could establish a reasonable alternative to — excuse me, whether there was a reasonable alternative to violating the law. And clearly, in this particular case, based upon the length of time that has passed, there would be reasonable alternatives to creating false documents and acting in the way in which the United States has asserted and offered proof in this particular case."

Trial Tr., ECF No. 179, PageID §1774 (Court's final order — excluding duress testimony from jury): "So I do find that the defendant has not been able to establish a prime facia [sic] that case as to the third and the fifth elements that must be established and, therefore, will not be allowed to present such testimony to the jury."

Sent'g Tr., ECF No. 235, PageID §2352 (Court's obstruction enhancement finding — August 21, 2023): "I believe there's not a specific objection to that enhancement, but I do find that the defendant did commit perjured testimony in this matter by testifying essentially that she was under duress and was threatened by a victim in the case unless she altered documents and then provided those documents to other victims. So I do find that the defendant testified falsely, it was material in the case, and it would be sufficient to constitute obstruction of justice inasmuch as it was relevant to the issues presented, falsely given, and would have affected the outcome of the case had it been believed."

McKinnon Decl. ¶71: "Hayworth told me that Judge Reeves 'automatically' applies the obstruction-of-justice enhancement to all defendants who proceed to trial. That representation was incorrect. Hayworth made no objection to the enhancement at sentencing."

McKinnon Decl. ¶4: "At no time was I an actual owner, partner, member, or control person of NGI, NGEP, or any operating entity or account the Government attributed to me."

McKinnon Decl. ¶5: "I was not a signatory, authorized user, or account holder on any of Douglas William Vance's personal or business bank accounts. I had no authority to initiate, approve, or direct any financial transactions through those accounts."

McKinnon Decl. ¶6: "I had no access to the NGEP Bank of America account, the Brand Bank account controlled by Chamblee and his Shumard partners, or any other account controlled solely by Chamblee and his partners. Because I had no access to those accounts, I had no independent means of verifying whether Chamblee's reported sales were genuine or fabricated."

McKinnon Decl. ¶36: "I was not an owner, partner, or member of NGI, NGEP, V4 Carbon, Carbon Holdings, or any other relevant entity. I did not control the entities or accounts in the manner the Government's presentation suggested. My work was administrative, bookkeeping, and operational in nature, and I acted based on information provided to me by others."

Trial Tr., ECF No. 176, PageID §§1186–1187: Agent Hubbuch identified Gov't Ex. 201 as Bank of America NGEP account records; Chamblee and Hogan were identified as listed signers; Movant was not identified as a signer on those pages.

Trial Tr., ECF No. 179, PageID §§1782–1793, 1802–1804: Movant's trial testimony addressing her role, work responsibilities, lack of official title, use of CFO designation at Chamblee's direction, lack of principal status, and the administrative and bookkeeping nature of her work.

PSR ¶36: The PSR premised the obstruction-of-justice enhancement on the assertion that Movant falsely denied being CFO of Nex-Gen.

RECORD-PROOF POINT:

The record establishes a fundamental procedural inconsistency between the Court's trial ruling and its sentencing obstruction finding — an inconsistency that Hayworth was present to observe and obligated to challenge on the record.

Primary Basis — Prohibited Testimony Treated as Perjury. On the morning of Day 6 of trial, before the jury was brought in, Lewis made an oral proffer of McKinnon's proposed testimony on the five Singleton elements needed to establish a duress/justification defense. Trial Tr., ECF No. 179, PageID §§1762–1769. The proffer described a series of threats Chamblee made against McKinnon from June 2017 through June 2018 — including surveillance photographs delivered to her personal devices showing someone had been inside her home, explicit phone threats, a mugging, a house fire, a hotel-room assault, and a physical confrontation in which Chamblee grabbed her by the throat. None of these incidents were ever reported to law enforcement. Trial Tr., ECF No. 179, PageID §1767.

The Court ruled the proffer legally insufficient. The ruling rested on elements 3 and 5 of the Singleton framework: McKinnon had failed to establish that she had no reasonable legal alternative to her conduct (element 3), and had failed to establish that she did not maintain the illegal conduct longer than absolutely necessary (element 5) — both because she never contacted law enforcement over a period exceeding one year. Trial Tr., ECF No. 179, PageID §§1771–1774. The Court's final order was explicit: McKinnon "will not be allowed to present such testimony to the jury." Trial Tr., ECF No. 179, PageID §1774. That ruling was a legal ruling — not a factual one. The Court found the proffer legally insufficient under the Singleton framework. It did not find that the threats were fabricated, that McKinnon was lying, or that the incidents Lewis described never occurred.

McKinnon chose to testify after the ruling. Her trial testimony addressed her background, her administrative and bookkeeping role in the business, Chamblee's direction of her work, the financial figures Chamblee provided her, and her reliance on information she received from others. She did not testify — because she was prohibited from doing so — about the specific threat incidents Lewis had proffered. Trial Tr., ECF No. 179, PageID §§1782–1793, 1802–1804. At sentencing, the Court imposed the obstruction-of-justice enhancement based on the following finding: McKinnon committed perjury by "testifying essentially that she was under duress and was threatened by a victim in the case unless she altered documents and then provided those documents to other victims." Sent'g Tr., ECF No. 235, PageID §2352. The problem is direct and apparent on the face of the two transcripts: the Court prohibited McKinnon from presenting duress testimony to the jury, and McKinnon did not present that testimony. Yet at sentencing, the Court imposed a perjury-based obstruction enhancement premised on characterizing her trial testimony as duress testimony and finding it to be false. Using those same excluded and undelivered claims as the factual predicate for a perjury-based obstruction enhancement treats her compliance with the Court's own ruling as the basis for additional punishment.

Secondary Basis — CFO-Title Premise (PSR ¶36). At the evidentiary hearing, Hayworth did challenge the significance of the CFO designation — but only in the context of the §3B1.3 abuse-of-position-of-trust argument. He argued that having "CFO" in an email signature does not constitute actually holding or functioning as a CFO, and that title without corresponding function cannot establish a position of trust. Evid. Hr'g., ECF No. 219, PageID §§2216–2217. That argument, however, was never carried over to the obstruction enhancement. Independently of the prohibited-testimony issue, the PSR also premised the obstruction enhancement on the separate assertion that Movant falsely denied being CFO of Nex-Gen — a distinct application of the

CFO-title premise under PSR ¶36 that Hayworth never addressed in the context of the obstruction enhancement. PSR ¶36. The trial record did not support a straightforward false-denial finding on that premise. McKinnon's testimony was nuanced: she acknowledged using the CFO designation in email correspondence; explained that she held no official title; testified that the designation was used because Chamblee wanted the company to receive credit; and testified that she was not a principal of any relevant company. Trial Tr., ECF No. 179, PageID §§1782–1793, 1802–1804. Using an email label at another party's direction is not the same as falsely denying a legal title one actually holds. The distinction is further supported by the Deware Operating Agreement for NGI (Movant Ex. 19 / Gov't Ex. 617) and the NGEP Operating Agreement (Movant Ex. 20 / Gov't Ex. 703) — which identified no ownership, membership, or principal role for Movant in either entity.

On both the primary and secondary bases, Hayworth's failure to raise any objection to the obstruction enhancement is confirmed by the sentencing record itself. Although Hayworth had challenged the significance of the CFO designation in the §3B1.3 context at the evidentiary hearing, that argument was never applied to the obstruction enhancement. The Court noted "there's not a specific objection to that enhancement." Sent'g Tr., ECF No. 235, PageID §2352. Hayworth confirmed this at the close of the hearing: "no legal objections, no Bostic objections." Sent'g Tr., ECF No. 235, PageID §2403.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

Under Strickland v. Washington, 466 U.S. 668, 690–91 (1984), competent sentencing counsel is required to be familiar with the trial record, to recognize meritorious objections to proposed sentencing enhancements as they are announced, and to raise those objections on the record — not after the fact, and not based on a personal prediction of how the Court will rule.

Primary Failure — Failure to Object to the Prohibited-Testimony Obstruction Finding. Hayworth was present at the sentencing hearing. He was standing before Judge Reeves when the Court announced it was applying the obstruction-of-justice enhancement based on its finding that McKinnon had committed perjury by "testifying essentially that she was under duress." Sent'g Tr., ECF No. 235, PageID §2352. The objection the record required was straightforward and immediate: this Court prohibited McKinnon from testifying about duress before the jury; the defendant could not, by definition, have committed perjury by giving testimony the Court itself had excluded. The required objection did not demand complex legal research or extended preparation — it required only that Hayworth be familiar with what had happened at trial. Competent appointed sentencing counsel is required to review the trial record. That review would have revealed, at the very opening pages of the Day 6 transcript (ECF No. 179), that the morning of Day 6 began with a duress proffer — before the jury was ever brought in — and that the Court ruled McKinnon was prohibited from presenting duress testimony to the jury. Trial Tr., ECF No. 179, PageID §§1762–1774. Any attorney who had done that basic review would have known, the moment the Court announced the obstruction enhancement at sentencing, that the Court was predicating a perjury finding on testimony its own prior ruling had excluded. The duty was to stand up and say so.

Furthermore, the Court's own ruling at trial was a legal ruling — not a finding that the threats were fabricated or that McKinnon was lying. The Singleton analysis asked only whether, even accepting the proffered facts as true, the legal elements for a jury instruction were met. They were not, because McKinnon had not contacted law enforcement and the conduct had continued over more than a year. That legal ruling cannot supply a factual finding that the duress claims were invented.

Hayworth's misrepresentation to Movant that Judge Reeves "automatically" applies the obstruction-of-justice enhancement to all trial defendants (McKinnon Decl. ¶71) is itself evidence that he never reviewed the Day 6 trial transcript. Any attorney who read those opening pages would have known the enhancement was not automatic — it was premised on a specific factual finding about the truth or falsity of trial testimony, and that factual finding was susceptible to an immediate, record-supported objection. See G4-RA-003; Wiggins v. Smith, 539 U.S. 510, 521 (2003).

Secondary Failure — Failure to Apply CFO-Title Argument to Obstruction Enhancement. Although Hayworth challenged the significance of the CFO designation in the context of the §3B1.3 abuse-of-position-of-trust argument — arguing at the evidentiary hearing that an email label does not constitute holding or functioning as a CFO (Evid. Hr'g., ECF No. 219, PageID §§2216–2217) — he never applied that same challenge, or any objection, to the obstruction enhancement, even though the obstruction enhancement was also premised in part on the CFO-title false-denial claim in PSR ¶36. Competent sentencing counsel was required to recognize that his own 3B1.3 argument was directly applicable to PSR ¶36's false-denial premise and to deploy it as a specific objection to the obstruction enhancement. Hayworth was further required to present the trial record establishing that McKinnon's testimony was nuanced and contextual, including evidence that the government's claim she was the CFO rested primarily on her email signature rather than proof that she actually held the position. The entity formation records (Movant Ex. 19 / Gov't Ex. 617; Movant Ex. 20 / Gov't Ex. 703) and the Bank of America NGEP signature-card evidence (Trial Tr., ECF No. 176, PageID §§1186–1187; Movant Ex. 72 / Gov't Ex. 201) were in the trial record and directly contradicted the false-denial premise. Movant had specifically identified the obstruction enhancement as one of the 25+ PSR objections she

provided to Hayworth on August 8, 2023 — thirteen days before the hearing. McKinnon Decl. ¶¶63, 71. Hayworth had written notice of the issue, the trial record supporting the challenge, and the client's explicit identification of the enhancement as a meritorious objection target. He raised nothing in the obstruction enhancement context.

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

The meritorious obstruction objection on the primary basis required no document Hayworth did not already have access to, and no research he could not have completed before the sentencing hearing. The duress proffer and the Court's ruling appear at the opening pages of the Day 6 transcript — ECF No. 179, PageID §§1761–1774 — before McKinnon's trial testimony even begins. Any attorney who opened ECF No. 179 would have encountered the proffer proceedings immediately. The Court's ruling — that McKinnon was prohibited from presenting duress testimony to the jury — is explicit and unambiguous on the face of the transcript. Trial Tr., ECF No. 179, PageID §1774.

More fundamentally, Hayworth was present at the sentencing hearing itself. He heard the Court announce, in open court, that it was applying the obstruction enhancement because McKinnon had committed perjury by "testifying essentially that she was under duress." Sent'g Tr., ECF No. 235, PageID §2352. He did not need a transcript to recognize this finding — he was in the room when it was made, and as counsel of record he was required to respond if a meritorious legal objection was available. It was. The objection was immediate, obvious, and required no research: the Court had prohibited that very testimony at trial, and the perjury predicate therefore could not rest on it.

Movant also gave Hayworth direct and specific notice. She provided a comprehensive list of more than 25 specific PSR objections on August 8, 2023, which explicitly identified the

obstruction enhancement as a meritorious objection target. McKinnon Decl. ¶¶63, 71. She communicated directly to Hayworth that the enhancement was not automatic and that a valid challenge existed. McKinnon Decl. ¶71. Hayworth therefore had: notice from his client; an obligation to review the trial record; the trial transcript establishing the prohibition of duress testimony; and direct, real-time awareness at the sentencing hearing of the Court's enhancement finding.

On the secondary basis, every component needed to challenge the CFO-title false-denial premise of the obstruction enhancement — including McKinnon's nuanced trial testimony at ECF No. 179, PageID §§1782–1793, 1802–1804; the Deware Operating Agreement (Movant Ex. 19 / Gov't Ex. 617); the NGEP Operating Agreement (Movant Ex. 20 / Gov't Ex. 703); and the Bank of America NGEP signature-card evidence (Trial Tr., ECF No. 176, PageID §§1186–1187; Movant Ex. 72 / Gov't Ex. 201) — was in the trial record throughout Hayworth's appointment and required no additional investigation beyond reviewing materials already available to him. Hayworth's own 3B1.3 argument at the evidentiary hearing — that a CFO email label does not constitute holding or functioning as a CFO — itself demonstrates he was already equipped to make the identical challenge in the obstruction enhancement context and simply failed to do so.

MATERIALITY / PREJUDICE:

Under Glover v. United States, 531 U.S. 198, 203–04 (2001), any increase in actual imprisonment attributable to counsel's errors satisfies Strickland prejudice. The obstruction enhancement is a significant upward adjustment to the advisory guideline range — its elimination would have produced a materially lower advisory range independently of the loss-calculation challenge documented in G4-RA-004 and G4-RA-005.

On the primary basis, the prejudice is direct. The Court premised the obstruction enhancement on a perjury finding — that McKinnon testified falsely about being under duress — when the Court itself had prohibited McKinnon from presenting duress testimony to the jury. A sentencing court presented with the objection — that the perjury predicate for the enhancement rested on testimony the Court had itself prohibited — would have been required to grapple with the fundamental inconsistency between the trial ruling and the sentencing finding. There is a reasonable probability that a properly presented objection drawing that direct comparison, and pointing out that the trial ruling was a legal ruling on Singleton elements rather than a factual finding that the threats were fabricated, would have resulted in the Court declining to apply the enhancement or reducing it. Under Glover, any such reduction satisfies prejudice.

The prejudice is compounded by Hayworth's misrepresentation. By telling Movant that the obstruction enhancement was "automatic," Hayworth prevented her from directing him to raise an objection she had every right to insist upon. McKinnon Decl. ¶71. That misrepresentation did not merely reflect a strategic choice not to object — it affirmatively deprived Movant of the informed decision-making that competent representation requires at a critical stage. See G4-RA-003.

On the secondary basis, the prejudice from Hayworth's failure to apply his own 3B1.3 CFO-title argument as an objection to the obstruction enhancement is independently sufficient. Although Hayworth had already argued at the evidentiary hearing that an email label does not constitute holding or functioning as a CFO, he never carried that argument forward as an objection to the obstruction enhancement's false-denial premise under PSR ¶36. A sentencing court presented with McKinnon's nuanced trial testimony, the entity formation records showing no ownership or principal role for her in NGI or NGEP, and the Bank of America signature-card evidence

showing she was not a listed account signer, would have had a concrete documentary basis on which to sustain the objection and decline the enhancement on the PSR ¶36 premise.

The obstruction prejudice is analytically related to the ownership and role mischaracterization documented in G4-RA-008: both failures allowed the Government's characterization of Movant's role and authority — unsupported by the entity formation records, operating agreements, and account signature evidence in the trial record — to stand without a record-based correction in the obstruction and ownership enhancement findings at sentencing, reinforcing a sentencing record built on premises the available evidence contradicted. There is a reasonable probability that a properly-raised, record-supported objection on either or both bases would have produced a lower advisory guideline range and, under Glover, a materially different sentence. Strickland, 466 U.S. at 694; Glover, 531 U.S. at 203–04. See G4-RA-011 (cumulative sentencing prejudice anchor).

CROSS-GROUND NOTATION:

Ground Three (App. D, G3-RA-010): The Ground Three Day 6 preservation anchor documents the duress proffer proceedings and the Court's ruling at Trial Tr., ECF No. 179, PageID §§1762–1774 prohibiting McKinnon from presenting duress testimony before the jury — those are the same trial-record events that form the primary basis of the obstruction enhancement objection Hayworth failed to raise at sentencing; the trial-stage preservation failure and the sentencing-stage objection failure are analytically continuous. See App. D, G3-RA-010.

Ground Three (App. D, G3-RA-002): The Ground Three pretrial-IAC entry documenting the CFO-title, entity formation, and attribution-record failures establishes the same entity formation evidence that grounds the secondary basis of the obstruction enhancement challenge — the CFO-title false-denial premise in PSR ¶36 that the operating agreements, trial testimony, and bank account signature-card evidence directly contradicted. See App. D, G3-RA-002.

Ground One (App. B, G1-RA-001): The foundational Ground One attribution anchor documents the entity formation records, operating agreements, and role evidence applicable to the secondary CFO-title premise of the obstruction enhancement challenge. See App. B, G1-RA-001.

G4-RA-007 — Failure to Object to "Ponzi-Style Returns" Sentencing Exhibit and Substantial-Financial-Hardship Framing

RECORD CITATION / SOURCE:

McKinnon Decl. ¶¶4–10, 36, 63; Culberson Decl. ¶¶3–22; Evid. Hr'g., ECF No. 219, PageID §§2128–2129, 2166–2167, 2182, 2195, 2212; PSR ¶34 (Ponzi-style returns chart); PSR ¶41 (substantial financial hardship 2-level enhancement, USSG §2B1.1(b)(2)(A)(i) and (iii)); Government Exhibit 1 (summary spreadsheet; first table labeled "Ponzi-style returns"; admitted at evidentiary hearing with no objection from Hayworth, Evid. Hr'g., ECF No. 219, PageID §2128–2129); Trial Tr., ECF No. 175, PageID §§1034–1036, 1055–1056; App. B, G1-RA-006; App. D, G3-RA-003; G4-RA-008; Movant Ex. D [Tab 4] — Faybik Declaration (Declaration of Joan Faybik, executed February 11, 2026, notarized, Westmoreland County, Pennsylvania — post-sentencing §2255 exhibit; corroborates four pre-sentencing letters dated 11/8/2022, 12/24/2022, 12/31/2022, and 01/04/2023 written by Faybik and provided to the Court); Strickland v. Washington, 466 U.S. 668, 690–91 (1984); Glover v. United States, 531 U.S. 198, 203–04 (2001)

EXACT QUOTE OR RECORD LANGUAGE:

Evid. Hr'g., ECF No. 219, PageID §2128: Hubbuch described Government Exhibit 1 on direct examination: "This is a summary table that was extracted/derived from a combination of investigation and spreadsheets that were compiled by a forensic accountant with the FBI. It basically shows the investor funds, lender funds that were infused into the business, repayment of judgments, Ponzi returns, and gross sales. So it's a summary — it's a summary spreadsheet." When the Government moved admission, the Court asked: "Any objection to its admission for this hearing?" Hayworth responded: "No, Your Honor."

Evid. Hr'g., ECF No. 219, PageID §2129: Hubbuch identified the first table: "The first table is what we have documented as what are referred to as Ponzi-style returns. Basically, they're returns to investors or lenders that infuse money into Nex-Gen."

Evid. Hr'g., ECF No. 219, PageID §§2166–2167: On cross-examination by Vance's counsel (Darling), the "Ponzi-style returns" label was directly challenged: "Let me take issue with that title. This is money that you can say people, investors received back, correct?" Hubbuch: "Yes." Darling: "So when it says 'Ponzi-style returns,' that's either your interpretation or Mr. Chapman's or whoever else worked on this, right?" Hubbuch: "It's an interpretation based on the remaining — on the rest of the bank records, as in the description I talked about." At PageID §2167, Darling established that Joan Faybik received more from the business than the bank records showed she invested ($42,500 in; $59,600 returned). Hubbuch: "According to the bank records, yes."

Evid. Hr'g., ECF No. 219, PageID §2182: The Court adopted the exhibit's framing in its own questioning: "the balance of the money that's listed as Ponzi-Style Returns, the first chart on Exhibit 1, would have been after that date, after — to Ms. Faybik would have been after June 7th, 2017?" Hubbuch: "According to the bank records that I had access to, yes."

Evid. Hr'g., ECF No. 219, PageID §2195: The Court employed the "Ponzi-style returns" framing directly in its substantial-financial-hardship analysis: "If we only look at what's referred to as the Ponzi-style returns, and if she received more money than the amount listed for the fraud, the $42,500, would the argument be the same, that she incurred substantial financial hardship?"

Evid. Hr'g., ECF No. 219, PageID §2212: The Court overruled objections on the loss calculation under 2B1.1(b)(1)(I), finding "an amount significantly in excess of the $1.5 million necessary to increase the offense level by 16 in the case." The Court identified nine victims and found Joan Faybik's loss constituted substantial financial hardship "based upon the testimony presented about not only her status, her job, the type of work she had performed, the amount of money

she'd invested, and representations made to her that apparently were continued after Mr. Vance was aware of the investigation."

PSR ¶34: "The below chart reveals Ponzi-style returns sent back to victims." [Table: J.F. $59,600; K.S. 1 $39,089.17; G.G.C. Funding LLC $15,043.99; K.S. 2 $18,000; A.S. $2,100; Total Returned $133,833.16.]

PSR ¶41: "Pursuant to USSG § 2B1.1(b)(2)(A)(i) and (iii), there is a two-level increase because the offense involved 10 or more victims and resulted in substantial financial hardship to one or more victims."

McKinnon Decl. ¶4: "At no time was I an actual owner, partner, member, or control person of NGI, NGEP, or any operating entity or account the Government attributed to me."

McKinnon Decl. ¶7: "Chamblee routinely provided me with balance information and sales figures for the business. I relied on those representations in preparing financial reports and in communicating information to investors and lenders. I had no reason at the time to believe that Chamblee's reported sales were false, because Chamblee represented to me that all sales proceeds were being deposited into accounts controlled solely by him and his partners."

McKinnon Decl. ¶36: "I was not an owner, partner, or member of NGI, NGEP, V4 Carbon, Carbon Holdings, or any other relevant entity. I did not control the entities or accounts in the manner the Government's presentation suggested. My work was administrative, bookkeeping, and operational in nature, and I acted based on information provided to me by others."

Trial Tr., ECF No. 175, PageID §§1034–1036: Chamblee characterized funds as "in loans to Mr. Vance" and "a lot of it was loan as well" during his trial testimony.

Trial Tr., ECF No. 175, PageID §§1055–1056: Chamblee reviewed bank records and qualified whether the $5,600 underlying Count 2 came from him personally or from a transfer from the NGEP Bank of America account.

McKinnon Decl. ¶63: "On August 8, 2023, I provided Hayworth with a comprehensive list of more than 25 specific objections to the Presentence Investigation Report ('PSR'). Hayworth disregarded substantially all of those objections."

Faybik Decl. ¶7: "To the extent that any report, testimony, or characterization made by Special Agent Hubbuch that states or implies that I said I gave Doug Vance over $500,000 without any return on my investment is an inaccurate statement and does not accurately reflect what I told Special Agent Hubbuch."

Faybik Decl. ·8: "Over the years, there was partial return on my investments with Doug Vance. The money returned to me was often re-invested in the company or at times were used to pay balances owed on credit cards that I willingly gave Doug Vance to use to pay for company expenditures. Because of this ongoing cycle, where I would invest money, receive returns, and then reinvest those returns, it became difficult to track the exact total amount I invested with Doug Vance."

Faybik Decl. ·9: "I do not consider myself a victim or in any way tricked or conned by Doug Vance."

Faybik Decl. ·10: "On more than one occasion, I communicated to Special Agent Hubbuch that I did not view myself as a victim."

Faybik Decl. ·11: "On numerous occasions, I provided letters to the Court that were hand-written or on Victim Impact Statement sheets. On each of these letters, I repeatedly expressed that I did

not consider myself a victim. To the best of my knowledge, those letters were dated: 11/8/2022; 12/24/2022; 12/31/2022; 01/04/2023; and 09/24/2023."

Faybik Decl. ·12: "It was my desire to testify in the trial proceeding or the evidentiary hearing at sentencing to set the record straight regarding my voluntary investments with Doug Vance. However, I was never called as a witness. Instead, Special Agent Hubbuch made mischaracterizations to the court at both proceedings erroneously referring to me as a 'victim' of Doug Vance."

Faybik Decl. ·13: "I have never met Molly McKinnon in person."

Faybik Decl. ·14: "To my knowledge, I have never spoken with Molly McKinnon by telephone, email, text message, social media, or any other electronic means."

Faybik Decl. ·15: "I did not receive, and therefore, did not rely on any company bank statements, company financial statements, or any documents pertaining to company sales from Doug Vance or Molly McKinnon before I decided to invest funds with Doug Vance."

Faybik Decl. ·18: "Agent Hubbuch's characterization of me as an unwitting victim is not an accurate reflection of my state of mind and my business relationship with Doug Vance, which I feel was a mutually agreed-upon investment partnership."

RECORD-PROOF POINT:

The record establishes two distinct and independently documentable deficiencies in Hayworth's handling of the "Ponzi-style returns" exhibit: the failure to object to an unsupported and prejudicial characterization at sentencing, and the failure to correct the substantial-financial-hardship framing that the "Ponzi-style returns" label reinforced.

On the first deficiency, the "Ponzi-style returns" characterization was factually unsupported by the trial record and legally significant at sentencing because it attributed to Movant's conduct a

hallmark of classic fraud — the use of new investor money to repay earlier investors in a cyclical deceptive scheme — that was never charged and never established through trial evidence. No Ponzi scheme was charged in the indictment. No trial witness testified that the businesses operated as a Ponzi scheme. The Government's own records reflected documented intercompany transfers and repayments that the Government characterized at sentencing as "Ponzi-style returns" without the evidentiary foundation that characterization required. Government Exhibit 1; Evid. Hr'g., ECF No. 219.

On the second deficiency, the "Ponzi-style returns" framing was presented in connection with the substantial-financial-hardship enhancement and the Government's § 3553(a) argument. The sentencing court relied on the framing when analyzing substantial financial hardship and the enhancement. Evid. Hr'g., ECF No. 219, PageID §§2128–2129, 2166–2167, 2182, 2195, 2212. Of particular significance: at PageID §§2166–2167, Vance's counsel (Darling) recognized and challenged the "Ponzi-style returns" label at the same evidentiary hearing, established that Hubbuch acknowledged it was an "interpretation" rather than a neutral factual description, and further established that Joan Faybik received more back than the bank records showed she invested. Hayworth made no corresponding challenge on behalf of McKinnon at any point during the evidentiary hearing. The transcript therefore documents — in the same proceeding — that the objection was legally available and practically recognized by a contemporaneous defense attorney, while Hayworth neither made it nor preserved it.

The "Ponzi-style returns" characterization was also analytically inconsistent with Chamblee's own trial testimony. Chamblee described his financial relationship with Vance using loan and investment terminology — "in loans to Mr. Vance" and "a lot of it was loan as well" — at Trial Tr., ECF No. 175, PageID §§1034–1036. App. B, G1-RA-006. A loan or investment

characterization is the antithesis of a Ponzi-style return: loans involve documented repayment obligations from a specific counterparty, not the circular use of new investor funds to repay prior investors. Chamblee's own testimony therefore provided the clearest available record basis for objecting to the "Ponzi-style returns" label. App. D, G3-RA-003. Hayworth had the trial transcript containing Chamblee's loan and investment testimony, the Government's own financial evidence reflecting documented transfers and repayments, and Movant's specific identification of the "Ponzi-style returns" characterization as a meritorious objection target among the 25+ PSR objections she provided on August 8, 2023. McKinnon Decl. ¶63. He raised no objection.

The Faybik Declaration (executed February 11, 2026, notarized, Westmoreland County, Pennsylvania), Movant Ex. D, provides post-sentencing confirmation of a position Faybik had maintained, communicated repeatedly to the Government, and documented in letters filed with the Court throughout the pre-sentencing period. Although the declaration itself is a post-sentencing document executed in connection with these §2255 proceedings, it establishes three independently significant layers for the IAC claim.

First — Pre-sentencing letters written and provided to the Court. Faybik filed multiple letters with the Court expressing that she did not consider herself a victim, including letters dated November 8, 2022; December 24, 2022; December 31, 2022; and January 4, 2023 — all submitted before the August 21, 2023 evidentiary hearing and sentencing. Faybik Decl. ·11. Those four pre-sentencing letters were written by Faybik and provided to the Court during the pre-sentencing period. A competent sentencing attorney diligently reviewing the record would have identified those letters, recognized that the Government's primary listed "victim" — the first name on the "Ponzi-style returns" chart in Government Exhibit 1, and the individual whose

losses anchored the Court's substantial-financial-hardship analysis at PageID §2195 and §2212 — had filed four pre-sentencing statements rejecting the victim characterization, and would have contacted Faybik to obtain a sworn statement or to present her testimony at the evidentiary hearing. Hayworth conducted no such review and took no such step.

Second — Faybik's established willingness and desire to testify. Faybik states that it was her desire to testify at the trial proceeding or at the evidentiary hearing at sentencing "to set the record straight regarding my voluntary investments with Doug Vance," but that she was never called as a witness. Faybik Decl. ·12. She communicated to Hubbuch on more than one occasion that she did not view herself as a victim. Faybik Decl. ·10. Those communications with Hubbuch occurred before sentencing and were known to the prosecution. A competent sentencing attorney reviewing the docket letters and making even basic inquiry of the listed "victims" would have discovered that Faybik was cooperative, willing to provide a statement, and had been consistently maintaining her non-victim position directly to the case agent. Had Hayworth done so, Faybik's pre-sentencing position — "I do not consider myself a victim or in any way tricked or conned by Doug Vance" (Faybik Decl. ·9) — was fully obtainable in sworn form before the hearing and could have been presented to directly undercut Government Exhibit 1's "Ponzi-style returns" label and the substantial-financial-hardship enhancement resting on Faybik's designation as a victim. Instead, as Faybik confirms, Hubbuch "made mischaracterizations to the court at both proceedings erroneously referring to [her] as a 'victim' of Doug Vance" without any corrective challenge from Hayworth. Faybik Decl. ·12.

Third — McKinnon-specific exculpatory facts obtainable pre-sentencing. The Faybik Declaration establishes facts that are directly exculpatory as to McKinnon's causal connection to Faybik's investment. Faybik has never met McKinnon in person. Faybik Decl. ·13. She has

never spoken with McKinnon by telephone, email, text, social media, or any other electronic means. Faybik Decl. ·14. Critically, she "did not receive, and therefore, did not rely on any company bank statements, company financial statements, or any documents pertaining to company sales from Doug Vance or Molly McKinnon before I decided to invest funds with Doug Vance." Faybik Decl. ·15. These facts establish that the Government's primary listed "victim" — the person whose losses formed the foundation of the "Ponzi-style returns" framing and the substantial-financial-hardship enhancement — had zero contact with McKinnon and made her investment decision entirely independently of any conduct attributable to McKinnon. Those facts were obtainable from Faybik before sentencing, were consistent with her communicated position throughout the proceedings, and bore directly on the sentencing court's evaluation of McKinnon's individual culpability, her causal role in the victims' losses, and the loss properly attributable to her conduct — all § 3553(a) factors at the center of the sentencing analysis. Hayworth investigated none of these facts.

The Faybik Declaration further confirms that Hubbuch's $500,000 characterization — the figure Darling challenged on cross-examination at PageID §2167 — did not accurately reflect Faybik's own statements to him. Faybik describes the financial relationship not as a passive, victimized investment but as "an ongoing cycle, where I would invest money, receive returns, and then reinvest those returns" — including through credit cards she willingly provided for company expenditures. Faybik Decl. ·8. That characterization is the antithesis of a Ponzi-scheme victim relationship and is directly inconsistent with the "Ponzi-style returns" label Government Exhibit 1 applied. The Faybik situation illustrates a broader failure in Hayworth's victim-characterization investigation. A competent sentencing attorney conducting basic investigation of the victim designations — contacting listed "victims" before the evidentiary hearing — would have

discovered Faybik's position and could have obtained her statement or testimony to directly challenge the "Ponzi-style returns" exhibit and the enhancement premised on her losses. Hayworth conducted that investigation for no listed "victim." The Faybik Declaration is the documented consequence of that complete investigative failure.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

Under Strickland, 466 U.S. at 690–91, competent sentencing counsel is required to review the Government's sentencing exhibits and memorandum, identify characterizations that are factually unsupported by the trial record, and object to the use of those characterizations — particularly when the sentencing court is asked to rely on them in connection with an enhancement finding or a § 3553(a) analysis.

Competent sentencing counsel was required to: (a) review Government Exhibit 1 and identify the "Ponzi-style returns" label as unsupported by the trial record — no Ponzi scheme was charged, no trial witness testified the businesses operated as a Ponzi scheme, and the Government's own financial evidence reflected documented transfers and repayments rather than the circular structure that defines a Ponzi scheme; (b) cross-reference the "Ponzi-style returns" characterization against Chamblee's trial testimony at Trial Tr., ECF No. 175, PageID §§1034–1036, in which Chamblee described the relevant transactions using loan and investment terminology directly inconsistent with a Ponzi characterization — and develop that inconsistency into a specific, record-supported objection to the exhibit's label; (c) object on the record at the evidentiary hearing and sentencing to the introduction and use of the "Ponzi-style returns" exhibit, preserving the issue for post-conviction review and requiring the Government to establish an evidentiary foundation for the characterization it could not provide; (d) challenge the substantial-financial-hardship enhancement and § 3553(a) argument to the extent they relied on

the "Ponzi-style returns" framing; and (e) present the Government's own financial evidence — documented intercompany transfers and repayments — as affirmative record support for the objection.

Hayworth raised no objection to the "Ponzi-style returns" exhibit. His failure to object is confirmed on the transcript record: when the Court asked "Any objection to its admission for this hearing?" Hayworth expressly responded "No, Your Honor." Evid. Hr'g., ECF No. 219, PageID §2128. He took no steps to challenge the substantial-financial-hardship framing built on that characterization, and made no use of Chamblee's own trial testimony — which was directly on point — to correct the label at sentencing. McKinnon Decl. ¶63.

That failure extended beyond the trial record: a competent sentencing attorney was additionally required to investigate the victim designations on which Government Exhibit 1, the victim count, and the substantial-financial-hardship enhancement all rested — particularly where the lead-listed "victim" had written four pre-sentencing letters to the Court rejecting the victim characterization, had communicated that position directly to the case agent, and had desired to testify to correct the record. Hayworth did not investigate Faybik's communicated position, did not contact any listed victim, and did not seek any statement or testimony from Faybik — leaving the Government's entire "Ponzi-style returns" evidentiary framework unchallenged by the most directly available and most probative rebuttal evidence in the record.

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

Every component of a meritorious "Ponzi-style returns" objection was available to Hayworth in the trial record and sentencing materials before and during the hearing. The trial transcript containing Chamblee's loan and investment testimony — Trial Tr., ECF No. 175, PageID §§1034–1036 — was available to Hayworth and directly contradicted the Ponzi characterization.

App. B, G1-RA-006; App. D, G3-RA-003. The Government's own financial exhibit materials, including the documented intercompany transfer and repayment records introduced at trial, were in the trial record and available to Hayworth throughout his appointment. Government Exhibit 1 and the evidentiary-hearing materials in which it was used — Evid. Hr'g., ECF No. 219 — were part of the sentencing proceeding record available to Hayworth as counsel of record. The PSR's ¶34 substantial-financial-hardship analysis was in the PSR Hayworth received approximately August 1, 2023, and was available for objection throughout the thirteen-day window before sentencing. Culberson Decl. ¶¶14–18. Movant specifically identified the "Ponzi-style returns" characterization as among the objections she provided Hayworth on August 8, 2023. McKinnon Decl. ¶63. Hayworth therefore had: the trial testimony of the Government's own witness directly contradicting the Ponzi characterization in loan and investment terms; the Government's own financial evidence reflecting documented transfers and repayments; the PSR's substantial-financial-hardship analysis available for review and objection; and Movant's specific written identification of the "Ponzi-style returns" issue as a meritorious objection target.

The Faybik Declaration further demonstrates that an additional and independently documentable body of evidence was available to Hayworth through basic investigation of the victim designations. The four pre-sentencing letters Faybik provided to the Court — dated November 8, 2022; December 24, 2022; December 31, 2022; and January 4, 2023 — were written by Faybik and provided to the Court during the pre-sentencing period, and were available to Hayworth through diligent review of the case record throughout his six-month appointment. Faybik Decl. ·11. Those letters expressed, on each occasion, that Faybik did not consider herself a victim. Id. Faybik had also communicated that position to Hubbuch directly on more than one occasion before sentencing. Faybik Decl. ·10. No special investigative resource or additional access was

required to discover these facts — Faybik had written her position to the Court and communicated it directly to the case agent. Had Hayworth reviewed the docket correspondence and made even basic contact with the listed victims before the evidentiary hearing, he would have discovered that the Government's primary "victim" rejected the victim characterization, had no contact with McKinnon (Faybik Decl. ¶¶13–14), and made her investment decision without receiving or relying on any document from McKinnon (Faybik Decl. ·15). Every one of those facts was obtainable before sentencing through direct contact with Faybik and through diligent review of case materials.

MATERIALITY / PREJUDICE:

Under Glover, 531 U.S. at 203–04, any increase in actual imprisonment attributable to counsel's errors satisfies Strickland prejudice. The "Ponzi-style returns" prejudice operates on two levels. The first level is enhancement prejudice. The sentencing court relied on the "Ponzi-style returns" framing when analyzing substantial financial hardship and the corresponding enhancement. Evid. Hr'g., ECF No. 219, PageID §§2128–2129, 2166–2167, 2182, 2195, 2212. An enhancement finding that rested in part on an unsupported characterization — one that Chamblee's own testimony directly contradicted and that no trial evidence established — was a guideline calculation error that competent counsel was required to contest. Had Hayworth objected and presented Chamblee's loan and investment testimony as record-based contradiction of the "Ponzi-style returns" label, the sentencing court would have been required to evaluate the characterization against the trial record that contradicted it. A court that found the label unsupported would have had a basis to decline the substantial-financial-hardship enhancement or to reduce its weight in the § 3553(a) analysis — either of which satisfies Glover prejudice.

The second level is § 3553(a) seriousness prejudice. A "Ponzi-style returns" characterization, if accepted without objection, frames Movant's conduct as categorically more serious and deliberately exploitative than the trial record established. A Ponzi scheme carries a specific, highly prejudicial moral and financial connotation — systematic, calculated deception of investors through a circular funding structure — that goes beyond ordinary fraud and that the Government never charged or proved as to Movant. The sentencing court's § 3553(a) seriousness analysis conducted in the shadow of that characterization was therefore conducted on an inaccurate factual foundation. A competent objection — one that presented Chamblee's own loan and investment testimony and the Government's own documented-transfer records — would have required the sentencing court to evaluate seriousness on the basis of what the trial record actually established rather than on an uncharged, unproven, trial-record-contradicted label. There is a reasonable probability that a sentencing court presented with that corrected record would have conducted a materially different seriousness analysis under § 3553(a) and imposed a materially different sentence. The "Ponzi-style returns" prejudice is analytically related to the ownership and role mischaracterization documented in G4-RA-008. See G4-RA-011 (cumulative sentencing prejudice anchor). Strickland, 466 U.S. at 694; Glover, 531 U.S. at 203–04.

CROSS-GROUND NOTATION:

Ground One (App. B, G1-RA-006): The Ground One Chamblee/investor-characterization anchor documents Chamblee's trial testimony describing the relevant transactions in loan and investment terms — the same testimony that directly contradicts the "Ponzi-style returns" label Government Exhibit 1 applied and that Hayworth failed to use at the evidentiary hearing and sentencing to challenge the characterization. See App. B, G1-RA-006.

Ground Three (App. D, G3-RA-003): The Ground Three trial-IAC entry documenting the Chamblee/Count 2 source-of-funds impeachment failure establishes the same Chamblee financial-relationship evidence that grounds the "Ponzi-style returns" objection Hayworth failed to present at sentencing — the trial-IAC failure to use that evidence and the sentencing-IAC failure are analytically continuous. See App. D, G3-RA-003.

G4-RA-008 — Failure to Correct Ownership and Role Mischaracterization: 49% Nex-Gen Ownership Premise and Entity Attribution Errors at Sentencing

RECORD CITATION / SOURCE:

McKinnon Decl. ¶¶4–10, 36, 63; Movant Ex. 19 (Gov't Ex. 617 — Deware Operating Agreement, signed September 26, 2016 — Vance and Deware; Movant not a party); Movant Ex. 36 (Gov't Ex. 618 — Non-Compete Agreement, supplemental Deware agreement, signed September 26, 2016 — Vance and Deware; Movant not a party); Movant Ex. 20 (Gov't Ex. 703 — NGEP Operating Agreement); Movant Ex. 72 (Gov't Ex. 201 — Bank of America NGEP account signature-card records); Trial Tr., ECF No. 176, PageID §§1186–1187; Trial Tr., ECF No. 179, PageID §§1782–1793, 1802–1804; PSR ¶9 (offense conduct — A.D. and D.S. reported to FBI that "Vance and McKinnon were 49 percent owners" of Nex-Gen); PSR ¶12 (offense conduct — Shumard partners reported entering majority ownership agreement with Vance, doing business as Nex-Gen Industries, Inc., and McKinnon, forming NGEP); PSR ¶13 (offense conduct — G.C. stated McKinnon was "one of the managers of Nex-Gen Energy Partners, LLC"); Sent'g Tr., ECF No. 235; App. B, G1-RA-001; App. D, G3-RA-002; G4-RA-006; Strickland v. Washington, 466 U.S. 668, 690–91 (1984); Glover v. United States, 531 U.S. 198, 203–04 (2001)

EXACT QUOTE OR RECORD LANGUAGE:

McKinnon Decl. ¶4: "At no time was I an actual owner, partner, member, or control person of NGI, NGEP, or any operating entity or account the Government attributed to me. Although there were discussions about a future business structure involving Deware, Vance, Smith, and me if Deware proceeded with the Shumard buyout and related TJ facility transaction, any

contemplated future ownership interest never matured into actual ownership, membership, account control, or authority over company funds."

McKinnon Decl. ¶36: "I was not an owner, partner, or member of NGI, NGEP, V4 Carbon, Carbon Holdings, or any other relevant entity. I did not control the entities or accounts in the manner the Government's presentation suggested. My work was administrative, bookkeeping, and operational in nature, and I acted based on information provided to me by others."

McKinnon Decl. ¶5: "I was not a signatory, authorized user, or account holder on any of Douglas William Vance's personal or business bank accounts. I had no authority to initiate, approve, or direct any financial transactions through those accounts."

McKinnon Decl. ¶6: "I had no access to the NGEP Bank of America account, the Brand Bank account controlled by Chamblee and his Shumard partners, or any other account controlled solely by Chamblee and his partners. Because I had no access to those accounts, I had no independent means of verifying whether Chamblee's reported sales were genuine or fabricated."

McKinnon Decl. ¶63: "On August 8, 2023, I provided Hayworth with a comprehensive list of more than 25 specific objections to the Presentence Investigation Report ('PSR'). Hayworth disregarded substantially all of those objections."

Movant Ex. 19 (Gov't Ex. 617 — Deware Operating Agreement, signed September 26, 2016): This agreement identified the parties to its operating structure as Vance and Deware. Movant was not a party to the Deware Operating Agreement and was not identified in the agreement as an owner, partner, member, or signatory.

Movant Ex. 20 (Gov't Ex. 703 — NGEP Operating Agreement): The NGEP Operating Agreement identified the parties to the NGEP operating structure — Vance and the Shumard /

Chamblee / Hogan group — and did not identify Movant as an owner, partner, member, or signatory.

Movant Ex. 36 (Gov't Ex. 618 — Non-Compete Agreement, signed September 26, 2016): This supplemental agreement between Vance and Deware was executed on the same date as the Deware Operating Agreement. Movant was not a party to this agreement.

Trial Tr., ECF No. 176, PageID §§1186–1187: Agent Hubbuch identified Gov't Ex. 201 as Bank of America NGEP account records; Chamblee and Hogan were identified as listed signers; Movant was not identified as a signer on those pages.

Trial Tr., ECF No. 179, PageID §§1782–1793, 1802–1804: Movant's trial testimony addressing her role, work responsibilities, lack of ownership or principal status, administrative and bookkeeping nature of her work, and use of CFO designation at Chamblee's direction without corresponding official title or authority.

RECORD-PROOF POINT:

The record establishes that the Government's sentencing memorandum attributed a 49% Nex-Gen ownership interest to Movant and co-defendant — a premise that the Government's own trial exhibits directly and specifically contradicted — and that Hayworth failed to present that contradiction to the sentencing court. This entry is analytically distinct from G4-RA-006, which addresses the obstruction enhancement's specific CFO-title premise. This entry addresses the broader ownership and role mischaracterization that infected the Government's entire sentencing framing: the attribution of a defined ownership percentage to Movant that shaped the sentencing court's evaluation of her role, responsibility, financial benefit, and culpability under § 3553(a).

The record establishes the contradiction on three independent documentary levels. First, the NGEP Operating Agreement (Movant Ex. 20 / Gov't Ex. 703) — the Government's own trial

exhibit — identified the parties to the NGEP operating structure as Vance and the Shumard / Chamblee / Hogan group. Movant was not identified in the NGEP Operating Agreement as an owner, partner, member, or signatory. The premise that Movant and co-defendant owned 49% of Nex-Gen was therefore directly contradicted by the document that defined the NGEP ownership and operating structure.

Second, the Deware Operating Agreement (Movant Ex. 19 / Gov't Ex. 617, signed September 26, 2016) —identified the contracting parties as Vance and Deware. Movant was not a party to the Deware Operating Agreement. The supplemental Non-Compete Agreement (Movant Ex. 36 / Gov't Ex. 618, signed September 26, 2016) was executed between the same parties on the same date and similarly did not identify Movant as a party. The Government's sentencing memorandum's 49% ownership attribution therefore could not be grounded in the NGEP Operating Agreement (Movant Ex. 20 / Gov't Ex. 703), the Deware Operating Agreement (Movant Ex. 19 / Gov't Ex. 617), or the Non-Compete Agreement (Movant Ex. 36 / Gov't Ex. 618) — the principal documents governing the ownership and partnership structure of the relevant entities — because none of those documents identified Movant as an owner, partner, member, or signatory. App. B, G1-RA-001.

The Bank of America NGEP account signature-card evidence (Trial Tr., ECF No. 176, PageID §§1186–1187; Movant Ex. 72 / Gov't Ex. 201) further reinforced the documentary record by confirming that even the NGEP operating account identified Chamblee and Hogan — not Movant — as signers. McKinnon Decl. ¶4 addressed the only apparent basis for any ownership inference — discussions about a future business structure involving Deware, Vance, Smith, and Movant — and established that any contemplated future ownership interest never matured into actual ownership, membership, account control, or authority over company funds. The

ownership attribution the Government presented at sentencing was therefore not merely disputed — it was contradicted by the Government's own exhibits, the operating agreements governing the entities at issue, the entity formation records, and the bank account signature-card evidence, all of which were in the trial record and available to Hayworth throughout his appointment.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

Under Strickland, 466 U.S. at 690–91, competent sentencing counsel is required to review the Government's sentencing memorandum, identify factual premises that are contradicted by the trial record, and correct those mischaracterizations at sentencing — particularly when the mischaracterization bears directly on the sentencing court's evaluation of the defendant's role, culpability, financial benefit, and responsibility under § 3553(a). An ownership attribution that was directly contradicted by the Government's own trial exhibits was not a permissible sentencing inference — it was a factual error that the available documentary record required counsel to contest and correct.

Competent sentencing counsel was required to: (a) review the Government's sentencing memorandum and identify the 49% Nex-Gen ownership premise as directly contradicted by the Government's own trial exhibits — specifically, the NGEP Operating Agreement (Movant Ex. 20 / Gov't Ex. 703), which identified the NGEP ownership and operating structure without including Movant, the Deware Operating Agreement (Movant Ex. 19 / Gov't Ex. 617, signed September 26, 2016), and the Non-Compete Agreement (Movant Ex. 36 / Gov't Ex. 618, signed September 26, 2016), none of which identified Movant as an owner, partner, member, or signatory; (b) present the NGEP Operating Agreement (Movant Ex. 20 / Gov't Ex. 703), the Deware Operating Agreement (Movant Ex. 19 / Gov't Ex. 617), and the Non-Compete Agreement (Movant Ex. 36 / Gov't Ex. 618) as the controlling documentary record of the

relevant ownership and partnership structure; (c) develop the critical distinction preserved in McKinnon Decl. ¶4 — that discussions about a future business structure involving Deware, Vance, Smith, and Movant never matured into actual ownership, membership, account control, or authority over company funds — and present that distinction to the sentencing court as the factual basis for rejecting the 49% ownership attribution; (d) use the Bank of America NGEP account signature-card evidence (Trial Tr., ECF No. 176, PageID §§1186–1187; Movant Ex. 72 / Gov't Ex. 201) to reinforce the non-ownership finding by showing that even the NGEP operating account did not identify Movant as a signer; and (e) tie the ownership correction to the § 3553(a) factors bearing on role, responsibility, financial benefit, and culpability.

Hayworth disregarded substantially all of Movant's 25+ specific PSR objections, which included the ownership and role mischaracterization. McKinnon Decl. ¶63. He presented no correction of the 49% ownership attribution at sentencing, no organization or presentation of the documentary record establishing non-ownership, and no challenge to the Government's sentencing memorandum on this point. The failure was not a strategic choice made after reasonable review — it was the complete failure to investigate and present a correction that Government exhibits fully supported.

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

Every documentary component of the ownership correction was in the trial record and available to Hayworth throughout his appointment. The NGEP Operating Agreement (Movant Ex. 20 / Gov't Ex. 703) was a Government trial exhibit admitted at trial and available to Hayworth in the trial record from the date of his appointment. The Deware Operating Agreement (Movant Ex. 19 / Gov't Ex. 617) and the Non-Compete Agreement (Movant Ex. 36 / Gov't Ex. 618) were Government trial exhibits available in the trial record throughout Hayworth's appointment. The

Bank of America NGEP account signature-card evidence (Trial Tr., ECF No. 176, PageID §§1186–1187; Movant Ex. 72 / Gov't Ex. 201) had been introduced through Agent Hubbuch at trial and was part of the trial record Hayworth received or had access to. Culberson Decl. ¶¶14–18. Movant's trial testimony at Trial Tr., ECF No. 179, PageID §§1782–1793, 1802–1804 — addressing her role, lack of ownership, and administrative work — was in the trial transcript available to Hayworth. Movant specifically identified the ownership and role mischaracterization as among the objections she provided Hayworth on August 8, 2023. McKinnon Decl. ¶63. McKinnon Decl. ¶¶4–10, 36 provided the sworn declaration basis for the non-ownership assertion across all relevant entities. Hayworth therefore had: the Government's own trial exhibits directly contradicting the 49% ownership premise; the operating agreements and formation records governing the actual ownership structure; the bank account evidence confirming Movant's exclusion from signatory authority; Movant's trial testimony establishing the administrative and bookkeeping nature of her work; and Movant's sworn declaration establishing non-ownership across all relevant entities. The documentary correction required no new investigation — it required only the review and organized presentation of materials that were in Hayworth's possession or available to him throughout his six-month appointment.

MATERIALITY / PREJUDICE:

Under Glover, 531 U.S. at 203–04, any increase in actual imprisonment attributable to counsel's errors satisfies Strickland prejudice. The ownership and role mischaracterization is independently prejudicial at sentencing because it infected the sentencing court's evaluation of Movant's culpability at every level of the § 3553(a) analysis. An ownership premise shapes how the sentencing court evaluates the nature and circumstances of the offense, the history and characteristics of the defendant, and the seriousness of the conduct — all core § 3553(a) factors.

A defendant whom the sentencing court understands to have been a 49% owner of the businesses at issue is evaluated through a fundamentally different lens than a defendant whom the sentencing court understands to have been an administrative and bookkeeping employee who relied on information supplied by others, lacked ownership or account access, and derived no large financial benefit from the businesses. McKinnon Decl. ¶10. The two characterizations produce materially different assessments of role, responsibility, financial benefit, power, and moral culpability — and the difference between them is directly outcome-material under § 3553(a).

The prejudice is reinforced by the relationship between the ownership mischaracterization and the other sentencing failures. The 49% ownership premise interacted directly with the obstruction enhancement documented in G4-RA-006 — a sentencing court that accepts an ownership premise is more likely to find a false denial of authority and control credible. It interacted with the "Ponzi-style returns" framing documented in G4-RA-007 — a sentencing court that accepts an ownership premise is more likely to attribute calculated investor deception to a defined owner than to a bookkeeping employee. And it interacted with the loss attribution underlying G4-RA-004 — a sentencing court that accepts an ownership premise is more likely to hold the full PSR loss amount attributable to Movant without reduction for the role and control distinctions the evidence supported.

Had Hayworth corrected the 49% ownership premise using the Government's own trial exhibits, the sentencing court would have conducted its § 3553(a) analysis from a materially different factual starting point. There is a reasonable probability that a sentencing court presented with the correct ownership and role picture would have evaluated the nature of the offense, Movant's history and characteristics, and the appropriate sentencing range materially differently.

Strickland, 466 U.S. at 694; Glover, 531 U.S. at 203–04. The ownership mischaracterization prejudice reinforces and compounds the prejudice from G4-RA-006 and G4-RA-007, and is analyzed cumulatively in G4-RA-011.

CROSS-GROUND NOTATION:

Ground One (App. B, G1-RA-001): The foundational Ground One attribution anchor documents the entity formation records, NGEP Operating Agreement (Movant Ex. 20 / Gov't Ex. 703), Deware Operating Agreement (Movant Ex. 19 / Gov't Ex. 617), Non-Compete Agreement (Movant Ex. 36 [Tab 42] / Gov't Ex. 618), and bank account signature evidence that directly contradict the 49% Nex-Gen ownership attribution — the same record evidence Hayworth failed to organize and present at sentencing to correct the ownership and role mischaracterization. See App. B, G1-RA-001.

Ground Three (App. D, G3-RA-002): The Ground Three pretrial-IAC entry documenting the CFO-title, ownership-record, and entity attribution failures establishes the same entity formation and operating agreement evidence as the basis for the ownership correction Hayworth failed to present — the pretrial-IAC attribution failure and the sentencing mischaracterization failure are analytically continuous. See App. D, G3-RA-002.

G4-RA-009 — Failure to Present Meaningful Mitigation, Protect Allocution, and Submit Sentencing Letter

RECORD CITATION / SOURCE:

McKinnon Decl. ¶¶63, 67–68, 70; Culberson Decl. ¶¶18–19; Movant Ex. 32 [Tab 38] (McKinnon Sentencing Letter — personal letter authored by Movant at Hayworth's request for submission to the sentencing judge; Hayworth refused to submit); Sent'g Tr., ECF No. 235, PageID §§2355–2357; App. D, G3-RA-001; G4-RA-001; G4-RA-003; Strickland v. Washington, 466 U.S. 668, 690–91 (1984); Glover v. United States, 531 U.S. 198, 203–04 (2001)

EXACT QUOTE OR RECORD LANGUAGE:

McKinnon Decl. ¶68: "At Hayworth's own request, I authored a personal letter intended for submission to the sentencing judge, explaining my background, history, and perspective. Hayworth subsequently refused to submit the letter to the Court, stating that it would 'undermine his credibility.' I was present at the sentencing hearing and had the right to address the Court directly; however, because Hayworth had refused to submit my letter and had provided me no

guidance on how to effectively present my background and personal history without it, I was effectively denied a meaningful opportunity to be heard through my own voice — even though Judge Reeves stated on the record at the hearing that he wanted to understand my background and perspective."

McKinnon Decl. ¶70: "Hayworth told me he would not request downward departures and refused to argue for mitigation related to diminished intent, coercion, or my personal history. Hayworth stated that he did not believe Judge Reeves would grant such requests. His refusal was based not on legal merit but on his personal assessment of the judge's likely reaction."

McKinnon Decl. ¶67: "I requested that Hayworth file a motion for release due to my inability to prepare adequately for sentencing while incarcerated. Hayworth refused, stating his belief that Judge Reeves would deny it."

McKinnon Decl. ¶63: "On August 8, 2023, I provided Hayworth with a comprehensive list of more than 25 specific objections to the Presentence Investigation Report ('PSR'). Hayworth disregarded substantially all of those objections."

Culberson Decl. ¶19: "A week before sentencing, on August 15, 2023, I received an email request from Mr. Hayworth asking me to provide character letters for McKinnon's sentencing. On August 15, 2023, I responded and provided character letters as attachments, stating that the letters had been provided months earlier to prior counsel."

Culberson Decl. ¶18: "In that same email [August 8–9, 2023], I also stated that I was attaching quotes for drum dryers . . . I stated the dryers were worth '1.5 Million on the low end and probably 4–5 million on the high end' . . . The quotes had company names and contact information on them that Mr. Hayworth could use to easily obtain his own independent quotes."

Sent'g Tr., ECF No. 235, PageID §§2355–2357: At sentencing, the Court questioned Hayworth about the evidentiary basis for the background and abuse claims and asked how that history was causally connected to the § 3553(a) factors. Hayworth acknowledged having no court documents, only letters from McKinnon's sisters, and was unable to establish the evidentiary foundation or causal connection the Court sought.

RECORD-PROOF POINT:

The record establishes three distinct and independently documentable mitigation and allocution failures, each of which deprived the sentencing court of information it affirmatively sought and that bore directly on the § 3553(a) analysis.

The first failure is the sentencing letter. Hayworth requested that Movant author a personal letter to the sentencing judge explaining her background, history, and perspective. McKinnon Decl. ¶68. Movant authored that letter — Movant Ex. 32 — in direct response to Hayworth's own request. After Movant authored it, Hayworth refused to submit it, stating it would "undermine his credibility." Id. That refusal was not a strategic judgment about the letter's content or persuasive value — it was a decision made on the basis of Hayworth's personal credibility concern, without regard for Movant's right to have her own voice and perspective presented to the sentencing court. The prejudice from that refusal was made concrete and specific by the sentencing record itself: the Court's probing questions at PageID §§2355–2357 revealed the precise evidentiary gaps that Hayworth's failed mitigation preparation had created. By refusing to submit the letter and providing no guidance to McKinnon for allocution, Hayworth left the Court with only Hayworth's unsubstantiated oral summaries and the sisters' letters — which the Court found insufficient to establish the evidentiary foundation it sought.

The second failure is the allocution deprivation. Movant was present at the sentencing hearing and had the right to address the Court directly. McKinnon Decl. ¶68. But Hayworth had refused to submit the letter that Movant had prepared to convey her background and perspective, and had provided her no guidance on how to effectively present those matters without it. Id. The result was that Movant was present at the hearing, with the right to speak, but without the preparation, structure, or guidance needed to deliver the effective allocution to which she was constitutionally entitled. A defendant's right to allocution is not satisfied by physical presence at the hearing — it requires meaningful opportunity to be heard, which in turn requires counsel to prepare the defendant to use that opportunity effectively. Hayworth failed to provide that preparation.

The third failure is the last-minute, underprepared mitigation presentation. Hayworth did not request character letters until August 15, 2023 — six days before sentencing — despite having been appointed approximately six months earlier. Culberson Decl. ¶19. Culberson's response confirmed the letters had been provided months earlier to prior counsel. Id. The last-minute character-letter request reflects the complete absence of any mitigation investigation or preparation throughout the six-month appointment period. Hayworth also refused to argue for mitigation related to diminished intent, coercion, or Movant's personal history, based solely on his personal assessment of the judge's likely reaction. McKinnon Decl. ¶70. That refusal was not grounded in any legal evaluation of the arguments' merits or any review of the available mitigation record — it was a blanket foreclosure of available sentencing arguments made without the investigation that the Strickland standard requires before any strategic choice can be deemed reasonable.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

Under Strickland, 466 U.S. at 690–91, competent sentencing counsel is required to conduct a thorough mitigation investigation, develop and present available mitigation evidence bearing on the § 3553(a) factors, protect the defendant's allocution rights by preparing her to address the court effectively, and submit materials the defendant has prepared for presentation to the sentencing court — unless there is a specific, legally grounded reason for declining that is communicated to and accepted by the defendant. Hayworth failed on every component of that obligation.

Competent sentencing counsel was required to: (a) investigate and develop mitigation bearing on Movant's background, personal history, community ties, limited financial benefit from the businesses, reliance on information supplied by others, lack of ownership or control, coercive circumstances documented in the trial record, and the factors bearing on the § 3553(a) characteristics and history analysis — not defer that investigation to the final six days before sentencing; (b) submit the sentencing letter Movant authored at Hayworth's own request — a letter documenting her background, history, and perspective for the sentencing court — and not refuse submission on the basis of Hayworth's personal credibility concern, which was not a legally grounded basis for suppressing a mitigation document the defendant had a right to present; (c) prepare Movant to exercise her allocution right meaningfully — including providing guidance on how to present her background and perspective to the court effectively, whether or not the sentencing letter was submitted; (d) request character letters and other mitigation support materials promptly upon appointment — not six days before sentencing; (e) argue for downward departures and mitigation related to diminished intent, coercion, Movant's limited role, lack of financial benefit, and personal history — arguments that were legally available and factually supported by the trial record and declaration evidence — and not refuse those arguments based

solely on a personal prediction about the judge's likely response; and (f) ensure that the sentencing court received the complete picture of Movant's individual characteristics, role, and history so that the § 3553(a) analysis was conducted on an accurate and complete factual foundation.

Hayworth's refusal to submit the sentencing letter was particularly deficient because it was a reversal of his own request — he asked Movant to author the letter, received it, and then refused to use it — without any legally grounded explanation and without Movant's agreement. His refusal to argue mitigation related to diminished intent, coercion, and personal history was not a strategic judgment made after investigation; it was a blanket foreclosure of available sentencing arguments based on a judicial prediction that is never a legally adequate substitute for investigation and presentation. See Wiggins v. Smith, 539 U.S. 510, 521 (2003).

Competent sentencing counsel was further required to conduct independent investigation of the documentation available to substantiate the background and abuse history the Court would scrutinize under § 3553(a). Records of the reported kidnapping and sexual assaults could have been sought from the Monroe County Sheriff's Department in Forsyth, Georgia, or the Georgia Bureau of Investigation; medical documentation of the injuries may have been available from Monroe County Hospital in Forsyth, Georgia; and medical and counseling records could have been requested from the counselor (Montez Carr) Movant saw in Macon, Georgia, following those events. Hayworth never asked Movant or Culberson whether any such documentation existed, never identified any of these potential sources, and made no effort to investigate whether documentation was available throughout the six-month appointment period.

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

All mitigation and allocution materials were available to Hayworth or within his power to develop throughout the six-month appointment period. The sentencing letter (Movant Ex. 32) was authored by Movant at Hayworth's own request and transmitted to him before the sentencing hearing — it was in his possession and required only submission. McKinnon Decl. ¶68. Documentation that could have substantiated the abuse and trauma history may have been available through inquiry to identified sources: records of the reported kidnapping and sexual assaults could have been sought from the Monroe County Sheriff's Department in Forsyth, Georgia, or the Georgia Bureau of Investigation; medical documentation could have been sought from Monroe County Hospital in Forsyth, Georgia; and medical and counseling records could have been requested from the counselor (Montez Carr) Movant saw in Macon, Georgia, following those events. Hayworth never asked Movant or Culberson whether any such documentation existed, never identified these as potential mitigation sources, and made no effort to determine whether documentation was available. Had Hayworth made that basic inquiry, the potential sources were identifiable and documentation may have been obtainable.

Character letters were available from the beginning of Hayworth's appointment: Culberson's August 15, 2023 response to Hayworth's last-minute request confirmed that the letters had been provided to prior counsel months earlier, meaning they were in the prior counsel record available to Hayworth from the date of his appointment. Culberson Decl. ¶19. The mitigation evidence bearing on diminished intent and coercion was documented in Movant's trial testimony, the McKinnon Letter (Movant Ex. C [Tab 3]), the trial record addressing Chamblee's coercive conduct, and Defense Exhibits 73, 74, and 75 — the photographs documenting injuries Movant sustained — all of which were in the trial record available to Hayworth throughout his appointment. McKinnon Decl. ¶74. The mitigation evidence bearing on Movant's lack of

financial benefit was documented in McKinnon Decl. ¶10: "I received no large financial transfers, distributions, or personal financial benefits from any of the businesses during my tenure. When I was terminated, I was still owed money for wages." Hayworth also had direct notice from Movant's 25+ PSR objections — transmitted August 8, 2023 — that mitigation, allocution, and sentencing letter presentation were specific sentencing concerns requiring preparation and action. McKinnon Decl. ¶63. No additional investigative resource was required to develop a complete mitigation presentation — the factual and documentary basis for every available mitigation argument was assembled, documented, and in Hayworth's possession or available to him throughout his appointment.

MATERIALITY / PREJUDICE:

Under Glover, 531 U.S. at 203–04, any increase in actual imprisonment attributable to counsel's errors satisfies Strickland prejudice. The mitigation and allocution prejudice documented in this entry is made unusually specific and direct by the sentencing record itself. At the sentencing hearing, the Court actively questioned Hayworth about the evidentiary basis for the mitigation claims — asking for police reports, court documents, or other documentation — and asked how the claimed abuse history was causally connected to the § 3553(a) analysis. Sent'g Tr., ECF No. 235, PageID §§2355–2357. Hayworth was unable to answer: he acknowledged he had no court documents, only letters from McKinnon's sisters, and could not establish the evidentiary foundation or causal connection the Court sought. Id. That failure — counsel unable to answer the sentencing court's direct questions about the mitigation basis — occurred at the precise moment when Hayworth had already refused to submit the sentencing letter McKinnon authored at his own request, and had provided her no guidance on how to present her background and history through allocution without it.

The sentencing court's active inquiry into the very documentation and causal connection that Hayworth had failed to develop and refused to present establishes a direct and documentable connection between the mitigation failure and the sentencing outcome: the Court was seeking the information that counsel had failed to prepare and suppressed. That convergence — direct judicial inquiry and counsel's total inability to respond — is the clearest possible evidence that the omitted mitigation was outcome-material.

The § 3553(a) prejudice extends beyond the sentencing letter. A complete, prepared mitigation presentation would have supplied the sentencing court with: Movant's lack of any meaningful financial benefit from the businesses (McKinnon Decl. ¶10); Movant's limited administrative and bookkeeping role in contrast to the Government's ownership attribution (McKinnon Decl. ¶¶4–10, 36); the coercive circumstances documented in the trial record and declaration evidence bearing on diminished intent and voluntariness; Movant's personal history, background, and community ties — the very information the sentencing court stated it sought; and the factors supporting a downward departure or variance that Hayworth refused to argue without any legal evaluation of their merit. Each of those mitigation categories bore on a distinct § 3553(a) factor. There is a reasonable probability that a sentencing court that received a complete, prepared mitigation presentation on each of those factors — including the letter Movant authored and the allocution guidance she was denied — would have imposed a materially different, lower sentence. Strickland, 466 U.S. at 694; Glover, 531 U.S. at 203–04. The mitigation and allocution prejudice is analytically distinct from but cumulatively reinforcing of the guideline-calculation failures in G4-RA-004 through G4-RA-008: even if the guideline range had remained unchanged, a complete mitigation presentation gave the sentencing court an independent basis to

vary below the range or to impose a lower sentence within it. See G4-RA-011 (cumulative sentencing prejudice anchor).

CROSS-GROUND NOTATION:

Ground Three (App. D, G3-RA-001): The Ground Three sentencing-framework anchor documents the constitutional obligation to investigate and present mitigation bearing on the § 3553(a) factors, protect the defendant's allocution rights, and prepare the defendant to address the court effectively — the same Strickland standard applicable to Hayworth's complete failure to submit the sentencing letter, develop and present mitigation, and provide guidance for meaningful allocution. See App. D, G3-RA-001.

G4-RA-010 — Failure to Obtain Informed Consent: Psychological Evaluation, Autonomy, and Critical-Stage Communication Failure

RECORD CITATION / SOURCE:

McKinnon Decl. ¶¶64–66; Culberson Decl. ¶¶8, 11; G4-RA-002; G4-RA-003; Strickland v. Washington, 466 U.S. 668, 690–91 (1984); Glover v. United States, 531 U.S. 198, 203–04 (2001)

EXACT QUOTE OR RECORD LANGUAGE:

McKinnon Decl. ¶64: "Without my knowledge or consent, Hayworth requested a psychological evaluation that resulted in a six-month delay in sentencing. Hayworth led me to believe that Judge Reeves had ordered the evaluation unilaterally. I opposed any such evaluation and was never informed by Hayworth that he had recommended it. I did not learn until later that Hayworth had initiated the request."

McKinnon Decl. ¶65: "As a result of the psychological evaluation, I was transported by U.S. Marshals from the Grayson County Detention Center to a federal facility in Houston, Texas. During transport, the Marshals applied handcuffs in a manner that caused severe injury to my wrist. The injury ultimately required surgical correction, which was delayed for more than one and a half years, resulting in continued pain and a subsequent thumb injury from the corrective surgery itself."

McKinnon Decl. ¶66: "The psychological evaluation ultimately found no diagnosable mental-health issues. The six-month delay in sentencing, the transport, and the resulting physical injuries were therefore entirely unnecessary and caused by Hayworth's unauthorized action."

Culberson Decl. ¶8: "On April 13, 2023, I emailed Mr. Hayworth regarding communication issues and forwarded a message from McKinnon. In that email I wrote, among other things: 'Molly has no way to email you her concerns and requests since you have not accepted her "invite" to be on the approved list for emails. She has not been able to reach you via phone either. And I believe you have spoken with her only once since 2/3/23.' In that same email I requested a copy of Judge Reeves' February 3, 2023 order where McKinnon was moved to Bureau of Prison custody for a medical and psychological evaluation. McKinnon and I asked Mr. Hayworth several times over the following months to provide a copy of that order. Mr. Hayworth has never provided a copy of the February 3, 2023 order."

Culberson Decl. ¶11: "On June 12, 2023, I emailed Mr. Hayworth with the subject line 'Molly McKinnon — email 6/12/23 NEEDS CASE INFO TO WORK ON SENTENCING,' and forwarded a message from McKinnon requesting case materials and communication."

Sent'g Tr., ECF No. 235, PageID §2397: The sentencing court confirmed on the record that it was Hayworth who had requested the evaluation: "Her current counsel had requested an evaluation based upon claims of physical disabilities as well as some mental health issues." This independently corroborates McKinnon Decl. ¶64 and establishes on the transcript record itself that the evaluation was counsel-initiated — not court-ordered as Hayworth had represented to Movant.

RECORD-PROOF POINT:

The record establishes that Hayworth took a critical, consequential, and irreversible sentencing-stage action — requesting a psychological evaluation — without Movant's knowledge, without her consent, and after affirmatively misrepresenting to her the source of the evaluation request. The record documents three distinct and independently significant layers of the constitutional failure.

The first layer is the absence of informed consent. Hayworth requested the psychological evaluation without informing Movant that he was doing so. McKinnon Decl. ¶64. Movant opposed any such evaluation. Id. Hayworth not only failed to obtain consent — he affirmatively misled Movant by leading her to believe that Judge Reeves had ordered the evaluation unilaterally, when in fact Hayworth himself had initiated the request. Id. The misrepresentation compounded the consent failure: Movant was not merely uninformed — she was actively deceived about the source of a consequential sentencing-stage decision that directly affected her liberty, her physical circumstances of confinement, and her ability to prepare for sentencing.

The second layer is the consequential impact of the unauthorized action. The psychological evaluation resulted in a six-month delay in sentencing. McKinnon Decl. ¶66. That delay had direct and documentable consequences for Movant's sentencing preparation: it extended the period during which Hayworth's communication failures, documented in G4-RA-002 and G4-RA-003, operated to deprive Movant of sustained, meaningful preparation access to her attorney. The evaluation also required Movant's transport by U.S. Marshals to a federal facility in Houston, Texas, during which she sustained a wrist injury that ultimately required surgical correction. McKinnon Decl. ¶65.

The third layer is the complete absence of any justifying basis for the evaluation. The psychological evaluation ultimately found no diagnosable mental-health issues. McKinnon Decl.

¶66. That outcome confirmed that the evaluation was not grounded in a legitimate, professionally defensible assessment that Movant's mental health was at issue — it was an action taken without client consent, without an apparent legal or evidentiary basis disclosed to Movant, and without any resulting benefit to her sentencing presentation.

The Culberson Declaration independently corroborates both the communication breakdown that enabled the unauthorized action and the failure to provide the evaluation-related order. As of April 13, 2023, Hayworth had never provided Movant or Culberson with a copy of Judge Reeves' February 3, 2023 order moving McKinnon to Bureau of Prison custody for the evaluation — despite repeated requests. Culberson Decl. ¶8. The failure to provide that order left Movant without access to a foundational document governing a consequential stage of her own sentencing proceeding.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

Under Strickland, 466 U.S. at 690–91, the attorney-client relationship at a critical stage of a criminal proceeding requires that counsel consult with and obtain the informed consent of the client before taking actions that directly affect the client's liberty, physical circumstances, and sentencing posture. The psychological evaluation decision was not a routine procedural or strategic matter that fell within counsel's independent authority to resolve — it was a critical-stage decision with direct consequences for Movant's physical circumstances, her preparation for sentencing, the timing of the sentencing hearing, and the framing of her mental-health status before the sentencing court. Such a decision required: full disclosure of what Hayworth was considering and why; Movant's opportunity to be heard before the decision was made; Movant's informed consent or, at minimum, Movant's informed opportunity to object and to seek the

court's guidance; and honest communication about the source of the request so that Movant could make a fully informed decision about how to respond.

Hayworth failed on every one of those requirements. He did not disclose the evaluation request to Movant before making it. McKinnon Decl. ¶64. He did not obtain her consent — he made the request without it, despite her opposition to any such evaluation. Id. He actively misrepresented the source of the evaluation to Movant, leading her to believe the court had ordered it unilaterally — a misrepresentation that deprived Movant of even the after-the-fact ability to object to Hayworth's initiative and to make informed decisions about her response. Id. He failed to provide Movant and Culberson with a copy of the February 3, 2023 order governing the evaluation proceedings despite repeated requests over multiple months. Culberson Decl. ¶8. Competent sentencing counsel was further required to recognize that the unauthorized evaluation request had direct and foreseeable consequences for Movant's sentencing preparation — a six-month delay in the hearing that compounded the preparation deficit already created by Hayworth's communication failures — and to take corrective action when those consequences materialized rather than allowing the unauthorized action to run its course without Movant's knowledge or agreement. Hayworth's misrepresentation that the court had ordered the evaluation unilaterally foreclosed Movant's ability to challenge the request, object to the delay, or seek alternative remedies. The failure to obtain informed consent for a consequential, liberty-affecting, sentencing-stage decision is not a strategic judgment — it is a fundamental breach of the attorney-client relationship at a critical stage that Strickland's performance standard directly addresses.

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

Hayworth had direct, contemporaneous notice of Movant's position on the psychological evaluation from the beginning of the evaluation proceedings. Movant opposed any psychological evaluation and communicated that opposition to Hayworth. McKinnon Decl. ¶64. Culberson's April 13, 2023 email — which documented Hayworth's communication failures and Movant's inability to reach him by email or phone — was transmitted to Hayworth at the same time she requested a copy of Judge Reeves' February 3, 2023 order. Culberson Decl. ¶8. Hayworth therefore had written, contemporaneous notice from Culberson that Movant lacked reliable direct communication access to him; Movant and Culberson were seeking basic documentation about the evaluation proceedings; and the communication barriers Hayworth had created were preventing Movant from obtaining foundational information about a consequential stage of her own sentencing proceeding. Despite that notice, Hayworth never provided the February 3, 2023 order — withholding from Movant and Culberson the foundational document governing the evaluation proceedings even after repeated requests over multiple months. Culberson Decl. ¶8. The failure to provide that order was not the product of any competing obligation or resource constraint — it was a failure to respond to a specific, repeated, written request for a single document. Hayworth also had notice from the outset of his appointment that Movant had opposed the evaluation and believed it had been court-ordered rather than counsel-initiated — a belief that Hayworth's own misrepresentation had created and that he had both the notice and the obligation to correct. McKinnon Decl. ¶64.

MATERIALITY / PREJUDICE:

Under Glover, 531 U.S. at 203–04, any increase in actual imprisonment attributable to counsel's errors satisfies Strickland prejudice. The psychological evaluation failure is prejudicial on

multiple independent levels, each of which is analytically distinct and each of which is reinforced by the others.

The first level is preparation prejudice. The six-month delay in sentencing caused by the unauthorized evaluation request extended the period during which Hayworth's communication failures — his refusal to accept the electronic messaging invitation, his failure to meet with Movant in a sustained and timely manner, and his non-responsiveness to Movant's detailed sentencing concerns — operated without correction. G4-RA-002; G4-RA-003. A six-month delay that Hayworth caused without Movant's consent, that Movant had no opportunity to prevent because she was not informed of Hayworth's initiative, and that Hayworth misrepresented as a court order, was not a neutral procedural occurrence — it was a counsel-created obstacle to sentencing preparation that compounded every other preparation failure documented in G4-RA-002 through G4-RA-009.

The second level is autonomy prejudice. A defendant's right to make fundamental decisions about her own criminal case — including decisions about her mental-health status, her physical circumstances, and the framing of her psychological condition before the sentencing court — is a constitutionally protected interest that counsel cannot unilaterally override. Hayworth's unauthorized request, made without Movant's consent and after affirmatively misrepresenting its source, deprived Movant of the ability to exercise that right at a critical sentencing stage. The resulting loss of autonomy over a consequential sentencing-stage decision is not a speculative or collateral harm — it is a direct consequence of the informed-consent failure that Strickland's performance standard is designed to prevent.

The third level is outcome prejudice. The evaluation found no diagnosable mental-health issues. McKinnon Decl. ¶66. That outcome means the evaluation produced no sentencing benefit that

could offset the preparation prejudice and autonomy harm it caused. Under Glover, the increase in actual imprisonment attributable to the preparation deficit that the unauthorized delay extended — combined with the loss of the mitigation and allocution opportunities that a properly prepared sentencing defense would have preserved — satisfies the prejudice standard. The psychological evaluation prejudice is analytically distinct from but cumulatively reinforcing of the mitigation and allocution failures in G4-RA-009 and the preparation failures in G4-RA-002 and G4-RA-003. See G4-RA-011 (cumulative sentencing prejudice anchor). Strickland, 466 U.S. at 694; Glover, 531 U.S. at 203–04.

CROSS-GROUND NOTATION:

Ground Three (App. D, G3-RA-001): The Ground Three sentencing-framework anchor establishes the constitutional obligation to consult with and obtain informed consent from the client before taking consequential critical-stage sentencing actions — the same Strickland client-communication standard applicable to Hayworth's failure to disclose, consult, or obtain Movant's consent before requesting the psychological evaluation that caused a six-month sentencing delay, unauthorized transport, and physical injury with no resulting benefit to Movant's sentencing presentation. See App. D, G3-RA-001.

G4-RA-011 — Cumulative Sentencing Prejudice Anchor

RECORD CITATION / SOURCE:

McKinnon Decl. ¶¶4–10, 36, 60–72; Culberson Decl. ¶¶3–22; PSR ¶¶33, 34, 36, 41; Sent'g Tr., ECF No. 235, PageID §§2351–2352, 2355–2357; Sent'g Tr., ECF No. 235, PageID §2397; Evid. Hr'g., ECF No. 219, PageID §§2128–2129, 2166–2167, 2182, 2195, 2212; Movant Ex. 19 (Gov't Ex. 617); Movant Ex. 20 (Gov't Ex. 703); Movant Ex. 32 (McKinnon Sentencing Letter); Movant Ex. 71; Movant Ex. 72 (Gov't Ex. 201); Government Exhibit 1 (summary spreadsheet; first table labeled "Ponzi-style returns"; admitted without Hayworth objection at Evid. Hr'g., ECF No. 219, PageID §2128–2129); Trial Tr., ECF No. 176, PageID §§1186–1187; Trial Tr., ECF No. 179, PageID §§1762–1774 (duress proffer proceedings and Court's ruling prohibiting duress testimony before jury); Trial Tr., ECF No. 179, PageID §§1782–1793, 1802–1804; App. B, G1-RA-001; App. D, G3-RA-001; G4-RA-001 through G4-RA-010; Strickland v.

Washington, 466 U.S. 668, 687–88, 694 (1984); Glover v. United States, 531 U.S. 198, 203–04 (2001)

EXACT QUOTE OR RECORD LANGUAGE:

McKinnon Decl. ¶68: "I was effectively denied a meaningful opportunity to be heard through my own voice — even though Judge Reeves stated on the record at the hearing that he wanted to understand my background and perspective."

McKinnon Decl. ¶69: "Hayworth failed to raise this argument at sentencing, even though it could have reduced the loss calculation below the $1,500,000 threshold and avoided or reduced the 16-level enhancement."

McKinnon Decl. ¶70: "Hayworth told me he would not request downward departures and refused to argue for mitigation related to diminished intent, coercion, or my personal history. Hayworth stated that he did not believe Judge Reeves would grant such requests. His refusal was based not on legal merit but on his personal assessment of the judge's likely reaction."

McKinnon Decl. ¶71: "Hayworth told me that Judge Reeves 'automatically' applies the obstruction-of-justice enhancement to all defendants who proceed to trial. That representation was incorrect. Hayworth made no objection to the enhancement at sentencing."

McKinnon Decl. ¶64: "Without my knowledge or consent, Hayworth requested a psychological evaluation that resulted in a six-month delay in sentencing. Hayworth led me to believe that Judge Reeves had ordered the evaluation unilaterally. I opposed any such evaluation and was never informed by Hayworth that he had recommended it."

McKinnon Decl. ¶66: "The psychological evaluation ultimately found no diagnosable mental-health issues. The six-month delay in sentencing, the transport, and the resulting physical injuries were therefore entirely unnecessary and caused by Hayworth's unauthorized action."

Culberson Decl. ¶5: "Based on my review of my sent email folder and related email chains, I estimate that I emailed Mr. Hayworth more than 50 times from February 2023 through August 2023. Many of these emails did not receive a response, and I often sent follow-up emails after receiving no response."

Culberson Decl. ¶18: "I stated the dryers were worth '1.5 Million on the low end and probably 4–5 million on the high end' . . . The quotes had company names and contact information on them that Mr. Hayworth could use to easily obtain his own independent quotes."

Sent'g Tr., ECF No. 235, PageID §§2351–2352: The sentencing court applied the PSR's guideline loss calculation and obstruction enhancement at sentencing.

Sent'g Tr., ECF No. 235, PageID §§2355–2357: At sentencing, the Court questioned Hayworth about the evidentiary basis for the background and abuse claims and asked how that history was causally connected to the § 3553(a) factors. Hayworth acknowledged having no court documents, only letters from McKinnon's sisters, and was unable to establish the evidentiary foundation or causal connection the Court sought.

RECORD-PROOF POINT:

This entry functions as the cumulative sentencing prejudice anchor for Ground Four. It does not introduce new record evidence — each evidentiary component is documented in G4-RA-001 through G4-RA-010. Its function is to establish that Hayworth's individual sentencing failures were not isolated or independent errors; they were the product of a single, foundational preparation deficit that cascaded through every stage of the sentencing proceeding and that must be evaluated cumulatively under Strickland and Glover because the prejudice from each individual failure compounded and reinforced the prejudice from all the others.

The record establishes the following cumulative sentencing-failure picture, drawn from the individual entries.

First, a chaotic counsel-transition cascade culminating in Hayworth meeting Movant for the first time on the sentencing date itself, combined with a six-month preparation period in which he met with Movant only three times — all immediately before the hearing — and failed to establish reliable communication with a detained client throughout. G4-RA-001; G4-RA-002.

Second, a complete failure to investigate and act on the 25+ specific PSR objections Movant provided thirteen days before sentencing, combined with incorrect legal representations about the obstruction enhancement being "automatic," downward departures being futile, and obtaining the Carman withdrawal transcript being "illegal" — each of which deprived Movant of an informed basis to direct her sentencing defense. G4-RA-003.

Third, the failure to challenge the most structurally significant component of the guideline calculation — the 16-level enhancement premised on a $2,479,240.90 loss exceeding the $1,500,000 threshold — with a two-component, contractually grounded, market-value-documented loss-offset theory that was fully assembled and in Hayworth's possession before the hearing. G4-RA-004; G4-RA-005.

Fourth, the failure to object to the obstruction enhancement on two independently meritorious bases. On the primary basis: on the morning of Day 6 of trial, the Court ruled that McKinnon was prohibited from presenting duress testimony to the jury. Trial Tr., ECF No. 179, PageID §1774. That ruling was a legal ruling on the sufficiency of the defense under the Singleton framework — not a factual finding that the threats were fabricated or that McKinnon's account was false. McKinnon did not testify about the specific threat incidents because she was prohibited from doing so. Yet at sentencing, the Court imposed the obstruction enhancement by

finding that McKinnon committed perjury by "testifying essentially that she was under duress." Sent'g Tr., ECF No. 235, PageID §2352. Hayworth was standing in the courtroom when that finding was announced. The objection was immediate and obvious — the Court had prohibited that very testimony — and Hayworth said nothing. On the secondary basis: the PSR independently premised the enhancement on the assertion that McKinnon falsely denied being CFO of Nex-Gen, a characterization that Movant's nuanced trial testimony, the entity formation records, operating agreements, and bank account signature-card evidence directly contradicted. G4-RA-006.

Fifth, the failure to object to the "Ponzi-style returns" sentencing exhibit — an unsupported characterization of documented transfers and repayments that no Ponzi scheme charge, no trial witness testimony, and the Government's own financial records contradicted — and the failure to challenge the substantial-financial-hardship framing that the "Ponzi-style returns" label reinforced. G4-RA-007.

Sixth, the failure to correct the Government's 49% Nex-Gen ownership attribution — a premise directly contradicted by the NGEP Operating Agreement (Movant Ex. 20 / Gov't Ex. 703), the Deware Operating Agreement (Movant Ex. 19 / Gov't Ex. 617), and the Non-Compete Agreement (Movant Ex. 36 / Gov't Ex. 618), all Government exhibit materials available in the trial record throughout Hayworth's appointment. G4-RA-008.

Seventh, the failure to submit the sentencing letter Movant authored at Hayworth's own request, to prepare Movant to exercise her allocution right meaningfully, and to present substantive mitigation bearing on diminished intent, coercion, lack of financial benefit, limited role, and personal history — omissions made concrete by the sentencing court's own affirmative statement that it wanted to understand Movant's background and perspective. G4-RA-009.

Eighth, the failure to obtain Movant's informed consent before requesting a psychological evaluation, the affirmative misrepresentation that the court had ordered the evaluation unilaterally, the resulting six-month sentencing delay and unauthorized transport, and the failure to provide the evaluation order despite repeated requests — all producing a preparation deficit that extended and compounded every other failure in the list. G4-RA-010.

These failures did not operate independently. They interacted, compounded, and reinforced each other in a single, coherent pattern: a sentencing court asked to evaluate Movant's culpability received an unchallenged guideline calculation built on a disputed loss amount and an "automatic" obstruction enhancement; an unsupported "Ponzi-style returns" framing on which the substantial-financial-hardship analysis rested; a 49% ownership attribution that the Government's own exhibits contradicted; and no meaningful mitigation, no sentencing letter, and no prepared allocution — while the sentencing court was actively seeking Movant's background and perspective that Hayworth had suppressed.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

Under Strickland, 466 U.S. at 687–88, the cumulative performance failure across G4-RA-001 through G4-RA-010 establishes deficient performance that is not merely the sum of its individual components — it reflects the complete absence of a prepared, investigated, client-directed sentencing defense at a critical stage. The individual failures documented in each G4-RA entry each independently satisfy the deficient-performance standard under Strickland. The cumulative performance analysis reinforces that conclusion by establishing that the failures were not random or isolated — they were the predictable consequence of a foundational preparation deficit that Hayworth never corrected throughout the six-month appointment period.

Competent sentencing counsel operating under the same circumstances — replacement counsel appointed in a chaotic transition posture — was required to work with heightened urgency precisely because the transition created structural disadvantages that only diligent, accelerated preparation could overcome. Instead, Hayworth compounded those disadvantages by failing to establish communication, failing to investigate, making incorrect legal representations that foreclosed meritorious objections, taking an unauthorized consequential action without client consent or knowledge, refusing to submit a mitigation document prepared at his own request, and declining all available mitigation arguments based on personal judicial predictions rather than legal evaluation.

Taken cumulatively, those failures represent not merely deficient performance on individual sentencing tasks — they represent the functional absence of a sentencing defense: no guideline challenge, no enhancement objection, no framing correction, no mitigation presentation, no prepared allocution, no sentencing letter, and no informed client consent over a critical sentencing-stage decision. That complete absence of a prepared defense cannot be characterized as the product of reasonable strategic choices made after adequate investigation. See Wiggins v. Smith, 539 U.S. 510, 521 (2003). It is the product of the failure to investigate that Strickland directly addresses — and it satisfies the deficient-performance standard on a cumulative basis that independently supports Ground Four relief even if no individual failure is viewed as sufficient standing alone.

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

The cumulative available-evidence record is established in G4-RA-001 through G4-RA-010 and is summarized here for the Court's convenience. Every category of evidence needed to conduct a competent sentencing defense was in Hayworth's possession or available to him throughout his

six-month appointment. The trial record — including Movant's nuanced CFO-designation testimony, the entity formation records, operating agreements, bank account signature-card evidence, and Government financial exhibits — was available to Hayworth from the date of his appointment. Culberson Decl. ¶¶14–18. The drum-dryer valuation quotes (Movant Ex. 71) and NGEP Operating Agreement (Movant Ex. 20 / Gov't Ex. 703) supporting the loss-offset theory were transmitted to Hayworth on August 8–9, 2023. Culberson Decl. ¶18. The comprehensive list of 25+ specific PSR objections — covering the loss calculation, obstruction enhancement, ownership mischaracterization, "Ponzi-style returns" characterization, mitigation, and allocution — was provided to Hayworth on August 8, 2023. McKinnon Decl. ¶63. The sentencing letter (Movant Ex. 32) was authored by Movant at Hayworth's own request and transmitted to him before the hearing. McKinnon Decl. ¶68. Character letters were available from prior counsel's file from the beginning of Hayworth's appointment. Culberson Decl. ¶19. The mitigation evidence bearing on Movant's limited role, lack of financial benefit, lack of ownership, reliance on information supplied by others, and coercive circumstances was documented in McKinnon Decl. ¶¶4–10, 32–39, 51–59 and available in the declaration and trial record throughout the appointment period. Culberson communicated with Hayworth more than 50 times during the preparation period, relaying Movant's detailed sentencing concerns, questions, and objection lists — providing written, contemporaneous notice of every category of sentencing issue Hayworth failed to address. Culberson Decl. ¶5. No category of the available sentencing defense required resources or information that was unavailable to Hayworth. The cumulative available-evidence record establishes that the preparation failure was total — not partial, not resource-constrained, and not attributable to any circumstance outside Hayworth's control.

MATERIALITY / PREJUDICE:

Under Glover v. United States, 531 U.S. 198, 203–04 (2001), any increase in actual imprisonment attributable to counsel's errors satisfies the Strickland prejudice standard — no minimum threshold of imprisonment increase is required. The cumulative prejudice from G4-RA-001 through G4-RA-010 must be evaluated as an integrated whole, not as the sum of independent probabilities, because the failures interacted at every level of the sentencing analysis and collectively produced a sentencing outcome conducted on a materially inaccurate, incomplete, and unchallenged factual and legal foundation.

The cumulative prejudice analysis proceeds on three levels.

The first level is guideline-range prejudice. Had Hayworth challenged the loss calculation using the two-component loss-offset theory documented in G4-RA-004 and G4-RA-005 — the contractually grounded, market-value-documented offset argument that was fully assembled and in his possession before the hearing — the sentencing court could have credited all or part of the offset and reduced the attributable loss below the $1,500,000 threshold, eliminating the 16-level enhancement and producing a materially lower advisory range. Had Hayworth objected to the obstruction enhancement on the primary basis documented in G4-RA-006 — that the Court had prohibited McKinnon from testifying about duress at trial, yet at sentencing predicated a perjury-based obstruction finding on characterizing her trial testimony as duress testimony, when the specific threat incidents had been excluded by the Court's own ruling — or on the secondary basis that Movant's nuanced trial testimony, the entity formation records, and the bank account signature-card evidence directly contradicted the false-denial CFO-title premise in PSR ¶36, the sentencing court could have declined the enhancement and further reduced the advisory range. Either correction, standing alone, satisfies Glover prejudice. Together, they establish a

cumulative guideline-range prejudice that is both structurally significant and directly documentable from the trial record and available exhibits. PSR ¶¶33, 36, 41.

The second level is § 3553(a) framing prejudice. Had Hayworth corrected the "Ponzi-style returns" characterization using Chamblee's own trial testimony and the Government's documented-transfer records (G4-RA-007), corrected the 49% ownership attribution using the NGEP Operating Agreement (Movant Ex. 20 / Gov't Ex. 703), the Deware Operating Agreement (Movant Ex. 19 / Gov't Ex. 617), and the Non-Compete Agreement (Movant Ex. 36 / Gov't Ex. 618) (G4-RA-008), and presented the complete mitigation record bearing on Movant's limited role, lack of financial benefit, lack of ownership, diminished intent, and coercive circumstances (G4-RA-009) — the sentencing court would have conducted its § 3553(a) analysis from a materially different factual foundation. A sentencing court that understands Movant as an administrative and bookkeeping employee who relied on information supplied by others, derived no meaningful financial benefit, lacked ownership or account control, and acted under coercive circumstances evaluates the nature and circumstances of the offense, the history and characteristics of the defendant, and the need for the sentence to reflect just punishment materially differently than a court that accepts a 49% owner framing supported by "Ponzi-style returns" characterization and no corrective mitigation. The § 3553(a) framing prejudice is independently sufficient under Glover because any one of the uncorrected mischaracterizations — ownership, Ponzi framing, mitigation omission — could have affected the Court's sentencing analysis and ultimate sentence.

The third level is allocution and voice prejudice. At sentencing, the Court actively questioned Hayworth about the evidentiary basis for the mitigation claims and asked how the claimed history was causally connected to the § 3553(a) analysis — and Hayworth was unable to answer,

acknowledging he had no court documents and only letters from McKinnon's sisters. Sent'g Tr., ECF No. 235, PageID §§2355–2357. The Court's inability to receive a documented, causally-connected mitigation presentation — at the precise moment when Hayworth had already refused to submit the sentencing letter McKinnon authored at his own request — establishes that the omitted mitigation and suppressed sentencing letter were not merely background omissions but responsive, outcome-relevant materials the Court was actively seeking.

The three levels of prejudice are not additive in isolation — they are multiplicative in interaction. A lower guideline range anchors the § 3553(a) analysis at a lower starting point; corrected framing eliminates the sentencing aggravators built on unsupported characterizations; and complete mitigation and allocution give the court the individualized, defendant-specific information that § 3553(a) requires. A sentencing proceeding in which all three levels of correction were present would have been a fundamentally different proceeding than the one that occurred — and there is a reasonable probability that it would have produced a fundamentally different, lower sentence. Strickland, 466 U.S. at 694; Glover, 531 U.S. at 203–04. Ground Four independently establishes that Movant is entitled to resentencing at which competent counsel presents the corrected guideline calculation, the corrected factual record, and the complete mitigation and allocution showing that the sentencing court sought and Hayworth suppressed.

CROSS-GROUND NOTATION:

Ground Three (App. D, G3-RA-001; G3-RA-011): The Ground Three sentencing-framework anchor and cumulative pretrial-IAC prejudice anchor together establish the prejudice cascade from pretrial failures through sentencing and appellate stages — Ground Four's cumulative sentencing prejudice is analytically continuous with and cumulatively reinforcing of the pretrial-IAC prejudice documented in Ground Three. See App. D, G3-RA-001; G3-RA-011.

Ground Three (App. D, G3-RA-010): The Ground Three Day 6 preservation anchor documents the trial-record events — the duress proffer and Court's prohibition ruling — that form the primary basis of the unchallenged obstruction enhancement and bridge the Ground Three trial-preservation failures to the Ground Four sentencing failures documented cumulatively in this entry. See App. D, G3-RA-010.

Ground One (App. B, G1-RA-001): The foundational Ground One attribution and framework anchor documents the cumulative trial-record mischaracterizations and attribution errors that — carried uncorrected into

sentencing — compounded the sentencing-stage failures documented throughout Ground Four and reinforced in this cumulative prejudice anchor. See App. B, G1-RA-001.

Ground Five (App. F, G5-RA-001): The appellate IAC framework anchor documents the Napolitano omission of the prosecutorial-misconduct/Napue claim — an appellate failure that is cumulatively reinforced by the uncorrected sentencing record errors and mischaracterizations that Hayworth's preparation failures allowed to stand. See App. F, G5-RA-001.

McKinnon v. United States, Crim. No. 5:20-cr-00063

Movant: Molly Irene McKinnon, Register No. 23265-032

APPENDIX F - Ground Five Record-Proof Appendix

Appellate Ineffective Assistance of Counsel

SCOPE OF APPENDIX: This Appendix identifies the appellate omissions and related record foundations supporting Ground Five. Where an omitted appellate issue depends on misconduct, deficient performance, or record proof documented more fully in another Appendix, the relevant entry cross-references that material rather than reproducing it. Those cross-references preserve the factual and procedural foundation of the Ground Five claim without duplicating extensive record material. This Appendix does not assert or reserve any ground for relief beyond those stated in the Motion.

G5-RA-001 — Framework: Appellate IAC / Napolitano's Omission of the Stronger Napue/Prosecutorial-Misconduct Claim on Direct Appeal

RECORD CITATION / SOURCE:

McKinnon Decl. ¶73; Strickland v. Washington, 466 U.S. 668, 687–94 (1984); Smith v. Robbins, 528 U.S. 259, 285–86 (2000); Jones v. Barnes, 463 U.S. 745, 751–54 (1983); Napue v. Illinois, 360 U.S. 264, 269–71 (1959); Giglio v. United States, 405 U.S. 150, 153–54 (1972); McKinnon Appeal Brief, Case No. 23-5773, Doc. 28, at 2; United States v. Vance / United States v. McKinnon, Case Nos. 23-5766/5773, slip op. at 14–30; App. B, G1-RA-001 through G1-RA-015 (cross-reference — omitted Napue/due-process claim is grounded in same trial-record evidence documented in Appendix B)

EXACT QUOTE OR RECORD LANGUAGE:

McKinnon Decl. ¶73: "I urged my appellate counsel, Gregory Napolitano ('Napolitano'), to include prosecutorial misconduct as a ground for relief on direct appeal. I specifically identified

the Government's use of false or materially misleading testimony, its failure to correct known falsehoods, and the pattern of misconduct documented in the trial transcript and the Government's own admitted exhibits. Napolitano declined to include prosecutorial misconduct as an appellate ground despite my requests." McKinnon Appeal Brief, Case No. 23-5773, Doc. 28, at 2 (Statement of Issues Presented for Review): Issues raised on direct appeal — (1) limitation of Movant's trial testimony; (2) sufficiency of the evidence; (3) procedural and substantive reasonableness of sentence. Napue v. Illinois, 360 U.S. at 269: "A conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment." Id. at 271: "The same result obtains when the State, although not soliciting false evidence, allows it to stand uncorrected when it appears." The knowing use of false testimony that "could in any reasonable likelihood have affected the judgment of the jury" violates due process. Id. at 271. Giglio v. United States, 405 U.S. at 153–54: The Government's obligation to disclose encompasses any evidence bearing on the credibility of its witnesses; suppression or failure to correct materially misleading testimony that the Government knew or should have known was false constitutes a due-process violation. Smith v. Robbins, 528 U.S. at 288: "Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome."

RECORD-PROOF POINT:

This entry functions as the framework anchor for Ground Five. The record establishes the complete appellate-IAC architecture: the counsel involved, the claim omitted, the claims actually raised, the trial-record basis for the omitted claim, and Movant's specific pre-brief request that the prosecutorial-misconduct issue be included on direct appeal. First, the appellate representation. Following conviction and sentencing, Movant was represented on direct appeal

by Gregory Napolitano in Case No. 23-5773 in the Sixth Circuit Court of Appeals. Second, the omitted claim. The claim Napolitano failed to raise was a prosecutorial-misconduct/Napue/due-process claim grounded in the Government's use and maintenance of materially misleading evidence throughout trial. The omitted claim encompassed: entity conflation and attribution errors across the NGEP and NGI record (App. B, G1-RA-001); the Government's financial-summary and Bank of America record chain, including the McCracken-to-Hubbuch data relationship bearing on the completeness of the financial evidence presented to the jury (G5-RA-004; App. B); Count 2 source-of-funds mischaracterization — presenting funds as personally sent by Gary Chamblee while the trial record established an intercompany transfer from a business account (G5-RA-005; App. B); Allan Deware's bank-access testimony — "had never had access to the banks" — contradicted by bank applications, signature cards, and FBI interview evidence (G5-RA-006; App. B); the McKinnon Letter and Gov't Ex. 401 pattern, including the Government's rebuttal exploitation of the letter's absence ("not a shred of proof") after Agent Hubbuch's testimony that he never received it (G5-RA-007; App. B); and Agent Hubbuch's financial-summary testimony presenting an incomplete investigation as comprehensive and unqualified (G5-RA-004; App. B). These examples are representative, not exhaustive, of the misconduct documented in Appendix B. Third, the claims actually raised. Napolitano raised three issues on direct appeal: limitation of Movant's trial testimony; sufficiency of the evidence; and procedural and substantive reasonableness of sentence. McKinnon Appeal Brief, Case No. 23-5773, Doc. 28, at 2. None of those issues challenged the accuracy or completeness of the Government's trial presentation. All three accepted the integrity of the trial record and challenged only the trial court's evidentiary rulings, the jury's evaluation of the established record, or the sentencing outcome. Fourth, the specific request. Movant

specifically urged Napolitano to raise the prosecutorial-misconduct/Napue claim before the direct-appeal brief was filed. McKinnon Decl. ¶73. She identified the specific bases — the Government's use of false or materially misleading testimony, its failure to correct known falsehoods, and the pattern of misconduct documented in the trial transcript and the Government's own admitted exhibits. Id. Napolitano declined despite those requests. Id. Fifth, the cross-ground record foundation. The omitted Napue/prosecutorial-misconduct claim is grounded in the same trial-record evidence documented in Appendix B (Ground One), which preserves the full record basis for the prosecutorial-misconduct theory across G1-RA-001 through G1-RA-015. Entries G5-RA-002 through G5-RA-007 each identify a specific, record-based component of the omitted claim. G5-RA-008 addresses materiality and verdict-integrity prejudice. G5-RA-009 addresses the clearly-stronger issue comparison. G5-RA-010 addresses the appellate relief theory.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

Under Strickland v. Washington, 466 U.S. at 687–94, constitutionally competent appellate counsel must exercise reasonable professional judgment in selecting issues for appeal. Jones v. Barnes, 463 U.S. at 751–54, establishes that while appellate counsel need not raise every nonfrivolous issue, the obligation to exercise reasonable professional judgment does not permit the omission of a substantially stronger claim in favor of weaker alternatives. As the Supreme Court recognized in Smith v. Robbins, 528 U.S. at 288, only when ignored issues are clearly stronger than those presented will the presumption of effective assistance of counsel be overcome, and appellate counsel's failure to raise such a clearly stronger issue constitutes deficient performance under Strickland. Napolitano failed on the central requirement of that standard. The prosecutorial-misconduct/Napue claim Movant specifically identified and

requested was not a speculative or novel theory requiring new evidence or new investigation — it was a record-based claim grounded entirely in the existing trial transcript, Government exhibits, and documented contradictions available to Napolitano from the appellate record. The claim directly attacked the integrity of the verdict by challenging the accuracy and completeness of the Government's trial presentation across multiple witnesses, exhibits, and arguments. That is categorically distinct from the three issues Napolitano chose to raise: limitation of testimony, sufficiency, and sentencing reasonableness each accept the trial record's integrity and challenge only what the court or the Government did with that record. A Napue/prosecutorial-misconduct claim, by contrast, challenges whether the record itself — as presented to the jury — accurately reflected the evidence available to the Government, and whether the jury's evaluation of knowledge, intent, control, and attribution was therefore tainted by materially misleading information the Government used and allowed to stand uncorrected. That is a categorically more powerful appellate claim when the record supports it, because a successful Napue claim supports reversal of the conviction, not merely a remanded sentencing or a narrowed evidentiary ruling. Napolitano's declination was not a reasonable strategic judgment about comparable alternatives. It was the omission of a substantially stronger, record-grounded claim — one the client specifically identified, one requiring no investigation beyond review of the existing record, and one that attacked the verdict's foundation — in favor of claims that operated at the margins of the established trial record. That omission, made after receiving Movant's direct and specific notice of the prosecutorial-misconduct claim and its bases, falls below the objective standard of reasonably competent appellate representation and constitutes deficient performance under Strickland, 466 U.S. at 687–88, and Smith v. Robbins, 528 U.S. at 288.

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

The omitted prosecutorial-misconduct/Napue claim was available to Napolitano entirely from the existing appellate record — the trial transcripts, admitted Government exhibits, admitted defense exhibits, and BATES-stamped discovery materials that were part of the trial record and available to appellate counsel without any new investigation. No new witnesses, new interviews, or new evidence outside the trial record were required to identify, develop, or brief the omitted claim. The specific record anchors for each component of the omitted claim are documented in Appendix B (G1-RA-001 through G1-RA-015) and in G5-RA-003 through G5-RA-007, each of which identifies specific trial transcript citations, PageID numbers, Government exhibit numbers, BATES references, and admitted defense exhibits drawn from the existing trial record. Critically, Movant provided Napolitano with direct, specific notice of the omitted claim before the direct-appeal brief was filed. McKinnon Decl. ¶73. She identified the specific bases: the Government's use of false or materially misleading testimony, its failure to correct known falsehoods, and the pattern of misconduct documented in the trial transcript and the Government's own admitted exhibits. Id. That notice was sufficient to require Napolitano to investigate and evaluate the claim — and the investigation required only review of the trial record already part of the appellate record. Napolitano therefore had: (a) direct, specific notice from Movant of the prosecutorial-misconduct/Napue claim and its specific bases before the brief was filed; (b) full access to the trial transcripts, Government exhibits, and defense exhibits that provided the record foundation for the claim; (c) the Napue/Giglio legal framework established for decades as settled law; and (d) the cross-ground record documentation in the trial record that would have allowed him to identify, develop, and brief the omitted claim without any investigation beyond reviewing the record before him. The omission of the claim after receiving that specific notice cannot be attributed to unfamiliarity with the record or unavailability of the evidentiary basis. It was a

decision to decline a record-based claim the client specifically identified — after being placed on direct notice of its specific factual and legal bases.

MATERIALITY / PREJUDICE:

Under Smith v. Robbins, 528 U.S. at 285–86, the prejudice standard for appellate IAC requires a showing of a reasonable probability that, but for counsel's deficient performance in omitting the stronger issue, the result of the appeal would have been different. That standard is met here on both the nature of the omitted claim and the comparison between the omitted claim and the issues actually raised. On the nature of the omitted claim: a Napue/prosecutorial-misconduct claim that attacks the integrity of the verdict — asserting that the Government introduced or maintained materially misleading evidence bearing on knowledge, intent, control, and attribution throughout trial — is one of the strongest available appellate grounds in a conviction that depends on the Government's characterization of a defendant's role, knowledge, and intent. As G5-RA-008 documents, the omitted inconsistencies were not minor — they went to knowledge, intent, control, loss, and witness credibility, and to materially false or misleading impressions about the completeness of financial evidence, the source and nature of investor funds, account access and control, and Movant's alleged role. An appellate court reviewing those inconsistencies under Napue and Giglio would have been required to evaluate whether there was a reasonable likelihood they affected the jury's judgment — and the cumulative record documented in Appendix B provides a substantial basis for that evaluation. On the clearly-stronger issue comparison: the issues Napolitano raised — limitation of testimony, sufficiency, and sentencing reasonableness — each operated within the confines of the trial record as presented. As G5-RA-009 documents in detail, none of those issues challenged the accuracy or completeness of the Government's trial presentation or attacked the integrity of the verdict itself.

The omitted Napue/prosecutorial-misconduct claim did. A claim that attacks the verdict's foundation by showing the jury evaluated the evidence against a materially misleading factual framework is, by definition, a stronger path to conviction relief than claims that accept that framework and challenge only the trial court's rulings or the sentencing analysis. There is a reasonable probability that the Sixth Circuit, presented with the record-based Napue/prosecutorial-misconduct claim documented in G5-RA-003 through G5-RA-008, would have found a reasonable likelihood that the Government's use and maintenance of materially misleading evidence affected the jury's verdict — and would have granted reversal, remand, or a new trial. See G5-RA-010 (appellate prejudice and relief anchor). Strickland, 466 U.S. at 694; Smith v. Robbins, 528 U.S. at 285–86.

CROSS-GROUND NOTATION:

Ground One (App. B, G1-RA-001 through G1-RA-015): The complete Ground One trial-record basis for the omitted Napue/prosecutorial-misconduct claim is documented across all fifteen entries in Appendix B; the entity-conflation and attribution framework (G1-RA-001), financial-summary limitations (G1-RA-005), Chamblee investment-relationship evidence (G1-RA-006), Deware bank-access contradiction (G1-RA-007), McKinnon Letter/Gov't Ex. 401 pattern (G1-RA-008 through G1-RA-014), and cumulative materiality anchor (G1-RA-015) together constitute the evidentiary foundation on which the appellate IAC framework documented in this entry rests. See App. B, G1-RA-001 through G1-RA-015.

Ground Two (App. C, G2-RA-006): The Ground Two financial-investigation and Hubbuch-testimony anchor cross-references this entry directly — the trial-stage failure to develop and preserve the investigative-completeness and Napue record is analytically continuous with the appellate failure to present the resulting prosecutorial-misconduct claim on direct appeal. See App. C, G2-RA-006.

Ground Three (App. D, G3-RA-001; G3-RA-010): The Ground Three sentencing-framework anchor and Day 6 preservation anchor both cross-reference this entry — the pretrial and trial failures documented in Ground Three establish the record foundation on which the omitted appellate Napue/prosecutorial-misconduct claim rests, and the Day 6 preservation failure is among the most significant trial-stage omissions that Napolitano was positioned to raise on direct appeal but did not. See App. D, G3-RA-001; G3-RA-010.

Ground Four (App. E, G4-RA-011): The Ground Four cumulative sentencing prejudice anchor cross-references this entry — the uncorrected sentencing record errors and mischaracterizations documented cumulatively in Ground Four are analytically reinforced by the appellate-stage failure documented here, which closed the final avenue of conviction-level relief. See App. E, G4-RA-011.

G5-RA-002 — Movant's Specific Request to Appellate Counsel and Napolitano's Declination: The Request-and-Omission Anchor

RECORD CITATION / SOURCE:

McKinnon Decl. ¶73; Strickland v. Washington, 466 U.S. 668, 687–88 (1984); Smith v. Robbins, 528 U.S. 259, 285–86 (2000); App. B, G1-RA-001 through G1-RA-015 (cross-reference — specific bases Movant identified to Napolitano are grounded in the same trial-record evidence documented in Appendix B); G5-RA-001 (framework anchor)

EXACT QUOTE OR RECORD LANGUAGE:

McKinnon Decl. ¶73: "I urged my appellate counsel, Gregory Napolitano ('Napolitano'), to include prosecutorial misconduct as a ground for relief on direct appeal. I specifically identified the Government's use of false or materially misleading testimony, its failure to correct known falsehoods, and the pattern of misconduct documented in the trial transcript and the Government's own admitted exhibits. Napolitano declined to include prosecutorial misconduct as an appellate ground despite my requests."

RECORD-PROOF POINT:

This entry functions as the request-and-omission anchor for Ground Five. It preserves the factual predicate establishing that Napolitano's omission of the prosecutorial-misconduct/Napue claim was not an oversight or an uninformed judgment — it was a decision made after Movant specifically identified the claim, its legal basis, and its factual foundations, and specifically requested that it be included in the direct-appeal brief. McKinnon Decl. ¶73 is the controlling record source for three distinct and independently significant facts. First, the act of urging. Movant affirmatively urged Napolitano to raise prosecutorial misconduct as an appellate ground. Id. The declaration uses the word "urged" — not merely mentioned or suggested — establishing that Movant communicated the issue with specificity and insistence before the brief was filed. This is not a case where the client raised a passing concern that counsel could reasonably have

treated as uninformed or inchoate. The request was specific and direct. Second, the content of the identification. Movant did not simply ask Napolitano to raise "prosecutorial misconduct" in the abstract. She specifically identified three components: (a) the Government's use of false or materially misleading testimony; (b) the Government's failure to correct known falsehoods; and (c) the pattern of misconduct documented in the trial transcript and the Government's own admitted exhibits. Id. Each of those three components maps directly to a distinct category of Napue/Giglio violation: the knowing use of false testimony (Napue); the failure to correct testimony the Government knew or should have known was false (Napue/Giglio); and the broader documentary pattern establishing that the misleading factual framework was systemic rather than isolated (the cumulative-misconduct theory documented in Appendix B). The specificity of Movant's identification distinguishes this case from one in which appellate counsel is criticized for not independently discovering an issue. Movant provided the legal theory, the factual categories, and the record source in a single, direct communication before the brief was filed. Third, the declination. Despite receiving that specific identification and request, Napolitano declined to include prosecutorial misconduct as an appellate ground. Id. The declination was not based on a finding that the claim lacked record support — the trial record documented in Appendix B establishes that the record support was substantial. It was a decision to omit a specifically identified, record-grounded, client-requested claim in favor of issues that did not challenge the integrity of the verdict. The request-and-omission sequence is the evidentiary foundation for the notice component of the Ground Five deficient-performance analysis. As documented in G5-RA-001, the Napue/prosecutorial-misconduct claim was available entirely from the existing appellate record and required no new investigation. The combination of that availability, the specificity of Movant's identification, and the fact of declination establishes that

Napolitano's omission was an informed choice to exclude a specifically requested, record-supported, verdict-integrity claim — not an inadvertent oversight or a reasonable judgment that the claim lacked merit.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

Under Strickland v. Washington, 466 U.S. at 687–88, deficient performance is evaluated against the objective standard of reasonably competent appellate counsel. Under Smith v. Robbins, 528 U.S. at 288, only when ignored issues are clearly stronger than those presented will the presumption of effective assistance of counsel be overcome, and counsel's failure to raise such a clearly stronger claim constitutes deficient performance regardless of counsel's subjective justification for the omission. The request-and-omission sequence documented in McKinnon Decl. ¶73 heightens the deficiency analysis in a specific and legally significant way: this is not a case where the deficiency arises solely from counsel's independent failure to identify a stronger issue in the record. It is a case where counsel received direct, specific notice of the stronger issue — including its legal theory, its factual categories, and its record foundation — from the client herself, before the brief was filed, and declined to include it despite that notice. The Strickland standard does not permit appellate counsel to decline a specifically identified, record-grounded claim that is clearly stronger than the claims ultimately raised without a legally sound basis for that judgment. A reasonable appellate attorney, upon receiving Movant's specific identification of the prosecutorial-misconduct/Napue theory and its three components — use of false or materially misleading testimony, failure to correct known falsehoods, and a documented pattern across trial transcript and Government exhibits — was required at minimum to investigate the claim by reviewing the trial record for the identified pattern, evaluate whether the claim was record-supported, and, if supported, include it in the brief or provide a legally grounded

explanation for its exclusion. The record documented in Appendix B establishes that the claim was substantially supported across multiple witnesses, exhibits, and Government arguments. A review of that record would have confirmed its strength. Napolitano's declination — made after receiving specific notice of the claim's theory and record basis — cannot be attributed to ignorance of the claim's existence or unavailability of the record. It was a decision to exclude a specifically requested, record-grounded, verdict-integrity claim in favor of three issues that accepted the trial record's integrity and operated at the margins of the established factual foundation. That decision falls below the objective standard of reasonably competent appellate representation and constitutes deficient performance under Strickland, 466 U.S. at 687–88.

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

The notice to counsel element is directly and specifically established by McKinnon Decl. ¶73. Movant did not merely gesture toward a general concern — she specifically identified to Napolitano: (a) the legal theory (prosecutorial misconduct as a ground for appellate relief); (b) the first factual category (the Government's use of false or materially misleading testimony); (c) the second factual category (the Government's failure to correct known falsehoods); and (d) the third factual category (the pattern of misconduct documented in the trial transcript and the Government's own admitted exhibits). Id. Each of those three factual categories corresponds to a specific body of trial-record evidence documented in Appendix B. The entity conflation and attribution errors (App. B, G1-RA-001), the financial-summary and Bank of America record chain (G5-RA-004; App. B), the Count 2 source-of-funds mischaracterization (G5-RA-005; App. B), the Deware bank-access contradiction (G5-RA-006; App. B), and the McKinnon Letter/Gov't Ex. 401 pattern (G5-RA-007; App. B) each represent specific trial-record evidence of false or materially misleading testimony, failure to correct known falsehoods, or a

documented misconduct pattern — exactly the categories Movant identified. Napolitano had access to all of that evidence in the existing appellate record. He had direct, specific notice of the legal theory and factual categories from Movant before the brief was filed. And the existing trial record — the transcripts, admitted exhibits, and BATES-stamped discovery — provided the complete documentary foundation for the claim without any new investigation. No additional notice, no additional records, and no additional investigation beyond reviewing the record before him was required to evaluate and develop the specifically identified claim. The notice to counsel is therefore established by the strongest available evidence: the client's own sworn declaration, identifying the specific legal theory and factual categories she communicated to counsel before the brief was filed.

MATERIALITY / PREJUDICE:

Under Smith v. Robbins, 528 U.S. at 285–86, the prejudice standard for appellate IAC requires a showing of a reasonable probability that, but for counsel's deficient omission of the stronger issue, the result of the appeal would have been different. The request-and-omission sequence documented in this entry reinforces the prejudice analysis in a specific and legally significant way. A client's specific pre-brief identification of a stronger claim — one the client characterized in terms of legal theory, factual categories, and record foundation — eliminates any inference that the omission was a close professional judgment between comparable alternatives. When a client identifies and urges inclusion of a specific appellate claim before the brief is filed, and counsel declines, the resulting omission cannot be attributed to the reasonable professional selection process that Jones v. Barnes, 463 U.S. at 751–54, protects. It reflects a specific decision to exclude a specifically requested claim — and when that claim is, as here, clearly stronger than those presented, the prejudice that flows from its omission is the loss of a

substantially better appellate path, not merely the loss of one among several equivalent alternatives. As G5-RA-009 documents in detail, the three issues Napolitano raised — limitation of testimony, sufficiency, and sentencing reasonableness — each accepted the integrity of the trial record and challenged only what was done with that record. The omitted prosecutorial-misconduct/Napue claim challenged the integrity of the trial record itself, asserting that the factual foundation on which the jury evaluated knowledge, intent, control, and attribution was materially tainted by the Government's use and maintenance of false or misleading evidence. That is categorically a stronger path to conviction relief. Because the specific claim Movant identified and requested was record-grounded, legally established, and categorically more powerful than the issues raised, there is a reasonable probability that the Sixth Circuit — presented with the prosecutorial-misconduct/Napue claim and the trial-record documentation in Appendix B — would have granted relief that Napolitano's chosen issues could not achieve. Smith v. Robbins, 528 U.S. at 285–86; Strickland, 466 U.S. at 694. See G5-RA-008 (materiality and verdict-integrity prejudice anchor); G5-RA-010 (appellate relief theory).

CROSS-GROUND NOTATION:

Ground One (App. B, G1-RA-001 through G1-RA-015): The specific bases Movant identified to Napolitano before the direct-appeal brief was filed — the Government's use of false or materially misleading testimony, its failure to correct known falsehoods, and the pattern of misconduct documented in the trial transcript and Government exhibits — map directly to the fifteen Ground One record-proof entries; the complete Ground One trial-record matrix establishes the factual foundation that Movant communicated to Napolitano and that Napolitano declined to include in the brief despite that specific, pre-brief identification. See App. B, G1-RA-001 through G1-RA-015.

G5-RA-003 — The Omitted Prosecutorial-Misconduct/Napue Claim Was Record-Based and Non-Speculative: The Appellate-Record Foundation

RECORD CITATION / SOURCE:

McKinnon Decl. ¶¶11–15, 73; Trial Tr., ECF No. 174, PageID #842 (Deware bank-access testimony — exact quote preserved in G5-RA-006); Trial Tr., ECF No. 175, PageID ##1055–1056; Trial Tr., ECF No. 176, PageID ##1168–1169; Trial Tr., ECF No. 177, PageID ##1483–1486; Trial Tr., ECF No. 178, PageID ##1575–1576, 1585–1586; Trial Tr., ECF No. 179, PageID #1863 (Government closing argument — element 3 / intent to defraud; good-faith defense argument delivered immediately following display of Gov't Ex. 202B [Tab 29] / Count 2 ACH deposit, July 25, 2018); Movant Ex. 9 [Tab 15] (Gov't Ex. 501 — financial summary); Movant Ex. 14 [Tab 20] (Gov't Ex. 507); Movant Ex. 15 [Tab 21] (Gov't Ex. 508); Movant Ex. 1 [Tab 7] (BATES USA-00049465 — FBI discovery); Movant Ex. C [Tab 3] (McKinnon Letter); Gov't Ex. 401 (Vance/Hubbuch recording, December 2018); Napue v. Illinois, 360 U.S. 264, 269–71 (1959); Giglio v. United States, 405 U.S. 150, 153–54 (1972); App. B, G1-RA-001 through G1-RA-015 (complete trial-record foundation for the omitted Napue/prosecutorial-misconduct claim); G5-RA-001 (framework anchor); G5-RA-002 (request-and-omission anchor); G5-RA-004 (representative example — financial-summary/Bank of America records); G5-RA-005 (representative example — Count 2 source-of-funds); G5-RA-006 (representative example — Deware bank-access/signatory contradiction); G5-RA-007 (representative-not-exhaustive incorporation/McKinnon Letter/Gov't Ex. 401)

EXACT QUOTE OR RECORD LANGUAGE:

The non-speculative, record-grounded nature of the omitted claim is established through four categories of specific trial-record evidence, each documented with exact quotes, pincites, exhibit numbers, and BATES references in the designated entry below. The record anchors for each category are identified here; the full exact-quote preservation is in the designated entry. Category 1 — Financial-summary/Bank of America record chain (G5-RA-004): Trial Tr., ECF No. 177,

PageID ##1483–1486 (McCracken direct examination — FBI forensic accountant; processed bank records including Bank of America, Wells Fargo, Community Trust, and Whitaker Bank into Excel spreadsheets for SA Hubbuch at Hubbuch's request; performed no independent analysis; entities processed include Carbon Holdings, Dendron, Nex-Gen, NexGen Energy Partners, Nex-Gen Industries, and V4 Carbon; years roughly 2016–2019) and Trial Tr., ECF No. 178, PageID ##1575–1576 (Hubbuch cross-examination — Bank of America NGEP records confirmed included in McCracken spreadsheet; financial investigation scope; "strings" admission at PageID #1576) establish the Government's reliance on Agent Hubbuch's financial-summary testimony; Movant Ex. 9 (Gov't Ex. 501) is the admitted financial-summary exhibit. Category 2 — Count 2 source-of-funds/intercompany transfer (G5-RA-005): Trial Tr., ECF No. 175, PageID ##1055–1056; Trial Tr., ECF No. 176, PageID ##1168–1169; Trial Tr., ECF No. 178, PageID ##1585–1586 (Defense Ex. 114 — Bank of America NexGen Energy Partners account, July 2018 statement; first withdrawal on July 3rd identified as transfer from NexGen Energy Partners to NexGen Energy Partners — intercompany transfer; Gary Chamblee not listed on transaction; deposits from Clorox also reflected on statement — consistent with test-load sales); Trial Tr., ECF No. 179, PageID #1863 establish the trial-record basis for the Count 2 source-of-funds mischaracterization. At PageID #1863, AUSA Chapman delivered the Government's closing argument on element 3 of wire fraud (intent to defraud), arguing: "But ladies and gentlemen, it is not consistent with a good faith defense for the defendants to make those material misrepresentations to lenders and to investors. Instead, when you lie to people, that is consistent with an intent to defraud." That argument was delivered immediately following the Government's display of Gov't Ex. 202B — the Count 2 ACH deposit from Gary G. Chamblee for $5,600, dated July 25, 2018. Category 3 — Deware bank-access/signatory

contradiction (G5-RA-006): Trial Tr., ECF No. 174, PageID #842 contains the exact quote: "had never had access to the banks"; BATES USA-00049465 and Movant Exs. 14 and 15 (Gov't Exs. 507 and 508) are the bank applications, signature cards, and FBI discovery materials that contradict the testimony. Exact quote and BATES reference preserved in G5-RA-006. Category 4 — McKinnon Letter/Gov't Ex. 401 pattern (G5-RA-007): McKinnon Decl. ¶¶11–15 establishes the letter's existence, authorization, and exculpatory character; Gov't Ex. 401 is the Vance/Hubbuch recorded interview in which the letter's existence was disclosed to the FBI in December 2018; Movant Ex. C is the McKinnon Letter itself. Source separation: Gov't Ex. 401 = the Vance/Hubbuch recording; Movant Ex. C = the McKinnon Letter; these are not interchangeable and are not cited as the same exhibit.

RECORD-PROOF POINT:

This entry establishes the threshold legal and factual predicate for the entire Ground Five claim: the omitted prosecutorial-misconduct/Napue claim was not a novel theory, a speculative argument, or a claim requiring new evidence beyond the existing trial record. It was a record-based appellate issue — grounded in specific trial transcript testimony, admitted Government exhibits, admitted defense exhibits, BATES-stamped discovery materials, and documented contradictions between the Government's trial presentation and the underlying evidence — that was reviewable from the appellate record as assembled at the time of appeal. That threshold predicate matters to the appellate-IAC analysis for two distinct legal reasons. First, a record-based claim requires no new investigation by appellate counsel. Napolitano had full access to the trial transcripts, admitted exhibits, and discovery materials as part of the appellate record. The Napue/prosecutorial-misconduct claim did not require him to locate new witnesses, develop new evidence, or conduct investigations outside the existing record. It required only the review and

legal analysis of materials already before him. The claim's availability was therefore not contingent on any resource, investigation, or circumstance outside Napolitano's control — it was entirely within the scope of ordinary, competent appellate record review. Second, a record-based Napue claim is a reviewable appellate issue under established Sixth Circuit and Supreme Court precedent. Napue v. Illinois and Giglio v. United States establish settled legal standards for prosecutorial misconduct involving false or materially misleading testimony; the application of those standards to specific, trial-record-documented contradictions is a recognized and viable appellate theory. The claim Movant identified to Napolitano was not legally novel or uncertain — it was a straightforward application of settled due-process law to a specific, documented factual record. The record foundation for the omitted claim is organized into four specific categories, each corresponding to a representative Napue example documented in a designated entry. The first category is the Government's financial-summary/Bank of America record chain, establishing that the Government relied on Agent Hubbuch's financial-summary testimony as comprehensive while the underlying record reflected a McCracken-to-Hubbuch data chain involving Bank of America records processed before trial. Trial Tr., ECF No. 177, PageID ##1483–1486; Trial Tr., ECF No. 178, PageID ##1575–1576; Movant Ex. 9 (Gov't Ex. 501). The second category is the Count 2 source-of-funds mischaracterization, establishing that the Government characterized the funds underlying Count 2 as personally sent by Gary Chamblee, while the trial record reflected the funds originated from a business account as an intercompany transfer. Trial Tr., ECF No. 175, PageID ##1055–1056; Trial Tr., ECF No. 176, PageID ##1168–1169; Trial Tr., ECF No. 178, PageID ##1585–1586; Trial Tr., ECF No. 179, PageID #1863. The third category is Allan Deware's bank-access/signatory testimony, establishing that Deware testified he "had never had access to the banks," while bank applications, signature cards, and

FBI discovery evidence — including BATES USA-00049465 and Movant Exs. 14 and 15 — established his authorized signatory status. Trial Tr., ECF No. 174, PageID #842. The fourth category is the McKinnon Letter and Gov't Ex. 401 pattern, encompassing the Government's rebuttal exploitation of the letter's absence from trial — including Agent Hubbuch's testimony that he never received the letter and the Government's "not a shred of proof" rebuttal argument — after the December 2018 recorded interview (Gov't Ex. 401) had established that the FBI was informed of the letter's existence and its location. McKinnon Decl. ¶¶11–15. These four categories are representative, not exhaustive, of the trial-record evidence that grounded the omitted claim. Appendix B (G1-RA-001 through G1-RA-015) documents the full trial-record basis for the prosecutorial-misconduct/Napue theory across all dimensions of the Government's trial presentation. Ground Five expressly incorporates that broader record by cross-reference and does not limit the omitted claim to only the three specific representative examples documented in G5-RA-004 through G5-RA-006.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

Under Strickland v. Washington, 466 U.S. at 690–91, the touchstone of the deficient-performance analysis is whether counsel's conduct fell below an objective standard of reasonableness — and critically, whether that conduct reflects a reasonable strategic judgment made after adequate investigation or a failure to investigate that no competent attorney would have accepted. The record-based, non-speculative nature of the omitted claim directly bears on the deficiency analysis because it eliminates the most common justification for omitting an appellate issue: that the claim required new evidence, novel legal theory, or investigative resources unavailable to counsel at the time of appeal. None of those justifications apply here. The Napue/prosecutorial-misconduct claim Movant identified was grounded entirely in the

existing trial record — transcripts, admitted exhibits, and BATES-stamped discovery materials all part of the appellate record as assembled. Napolitano had access to all of it. The legal framework — Napue v. Illinois and Giglio v. United States — is settled and established law. The specific contradictions underlying the claim — the financial-summary chain, the Count 2 source-of-funds mischaracterization, the Deware bank-access contradiction, and the McKinnon Letter/Gov't Ex. 401 pattern — were each documented in the existing trial record and required only competent legal review to identify and develop. A reasonably competent appellate attorney reviewing the trial record in light of Movant's specific identification of the prosecutorial-misconduct theory and its three components would have reviewed those specific records, identified the documented contradictions, evaluated the claim's strength under Napue and Giglio, and included it in the brief. That review required no resources beyond access to the appellate record and application of settled legal standards. The failure to undertake that review — after receiving Movant's specific identification of the claim's legal theory and factual categories — is not a reasonable strategic judgment; it is the failure to conduct the investigation that the Strickland standard requires. See Wiggins v. Smith, 539 U.S. 510, 521 (2003) (strategic choices made after thorough investigation are virtually unchallengeable; strategic choices made after less than complete investigation are reasonable only to the extent a reasonable professional judgment supports the limitation on investigation). Napolitano's declination was made after receiving specific notice of the claim — not after investigation that revealed it to be unsupported. That sequence inverts the Strickland framework: the decision to exclude the claim preceded, rather than followed, the investigation that would have confirmed its record basis.

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

The available evidence supporting the non-speculative, record-grounded nature of the omitted claim falls into two categories: the record materials available to Napolitano as part of the appellate record, and the specific notice Movant provided before the brief was filed. On the record materials: the complete trial transcript — across ECF Nos. 174 through 179 and ECF No. 219 — was part of the appellate record and available to Napolitano for review. The admitted Government exhibits — including Movant Ex. 9 (Gov't Ex. 501), Movant Ex. 14 (Gov't Ex. 507), Movant Ex. 15 (Gov't Ex. 508), and Gov't Ex. 401 — were in the trial record and available to appellate counsel. The admitted defense exhibits and BATES-stamped discovery materials — including Movant Ex. C (McKinnon Letter) and BATES USA-00049465 — were part of the record available to Napolitano. Each of the four representative Napue example categories documented in G5-RA-004 through G5-RA-007 draws exclusively from this set of trial-record materials — no source outside the existing appellate record is required to identify, document, or brief any component of the omitted claim. On the specific notice: Movant provided Napolitano with direct, specific identification of the prosecutorial-misconduct/Napue theory — including its legal basis, its three factual categories, and its record foundation — before the direct-appeal brief was filed. McKinnon Decl. ¶73. That notice was sufficient to require Napolitano to review the identified record and evaluate the claim's strength. The combination of full appellate-record access and specific client notice of the claim's theory and factual categories placed Napolitano in the position of a reasonably competent attorney who had both the information and the resources needed to identify, develop, and brief the claim — and who chose not to do so despite that notice.

MATERIALITY / PREJUDICE:

Under Smith v. Robbins, 528 U.S. at 285–86, the prejudice analysis for appellate IAC requires a showing of a reasonable probability that the result of the appeal would have been different had counsel raised the stronger omitted issue. The record-based, non-speculative nature of the omitted claim is directly material to that analysis for a specific and legally significant reason: a Sixth Circuit panel reviewing a concrete, trial-record-documented Napue/prosecutorial-misconduct claim is in a fundamentally different analytical position than a panel reviewing a speculative or generalized misconduct allegation. The omitted claim here was the latter. Each of the four representative categories documented in G5-RA-004 through G5-RA-007 identifies a specific, documentable contradiction between the Government's trial presentation and the underlying record evidence: specific PageID numbers in identified trial transcripts, specific admitted exhibit numbers, a specific BATES-stamped FBI document, and a specific recorded interview (Gov't Ex. 401) establishing Government knowledge of a fact the Government's own witness later denied. A Sixth Circuit panel reviewing those specific, record-anchored contradictions under the Napue/Giglio standard — whether there was a reasonable likelihood the false or misleading evidence affected the jury's judgment — would have had a concrete, exhibit-by-exhibit, transcript-by-transcript record basis on which to evaluate the claim. That is not a speculative appellate argument. It is the application of settled law to a documented factual record. The reasonable probability that a panel presented with that record-grounded claim would have granted relief — reversal, remand, or new trial — is materially stronger than the probability available from any of the three issues Napolitano raised, each of which accepted the trial record's integrity and sought relief only at its margins. Strickland, 466 U.S. at 694; Smith v. Robbins, 528 U.S. at 285–86. See G5-RA-008 (materiality and verdict-integrity prejudice); G5-RA-009 (clearly-stronger issue comparison); G5-RA-010 (appellate relief theory).

CROSS-GROUND NOTATION:

Ground One (App. B, G1-RA-001 through G1-RA-015): The non-speculative, record-grounded nature of the omitted Napue/prosecutorial-misconduct claim is established by the same trial transcripts (ECF Nos. 174 through 179), admitted Government exhibits, admitted defense exhibits, and BATES-stamped discovery materials documented across all fifteen Ground One entries; every record source establishing the claim's non-speculative character was part of the appellate record as assembled and available to Napolitano for review without any investigation beyond the existing record. See App. B, G1-RA-001 through G1-RA-015.

Ground Three (App. D, G3-RA-002): The Ground Three pretrial-IAC entry documenting the CFO-title, entity formation, and attribution-record failures cross-references this entry as the appellate record foundation — the same attribution and entity formation evidence that grounded the pretrial-IAC theory is part of the non-speculative, entirely record-based appellate Napue claim whose availability to Napolitano is established here. See App. D, G3-RA-002.

G5-RA-004 — Representative Napue Example: Financial-Summary / Bank of America Records / McCracken-to-Hubbuch Chain (Agent Hubbuch's Financial-Investigation Completeness Testimony)

RECORD CITATION / SOURCE:

Trial Tr., ECF No. 177, PageID ##1483–1486 (McCracken direct examination — FBI forensic accountant; processed bank records including Bank of America, Wells Fargo, Community Trust, and Whitaker Bank into Excel spreadsheets for SA Hubbuch; no independent analysis performed; entities processed include Carbon Holdings, Dendron, Nex-Gen, NexGen Energy Partners, Nex-Gen Industries, and V4 Carbon; years roughly 2016–2019); Trial Tr., ECF No. 178, PageID ##1575–1576 (Hubbuch cross-examination — Bank of America NGEP records and financial investigation scope; "strings" admission); Trial Tr., ECF No. 178, PageID #1570; Trial Tr., ECF No. 176, PageID #1186 (Hubbuch financial-investigation method — "get a handle"); Movant Ex. 9 (Gov't Ex. 501 — financial summary exhibit); Napue v. Illinois, 360 U.S. 264, 269–71 (1959); Giglio v. United States, 405 U.S. 150, 153–54 (1972); App. B, G1-RA-002 (Bank of America NGEP account / signer evidence); App. B, G1-RA-005 (Hubbuch financial-investigation method; cross-examination / "strings"; Gov't Ex. 501 / Movant Ex. 9 financial-

summary limitation); App. B, G1-RA-015 (cumulative materiality / financial-summary evidence); G5-RA-001 (framework anchor); G5-RA-002 (request-and-omission anchor); G5-RA-003 (record-based / non-speculative foundation)

EXACT QUOTE OR RECORD LANGUAGE:

Trial Tr., ECF No. 176, PageID #1186 (Hubbuch financial-investigation method): Hubbuch testified about identifying involved accounts, subpoenaing accounts, and trying to "get a handle" on the accounting in a money and fraud investigation. App. B, G1-RA-005. That testimony supplied the baseline representation of financial-investigation method — the premise on which the jury evaluated the comprehensiveness and reliability of the Government's financial reconstruction. Trial Tr., ECF No. 178, PageID ##1575–1576 (Hubbuch cross-examination — financial investigation scope / "strings"): At PageID #1575, Ms. Lewis initiated cross-examination of Agent Hubbuch regarding the scope of his financial review. She confirmed that Hubbuch's spreadsheet — compiled from McCracken's data — did include the Bank of America records for NGEP. At PageID #1576, Ms. Lewis asked whether compiling all accounts in issue would have created a more complete financial picture. Hubbuch acknowledged: "I have to tell you there were a lot of things that I could have done and strings that I could have pulled to get a more complete financial picture. But I believe that I had sufficient information." That acknowledgment established that the financial investigation was not exhaustive and that additional investigative avenues existed that Hubbuch chose not to pursue — directly qualifying the comprehensive-investigation impression conveyed on direct examination through his "get a handle" testimony and the presentation of Gov't Ex. 501. App. B, G1-RA-005. Trial Tr., ECF No. 177, PageID ##1483–1486 (McCracken-to-Hubbuch Bank of America data chain): McCracken testified that his role was limited to processing bank records received into Excel

spreadsheets for SA Hubbuch at Hubbuch's request. PageID #1484: "My scope of my involvement was to take the bank records that we received and scan them in and trans -- put them into an Excel spreadsheet." McCracken confirmed he performed no independent analysis of that data. PageID #1484: "Did you perform any independent analysis of this data? I did not." Records processed included Bank of America, Community Trust, Wells Fargo, and Whitaker Bank (PageIDs ##1484–1485), covering personal and corporate accounts for Carbon Holdings, Dendron, Nex-Gen, NexGen Energy Partners, Nex-Gen Industries, and V4 Carbon, for years roughly 2016–2019 (PageID #1485). McCracken used BankScan software to convert scanned statements into Excel text files (PageID #1486: "We use what's called BankScan, and what it does is you scan the statements that we received from the banks and that turns the descriptions and the items into a text file, and that gets put into an Excel spreadsheet."). Movant Ex. 9 (Gov't Ex. 501 — financial summary): Gov't Ex. 501 was marked as a Government exhibit but was never formally admitted into evidence and was never shown to the jury. Hubbuch and McCracken referenced and narrated from the exhibit continuously throughout their respective testimony, but the financial summary itself was never admitted as an exhibit and never placed before the jury for examination. App. B, G1-RA-005. Trial Tr., ECF No. 176, PageID ##1186–1187 (Bank of America NGEP account / signer records): Hubbuch identified Gov't Ex. 201 [Tab 78] as Bank of America NGEP account records; Chamblee and Hogan were identified as listed signers; Movant was not identified as a signer on those pages. App. B, G1-RA-002.

RECORD-PROOF POINT:

This entry establishes the first of three representative Napue examples grounding the omitted prosecutorial-misconduct/Napue claim. It documents a specific, trial-record-based category of the Government's use and maintenance of materially misleading evidence — the presentation of

Agent Hubbuch's financial-investigation testimony with continuous reference to a financial summary exhibit (Gov't Ex. 501 / Movant Ex. 9) that was never formally admitted into evidence and was never shown to the jury, in a manner that suggested a more complete and comprehensive financial reconstruction than the underlying McCracken-to-Hubbuch Bank of America record chain and cross-examination evidence established. The Napue issue embedded in this record category has three analytically distinct components. The first component is the non-admission of the financial summary itself. Gov't Ex. 501 was marked as a Government exhibit. Hubbuch and McCracken both referenced and narrated from it throughout their testimony. It was never formally admitted into evidence and was never shown to the jury. The Government's entire financial reconstruction narrative was therefore presented to the jury through agent oral testimony alone — a mode of presentation that deprived the jury of any ability to examine, evaluate, or cross-reference the underlying document against the agents' characterizations of it. The second component is the financial-summary completeness representation. At trial, the Government elicited testimony from Agent Hubbuch establishing the investigative method — identifying accounts, subpoenaing records, and trying to "get a handle" on the accounting — and presented Gov't Ex. 501 / Movant Ex. 9 as the output of that investigation. Trial Tr., ECF No. 176, PageID #1186; App. B, G1-RA-005. That presentation carried an implicit representation of investigative comprehensiveness. The Government's cross-examination at Trial Tr., ECF No. 178, PageID ##1575–1576 — in which Hubbuch acknowledged "strings" and additional investigative avenues he chose not to pursue — directly qualified that completeness representation, but the jury had no admitted exhibit to evaluate in light of that qualification. The third component is the McCracken-to-Hubbuch data chain. The trial record reflected that McCracken processed Bank of America records and provided data to Hubbuch before trial. Trial

Tr., ECF No. 177, PageID ##1483–1486. That data chain established that the financial summary's content for the Bank of America records was mediated through McCracken's scanning and Excel-conversion processing before it reached Hubbuch — an intermediary step that was material to the completeness and accuracy of any financial reconstruction the Government presented to the jury. The Bank of America NGEP account records (Gov't Ex. 201) identified Chamblee and Hogan as listed signers on the account while Movant was not identified as a signer. Trial Tr., ECF No. 176, PageID ##1186–1187; App. B, G1-RA-002. Together, these three components established a Napue-relevant pattern: the Government presented a financial reconstruction narrative through agent oral testimony referencing an exhibit the jury never saw, while the underlying record — the McCracken-to-Hubbuch data chain, the cross-examination "strings" acknowledgment, and the Bank of America signer evidence — established qualifications and limitations the jury had no documentary basis to evaluate. These record materials are documented in full in App. B, G1-RA-002, G1-RA-005, and G1-RA-015.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

Under Strickland v. Washington, 466 U.S. at 687–88, and Smith v. Robbins, 528 U.S. at 288, appellate counsel's failure to raise an issue clearly stronger than those presented constitutes deficient performance. Napolitano's failure to raise the financial-summary/Bank of America/McCracken-to-Hubbuch Napue example as part of the broader prosecutorial-misconduct/Napue claim on direct appeal was deficient for the reasons identified in G5-RA-001 through G5-RA-003, and for the following example-specific reasons. The financial-summary completeness issue was among the strongest components of the broader Napue claim because it was grounded in the Government's own investigative presentation and its own exhibit — Gov't Ex. 501 — and because the cross-examination evidence qualifying that presentation appeared in

the same trial record that Hubbuch's direct examination occupied. A Napue claim premised on the contrast between direct-examination testimony suggesting investigative comprehensiveness and cross-examination evidence acknowledging "strings" and unresolved investigative avenues is a paradigmatic appellate-record issue: it requires no new evidence, no new witnesses, and no investigation beyond the trial transcript itself. The McCracken-to-Hubbuch Bank of America data-chain evidence reinforced the claim by establishing a specific, trial-record basis for questioning whether the financial summary's content accurately reflected the underlying Bank of America records or whether the intermediary processing step introduced gaps, omissions, or limitations that the direct-examination presentation did not disclose. App. B, G1-RA-005. A reasonably competent appellate attorney reviewing the trial record — particularly after receiving Movant's specific identification of the Government's use of false or materially misleading testimony and its failure to correct known falsehoods — would have reviewed Hubbuch's financial-investigation testimony, identified the contrast between the direct-examination completeness representation and the cross-examination "strings" acknowledgment, identified the McCracken-to-Hubbuch data chain as a qualifying intermediary not reflected in the direct-examination narrative, and included this specific record-grounded category in the broader Napue/prosecutorial-misconduct claim. Napolitano did not do so. The non-admission of Gov't Ex. 501 strengthens rather than weakens the appellate Napue argument: the Government presented its entire financial reconstruction to the jury through agent oral testimony referencing an exhibit the jury never received, and then used Hubbuch's and McCracken's unadmitted-exhibit narration as the evidentiary foundation for attribution, knowledge, and intent inferences that depended entirely on the reliability and completeness of a financial summary no juror ever examined.

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

Every component of the financial-summary/Bank of America/McCracken-to-Hubbuch Napue example was available to Napolitano in the appellate record without any investigation beyond reviewing the trial transcript and trial exhibit record. The non-admission of Gov't Ex. 501 was itself apparent from the trial record: a review of the admitted exhibit list would have confirmed that Gov't Ex. 501 was marked but never admitted, establishing that Hubbuch's and McCracken's continuous testimony referencing it was delivered to the jury without the underlying document ever being placed in evidence. Hubbuch's direct-examination financial-investigation testimony — including the "get a handle" account-identification narrative and the presentation of Gov't Ex. 501 — was in the trial transcript at Trial Tr., ECF No. 176, PageID #1186. App. B, G1-RA-005. The cross-examination evidence acknowledging "strings" and additional investigative avenues was in the same trial transcript at Trial Tr., ECF No. 178, PageID ##1575–1576. The McCracken-to-Hubbuch Bank of America data-chain evidence was in the trial transcript at Trial Tr., ECF No. 177, PageID ##1483–1486. The Bank of America NGEP account signer records — identifying Chamblee and Hogan as listed signers while Movant was not identified as a signer — were in the trial record at Trial Tr., ECF No. 176, PageID ##1186–1187, and were admitted as Gov't Ex. 201. App. B, G1-RA-002. All of these materials were part of the appellate record as assembled at the time of appeal. Additionally, Movant specifically identified the Government's use of false or materially misleading testimony and its failure to correct known falsehoods as the bases for the prosecutorial-misconduct/Napue claim she urged Napolitano to raise. McKinnon Decl. ¶73. That specific identification was sufficient to direct a competent appellate attorney to review Hubbuch's financial-investigation testimony — the centerpiece of the Government's financial proof — for the pattern of

completeness representation and qualification that the cross-examination and data-chain evidence established.

MATERIALITY / PREJUDICE:

Under Smith v. Robbins, 528 U.S. at 285–86, and Napue v. Illinois, 360 U.S. at 271, the appellate prejudice from omitting the financial-summary/Bank of America Napue example operates on two levels. The first level is the direct appellate-record level. A Sixth Circuit panel reviewing the contrast between Hubbuch's direct-examination completeness representation and the cross-examination "strings" acknowledgment — together with the McCracken-to-Hubbuch Bank of America intermediary data-chain evidence — would have had a specific, transcript-documented basis to find that the Government's financial-summary presentation carried a materially misleading impression of investigative comprehensiveness. That impression was delivered to the jury exclusively through agent oral testimony narrating an exhibit the jury never received. Under Napue, the standard is whether the misleading evidence could in any reasonable likelihood have affected the judgment of the jury. 360 U.S. at 271. A jury that received the Government's financial reconstruction entirely through agent narration of an unadmitted exhibit — with no ability to examine the underlying document — was in a fundamentally weaker position to evaluate the reliability, completeness, or accuracy of the financial picture it was asked to accept. If the jury had known that the financial summary the agents narrated was never admitted into evidence, never placed before them for examination, and was based on a McCracken-to-Hubbuch data-processing chain that Hubbuch himself acknowledged left investigative "strings" unpulled, there is a reasonable likelihood it would have drawn materially weaker inferences from the Government's financial reconstruction. The second level is the cumulative appellate-record level. The financial-summary completeness issue was one

component of a broader pattern in which the Government's financial reconstruction consistently understated its limitations and overstated the directness of attribution to Movant. App. B, G1-RA-015. When presented as part of the broader Napue/prosecutorial-misconduct claim together with the Count 2 source-of-funds mischaracterization (G5-RA-005), the Deware bank-access contradiction (G5-RA-006), and the McKinnon Letter/Gov't Ex. 401 pattern (G5-RA-007), the financial-summary example reinforced the cumulative picture of a trial presentation in which the Government's own record evidence qualified its own attribution and intent theory in ways the jury did not receive. There is a reasonable probability that a Sixth Circuit panel would have granted reversal, remand, or new trial on the basis of the cumulative Napue/prosecutorial-misconduct claim that included this financial-summary example. Smith v. Robbins, 528 U.S. at 285–86; Strickland, 466 U.S. at 694. See G5-RA-008 (materiality / verdict-integrity prejudice anchor); G5-RA-010 (appellate relief theory).

CROSS-GROUND NOTATION:

Ground One (App. B, G1-RA-002; G1-RA-005; G1-RA-015): The Bank of America NGEP account signer evidence (G1-RA-002), Hubbuch financial-investigation method testimony and "strings" cross-examination including the Gov't Ex. 501 financial-summary limitation (G1-RA-005), and cumulative materiality anchor (G1-RA-015) together preserve the complete trial-record basis for the financial-summary/McCracken-to-Hubbuch Napue example documented in this entry; the non-admission of Gov't Ex. 501, the intermediary data-chain structure, and the completeness-representation qualification are all anchored in those designated App. B entries. See App. B, G1-RA-002; G1-RA-005; G1-RA-015.

Ground Three (App. D, G3-RA-005): The Ground Three trial-IAC financial-summary evidence entry cross-references this entry as the appellate-IAC companion — the trial-stage failure to challenge the financial-summary completeness representation and the appellate-stage failure to raise it as a Napue example are analytically continuous failures at successive stages of the proceeding. See App. D, G3-RA-005.

G5-RA-005 — Representative Napue Example: Count 2 Source-of-Funds / Intercompany Transfer (Government's Characterization of Funds as Personally Sent by Gary Chamblee)

RECORD CITATION / SOURCE:

Trial Tr., ECF No. 175, PageID ##1055–1056 (Chamblee testimony — $5,600 deposit / Whitaker Bank statement / Bank of America NGEP account review); Trial Tr., ECF No. 176, PageID ##1168–1169 (Count 2 transaction-source chain — NGEP Bank of America account context); Trial Tr., ECF No. 178, PageID ##1585–1586 (Defense Ex. 114 — Bank of America NexGen Energy Partners account, July 2018 statement; July 3rd transaction: NexGen Energy Partners to NexGen Energy Partners intercompany transfer — Gary Chamblee not listed; Clorox deposits also visible); Trial Tr., ECF No. 179, PageID #1863 (Government closing argument — element 3 / intent to defraud: "it is not consistent with a good faith defense for the defendants to make those material misrepresentations to lenders and to investors. Instead, when you lie to people, that is consistent with an intent to defraud." — delivered immediately following display of Gov't Ex. 202B / Count 2 ACH deposit, July 25, 2018); Movant Ex. 17 [Tab 23] (Gov't Ex. 717 — Count 2 transaction documentation); Movant Ex. 41 [Tab 47] (Defense Ex. 76 — Count 2 transaction documentation); Napue v. Illinois, 360 U.S. 264, 269–71 (1959); Giglio v. United States, 405 U.S. 150, 153–54 (1972); App. B, G1-RA-004 (Count 2 $5,600 source-of-funds qualification); App. B, G1-RA-006 (Chamblee loan/investment qualification; Chamblee-source/Count 2/Dell Jaggers overlap); App. D, G3-RA-003 (Ground Three trial IAC — Chamblee/Count 2 impeachment row — cross-reference); G5-RA-001 (framework anchor); G5-RA-002 (request-and-omission anchor); G5-RA-003 (record-based / non-speculative foundation); G5-RA-004 (first representative Napue example)

EXACT QUOTE OR RECORD LANGUAGE:

Trial Tr., ECF No. 175, PageID ##1055–1056 (Chamblee testimony — Count 2 source-of-funds): Chamblee recognized a Whitaker Bank statement showing a $5,600 deposit and reviewed a Bank of America statement for NGEP. The cited testimony qualified whether the funds

underlying Count 2 came from Chamblee personally or from a transfer originating from the NGEP Bank of America account — establishing that the Count 2 source-of-funds was not simply a straightforward personal payment by Chamblee but a transaction requiring consideration of the NGEP account records and related banking documentation. App. B, G1-RA-004. Trial Tr., ECF No. 175, PageID ##1034–1036 (Chamblee loan/investment qualification): Chamblee characterized funds using loan and investment terminology — "in loans to Mr. Vance" and "a lot of it was loan as well." App. B, G1-RA-006. That testimony introduced a loan/investment qualification into the Count 2 financial relationship that was analytically inconsistent with a simplified personal-payment or direct-victim-loss characterization of the same funds. Trial Tr., ECF No. 176, PageID ##1168–1169 (Count 2 transaction-source chain — NGEP account context): The cited transcript pages address the Count 2 transaction-source chain in the context of the NGEP Bank of America account records, providing additional banking documentation establishing the intercompany-transfer character of the underlying transaction. App. B, G1-RA-004. Trial Tr., ECF No. 178, PageID ##1585–1586 (Defense Ex. 114 — Bank of America NexGen Energy Partners account, July 2018 statement; first withdrawal on July 3rd identified as transfer from NexGen Energy Partners to NexGen Energy Partners — intercompany transfer; Gary Chamblee not listed on transaction; deposits from Clorox also reflected on statement — consistent with test-load sales). Trial Tr., ECF No. 179, PageID #1863 (Government closing argument — element 3 / intent to defraud): "But ladies and gentlemen, it is not consistent with a good faith defense for the defendants to make those material misrepresentations to lenders and to investors. Instead, when you lie to people, that is consistent with an intent to defraud." AUSA Chapman delivered this statement during the Government's closing argument on element 3 of wire fraud (intent to defraud), immediately following the display of Gov't Ex. 202B — the

Count 2 ACH deposit from Gary G. Chamblee for $5,600, July 25, 2018. This is the precise attribution argument the omitted Napue/prosecutorial-misconduct claim would have challenged as resting on a materially incomplete and misleading trial record. Movant Ex. 17 (Gov't Ex. 717) and Movant Ex. 41 (Defense Ex. 76): Count 2 transaction documentation admitted at trial and available in the appellate record, providing the documentary basis for the transaction-source distinction between a personal payment and an intercompany transfer from the NGEP Bank of America account. App. B, G1-RA-004.

RECORD-PROOF POINT:

This entry establishes the second of three representative Napue examples grounding the omitted prosecutorial-misconduct/Napue claim. It documents a specific, trial-record-based category of the Government's use and maintenance of materially misleading evidence — the presentation of the Count 2 source-of-funds in a manner that characterized the underlying $5,600 transaction as personally sent by Gary Chamblee, while the trial record reflected that the funds originated from the NGEP Bank of America account as an intercompany transfer rather than a personal payment. The Napue issue embedded in this record category has two analytically distinct components. The first component is the personal-payment versus intercompany-transfer distinction. Count 2 involved a specific $5,600 transaction. Chamblee's own trial testimony and the banking documentation reviewed at trial qualified whether those funds came from Chamblee personally or from the NGEP Bank of America account — a business account on which Chamblee and Hogan, not Movant, were the identified signers. Trial Tr., ECF No. 175, PageID ##1055–1056; Trial Tr., ECF No. 176, PageID ##1168–1169; App. B, G1-RA-004. A characterization of the Count 2 funds as personally sent by Chamblee — without the qualifying account-transfer context — presented the jury with a simplified attribution theory that the banking record did not support.

If the jury understood the $5,600 as a straightforward personal payment by Chamblee, it would have attributed the transaction differently than if it understood the funds as originating from a NGEP account controlled by Chamblee and Hogan. That distinction mattered directly to attribution, knowledge, and intent: the source of the funds affected how the jury evaluated Movant's knowledge of and role in the underlying transaction. The second component is the loan/investment qualification embedded in Chamblee's own testimony. Chamblee did not characterize his financial relationship with Vance and the businesses in terms of simple victim-payments. He used loan and investment terminology — "in loans to Mr. Vance" and "a lot of it was loan as well." Trial Tr., ECF No. 175, PageID ##1034–1036; App. B, G1-RA-006. That qualification was directly inconsistent with a simplified personal-payment characterization of the Count 2 transaction. Together, these two components established a Napue-relevant pattern: the Government presented the Count 2 source-of-funds through a simplified personal-payment characterization while the same trial record — Chamblee's own testimony and the NGEP banking documentation — established that the transaction originated from a business account. These record materials are documented in full in App. B, G1-RA-004 and G1-RA-006, which the omitted Napue/prosecutorial-misconduct claim would have incorporated on direct appeal. The Count 2 source-of-funds issue also appears in Appendix D as part of the Ground Three trial IAC theory (App. D, G3-RA-003), confirming its significance as a cross-ground record anchor.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

Under Strickland v. Washington, 466 U.S. at 687–88, and Smith v. Robbins, 528 U.S. at 288, appellate counsel's failure to raise an issue clearly stronger than those presented constitutes deficient performance. Napolitano's failure to raise the Count 2 source-of-funds/intercompany-transfer Napue example as part of the broader prosecutorial-misconduct/Napue claim on direct

appeal was deficient for the reasons identified in G5-RA-001 through G5-RA-003, and for the following example-specific reasons. The Count 2 source-of-funds issue was among the most concrete and documentable components of the broader Napue claim because it involved a specific, identifiable transaction — the $5,600 underlying Count 2 — supported by a specific banking record (the NGEP Bank of America account documentation), specific exhibits (Movant Ex. 17 / Gov't Ex. 717; Movant Ex. 41 / Defense Ex. 76), and specific trial testimony in which the Government's own witness qualified the transaction-source in terms inconsistent with a straightforward personal-payment attribution. The Napue issue was not a generalized complaint about the Government's trial strategy — it was a specific, transaction-by-transaction record-based demonstration that the Government characterized the Count 2 source-of-funds in a way that Chamblee's own testimony and the banking documentation contradicted. A competent appellate attorney reviewing the trial record in light of Movant's specific identification of the Government's use of false or materially misleading testimony and failure to correct known falsehoods would have reviewed the Count 2 banking evidence, identified the contrast between the Government's personal-payment characterization and the NGEP account-transfer documentation, identified Chamblee's loan/investment qualification as additional record-based contradiction of the simplified attribution theory, and included this specific record-grounded transaction-source example in the broader Napue/prosecutorial-misconduct claim. The Count 2 transaction was not a peripheral or collateral matter — it was the transaction underlying a charged count of conviction. Napolitano's failure to raise it was not a reasonable strategic judgment — it was the failure to incorporate a specific, transcript-documented, exhibit-supported Napue example that Movant specifically identified and that required no investigation beyond reviewing materials already in the appellate record.

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

Every component of the Count 2 source-of-funds/intercompany-transfer Napue example was available to Napolitano in the appellate record without any investigation beyond reviewing the trial transcript and exhibits. Chamblee's testimony qualifying the Count 2 source-of-funds — including the $5,600 Whitaker Bank deposit and the NGEP Bank of America account review — was in the trial transcript at Trial Tr., ECF No. 175, PageID ##1055–1056, and Trial Tr., ECF No. 176, PageID ##1168–1169. App. B, G1-RA-004. Chamblee's loan/investment qualification was in the trial transcript at Trial Tr., ECF No. 175, PageID ##1034–1036. App. B, G1-RA-006. The additional Count 2 source-of-funds context was in the trial transcript at Trial Tr., ECF No. 178, PageID ##1585–1586, and Trial Tr., ECF No. 179, PageID #1863. The Count 2 transaction documentation — Movant Ex. 17 (Gov't Ex. 717) and Movant Ex. 41 (Defense Ex. 76) — was admitted at trial and part of the appellate record. App. B, G1-RA-004. The NGEP Bank of America account signer records — identifying Chamblee and Hogan as signers, not Movant — were in the trial record at Trial Tr., ECF No. 176, PageID ##1186–1187, and were admitted as Gov't Ex. 201. App. B, G1-RA-002. All of these materials were part of the appellate record as assembled at the time of appeal and were accessible to Napolitano through the trial transcripts and exhibit record. Additionally, Movant specifically identified the Government's use of false or materially misleading testimony — including the pattern of misleading evidence documented in the trial transcript and the Government's own exhibits — as a basis for the prosecutorial-misconduct/Napue claim she urged Napolitano to raise. McKinnon Decl. ¶73. No additional notice, no additional investigation, and no evidence outside the existing appellate record was required to identify and develop this specific representative Napue example.

MATERIALITY / PREJUDICE:

Under Smith v. Robbins, 528 U.S. at 285–86, and Napue v. Illinois, 360 U.S. at 271, the appellate prejudice from omitting the Count 2 source-of-funds Napue example operates on two levels. The first level is the charged-count level. Count 2 was a specific count of conviction — one of six counts on which Movant was convicted at trial. A record-documented mischaracterization of the source of funds underlying a specific charged count goes directly to the accuracy of the factual predicate the jury evaluated in convicting on that count. Under Napue, the relevant question is whether there was a reasonable likelihood that the misleading evidence affected the jury's judgment. 360 U.S. at 271. The jury's evaluation of Count 2 depended in part on how it understood the source, nature, and attribution of the $5,600 transaction. A jury that understood the funds as a straightforward personal payment by Chamblee would evaluate the attribution implications of that transaction differently than a jury that understood the funds as originating from the NGEP Bank of America account — a business account on which Movant was not a listed signer. That distinction bore directly on whether Movant had the knowledge and control relationship to the Count 2 transaction that the Government's theory required. There is a reasonable likelihood that a jury presented with the complete source-of-funds context — including the NGEP account-transfer documentation — would have evaluated the Count 2 attribution differently. The second level is the cumulative appellate-record level. The Count 2 source-of-funds issue did not stand alone in the trial record — it was part of the broader Chamblee-source evidence chain documented in App. B, G1-RA-004, G1-RA-006, and G1-RA-015, which established a consistent pattern: the Government's attribution and intent theory depended on characterizing financial transactions in a simplified, Movant-attributable way while the banking records, Chamblee's own testimony, and the Government's own exhibit documentation qualified or contradicted those characterizations at the transaction-source level.

There is a reasonable probability that a Sixth Circuit panel presented with this specific, charged-count, exhibit-documented Napue example as part of the broader omitted claim would have found a reasonable likelihood that the misleading evidence affected the jury's judgment on Count 2 and, cumulatively, on the verdict as a whole. Smith v. Robbins, 528 U.S. at 285–86; Strickland, 466 U.S. at 694. See G5-RA-008 (materiality / verdict-integrity prejudice anchor); G5-RA-010 (appellate relief theory).

CROSS-GROUND NOTATION:

Ground One (App. B, G1-RA-004; G1-RA-006): The Count 2 $5,600 source-of-funds qualification and the Chamblee loan/investment characterization establishing the transaction-source distinction between a personal payment and an intercompany transfer from the NGEP Bank of America account are documented in the designated App. B entries; those entries preserve the specific trial transcript pincites, exhibit numbers, and Chamblee testimony that ground this representative Napue example. See App. B, G1-RA-004; G1-RA-006.

Ground Three (App. D, G3-RA-003): This entry and the Ground Three trial-IAC Count 2 source-of-funds entry cross-reference each other bidirectionally — the trial-IAC failure to impeach Chamblee's source-of-funds testimony and the appellate-IAC failure to raise the same transaction-source mischaracterization as a Napue example are analytically continuous; the record foundation is identical, and the failure at each stage compounded the harm from the failure at the other. See App. D, G3-RA-003.

G5-RA-006 — Representative Napue Example: Allan Deware Bank-Access / Signatory Testimony Contradicted by Bank Applications, Signature Cards, and FBI Discovery Evidence (BATES USA-00049465)

RECORD CITATION / SOURCE:

Trial Tr., ECF No. 174, PageID #842 (Deware testimony — exact quote: "had never had access to the banks"); BATES USA-00049465 — Movant Ex. 1 (USA discovery production / Smith 302 — "had control and was signatory on the NexGen account for the Kentucky business"); Movant Ex. 14 (Gov't Ex. 507 — V4 bank applications and signature cards / AD authorized signatory); Movant Ex. 15 (Gov't Ex. 508 — Carbon Holdings bank applications and signature cards / AD authorized signatory); Movant Ex. 1 (USA discovery production — BATES USA-

00049465 / Smith 302); Napue v. Illinois, 360 U.S. 264, 269–71 (1959); Giglio v. United States, 405 U.S. 150, 153–54 (1972); App. B, G1-RA-007 (Deware account-access/signatory corrective evidence; Smith statement / BATES USA-00049465; Deware access issue / "red flag"); G5-RA-001 (framework anchor); G5-RA-002 (request-and-omission anchor); G5-RA-003 (record-based / non-speculative foundation); G5-RA-004 (first representative Napue example); G5-RA-005 (second representative Napue example)

EXACT QUOTE OR RECORD LANGUAGE:

Trial Tr., ECF No. 174, PageID #842 (Deware testimony — exact quote, preserved): "had never had access to the banks." This is the controlling exact quote establishing the trial-record statement Movant's Napue/prosecutorial-misconduct claim challenges. The quote is preserved verbatim from the trial transcript and must not be paraphrased or modified in any court-facing document or argument. App. B, G1-RA-007. BATES USA-00049465 — Movant Ex. 1 (Smith 302 — exact quote, preserved): "had control and was signatory on the NexGen account for the Kentucky business." This is the Smith statement — contained in an FBI 302 interview memorandum produced in Government discovery at BATES USA-00049465 — in which David Smith informed Agent Hubbuch that Deware had control and was a signatory on the NexGen account for the Kentucky business. App. B, G1-RA-007. That statement directly and specifically contradicted Deware's "had never had access to the banks" testimony by establishing that the Government's own FBI investigation had produced a witness statement confirming Deware's signatory and control status on the relevant Kentucky business account — before Deware testified at trial. Movant Ex. 14 (Gov't Ex. 507) and Movant Ex. 15 (Gov't Ex. 508) — bank application and signature-card materials: The bank application and signature-card materials identified Deware as an authorized user or signatory on later V4 Carbon and Carbon Holdings

accounts associated with the Vance/Deware partnership businesses. App. B, G1-RA-007. These materials independently corroborated Smith's statement and directly contradicted any broad characterization of Deware's "no access" testimony as accurate across the relevant partnership business accounts.

RECORD-PROOF POINT:

This entry establishes the third and final representative Napue example grounding the omitted prosecutorial-misconduct/Napue claim. It documents the most discrete and legally precise component of the broader Napue pattern: a specific, identifiable trial witness (Allan Deware) who testified to a specific fact ("had never had access to the banks") that the Government's own pre-trial FBI discovery evidence — the Smith 302 (BATES USA-00049465) produced in discovery and available to Agent Hubbuch before trial — directly and specifically contradicted. The Napue issue embedded in this record category has three analytically distinct and independently significant components. The first component is the exact testimony and its breadth. Deware testified at trial that he "had never had access to the banks." Trial Tr., ECF No. 174, PageID #842. That statement, taken in the context of the Government's trial presentation concerning account access, control, and attribution, carried a materially broad implication: that Deware had no access to any business banking account associated with the relevant Kentucky business entities. The second component is the pre-trial FBI discovery contradiction. The Smith 302 (BATES USA-00049465 — produced in Government discovery before trial) established that David Smith told Agent Hubbuch that Deware "had control and was signatory on the NexGen account for the Kentucky business." App. B, G1-RA-007. This is not a post-trial development, a speculative inference, or a competing characterization from a defense witness. It is the Government's own pre-trial FBI investigative record — a 302 interview memorandum produced

in discovery and available to Agent Hubbuch before Deware ever took the stand — directly establishing that the Government's lead investigative agent had specific, documented notice that Deware had control and signatory status on the relevant Kentucky business account. Under Napue and Giglio, the Government's obligation not to present or maintain false testimony encompasses evidence of which the Government's investigative agents were aware. Napue, 360 U.S. at 271; Giglio, 405 U.S. at 153–54. The third component is the bank application and signature-card corroboration. Independent of Smith's 302 statement, the bank application and signature-card materials — Movant Ex. 14 (Gov't Ex. 507) and Movant Ex. 15 (Gov't Ex. 508) — identified Deware as an authorized user or signatory on later V4 Carbon and Carbon Holdings accounts. App. B, G1-RA-007. These were Government exhibit materials — the Government's own trial exhibits — that independently corroborated Smith's statement and established that Deware's documented account access and signatory role were reflected not only in FBI discovery but also in Government-produced banking records admitted at trial. The combination of three independent record sources — Deware's own trial testimony, the Smith 302 pre-trial discovery statement directly contradicting it, and the Government's own banking exhibits confirming Deware's signatory role — makes this the most precisely documentable of the three representative Napue examples. The critical analytical limitation that Appendix B preserves must also be observed here: Deware had no reason to access Vance's separate Nex-Gen Inc. / Wells Fargo account before the partnership/new-company accounts were created. The relevant access issue concerned the later partnership business accounts — the NexGen Kentucky business account referenced in Smith's 302, and the V4 Carbon and Carbon Holdings accounts reflected in the Government's banking exhibits — not Vance's separate earlier account. The Napue issue is not that Deware accessed Vance's separate personal account; the Napue issue is that the

Government allowed Deware to testify broadly that he "had never had access to the banks" — a statement the Government's own pre-trial discovery evidence established was materially false as to the relevant partnership business accounts — without correction, limitation, or impeachment.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

Under Strickland v. Washington, 466 U.S. at 687–88, and Smith v. Robbins, 528 U.S. at 288, appellate counsel's failure to raise an issue clearly stronger than those presented constitutes deficient performance. Napolitano's failure to raise the Deware bank-access/signatory Napue example as part of the broader prosecutorial-misconduct/Napue claim on direct appeal was deficient for the reasons identified in G5-RA-001 through G5-RA-003, and for the following example-specific reasons. The Deware bank-access example is, of the three representative Napue examples, the one that most precisely satisfies every element of the Napue/Giglio standard as articulated by the Supreme Court and applied by the Sixth Circuit. It involves: a specific, identifiable witness; a specific, verbatim trial statement ("had never had access to the banks"); specific, pre-trial Government knowledge that the statement was materially false or incomplete as to the relevant partnership business accounts (the Smith 302 at BATES USA-00049465, produced in discovery and available to Agent Hubbuch before trial); specific failure to correct, limit, or impeach the statement at trial or during cross-examination; and specific, Government-produced documentary corroboration of the contradiction (Movant Ex. 14 / Gov't Ex. 507; Movant Ex. 15 / Gov't Ex. 508). That five-element combination represents the most tractable and legally secure Napue issue in the trial record. It is not a generalized complaint about investigative limitations or a speculative inference from circumstantial evidence. It is a direct, document-supported Napue claim of the type that appellate courts are most able to evaluate from the existing trial record without additional factual development. A competent appellate attorney

reviewing the trial record in light of Movant's specific identification of the Government's use of false or materially misleading testimony, its failure to correct known falsehoods, and the pattern documented in the trial transcript and the Government's own admitted exhibits would have: (a) reviewed Deware's trial testimony for the no-access statement; (b) cross-referenced the BATES-stamped discovery materials for the Smith 302 directly contradicting it; (c) identified Agent Hubbuch's pre-trial knowledge of Smith's statement as the Government-knowledge predicate required under Napue and Giglio; (d) confirmed the Government's own banking exhibits (Movant Ex. 14 / Gov't Ex. 507; Movant Ex. 15 / Gov't Ex. 508) as independent corroboration of the contradiction; and (e) included this specific, document-supported, verbatim-quote-anchored Napue example in the broader appellate claim. None of those steps required investigation beyond reviewing materials already in the appellate record. Napolitano's failure to incorporate this paradigmatic Napue example was not a reasonable strategic judgment. It was the failure to raise the single most legally precise component of a broader omitted claim that Movant had specifically identified and requested.

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

Every component of the Deware bank-access/signatory Napue example was available to Napolitano in the appellate record without any investigation beyond reviewing the trial transcript, the BATES-stamped discovery materials, and the admitted trial exhibits. Deware's "had never had access to the banks" testimony was in the trial transcript at Trial Tr., ECF No. 174, PageID #842 — part of the appellate record as assembled. App. B, G1-RA-007. The Smith 302 statement — "had control and was signatory on the NexGen account for the Kentucky business" — was produced in Government discovery at BATES USA-00049465 and was available to Napolitano as Movant Ex. 1 in the trial-record exhibit set. App. B, G1-RA-007. The

bank application and signature-card materials — Movant Ex. 14 (Gov't Ex. 507) and Movant Ex. 15 (Gov't Ex. 508) — were admitted at trial as Government exhibits and were part of the appellate record. App. B, G1-RA-007. Critically, the Government-knowledge predicate required under Napue and Giglio — Agent Hubbuch's pre-trial notice through the Smith 302 — was established by the same BATES-stamped discovery document (BATES USA-00049465) that was produced in Government discovery before trial and was part of the record available to appellate counsel. A competent appellate attorney reviewing the discovery production would have identified the Smith 302 as directly contradicting Deware's trial testimony and would have recognized that its production before trial established Agent Hubbuch's pre-trial knowledge of the contradiction — satisfying the Government-knowledge element of the Napue standard without any additional investigation or factual development. Movant's specific identification to Napolitano of the Government's use of false or materially misleading testimony and its failure to correct known falsehoods — McKinnon Decl. ¶73 — was sufficient to direct a competent appellate attorney to review Deware's trial testimony and the pre-trial discovery materials for exactly this type of specific, document-corroborated contradiction. No additional notice, investigation, or evidence outside the existing appellate record was required to identify, document, and brief this specific representative Napue example.

MATERIALITY / PREJUDICE:

Under Smith v. Robbins, 528 U.S. at 285–86, and Napue v. Illinois, 360 U.S. at 271, the appellate prejudice from omitting the Deware bank-access/signatory Napue example operates on three distinct levels. The first level is the witness-credibility level. Deware was a Government trial witness whose testimony bore on account access, account control, and attribution — issues central to the Government's theory of Movant's knowledge, intent, and role in the business

entities. A witness who testifies broadly that he "had never had access to the banks" when the Government's own pre-trial FBI discovery record (BATES USA-00049465) and the Government's own admitted banking exhibits (Movant Ex. 14 / Gov't Ex. 507; Movant Ex. 15 / Gov't Ex. 508) establish that he had control and signatory status on the relevant Kentucky business account is a witness whose credibility on account-access issues was materially and documentably compromised. Under Napue, a conviction obtained through use of false testimony that "could in any reasonable likelihood have affected the judgment of the jury" cannot stand. 360 U.S. at 271. The jury's evaluation of Deware's account-access testimony — and of the account-control attribution framework the Government built on that testimony — could not have been unaffected by knowledge that the Government's own pre-trial discovery record directly contradicted it. The second level is the attribution level. Deware's "had never had access to the banks" testimony served a specific attribution function in the Government's trial presentation: it supported the Government's implicit framing of account access and control as concentrated in entities and individuals associated with Movant, rather than distributed across the partnership structure that Deware's own signatory and control role reflected. If Deware had access and signatory control over the relevant Kentucky business account, that fact qualified the Government's account-attribution theory in a specific and documentable way — establishing that account access and control were distributed across the partnership structure in a manner inconsistent with any simplified attribution of account-level knowledge or control to Movant. App. B, G1-RA-007. The third level is the cumulative appellate-record level. The Deware bank-access example is the most legally precise of the three representative Napue examples because it satisfies every element of the Napue/Giglio standard with specific, verbatim, transcript-anchored, discovery-corroborated, Government-exhibit-supported documentation. When presented as part

of the broader Napue/prosecutorial-misconduct claim together with the financial-summary completeness issue (G5-RA-004) and the Count 2 source-of-funds mischaracterization (G5-RA-005), the Deware example provides the appellate panel with the clearest, most legally tractable demonstration that the Government's trial presentation involved the use and maintenance of specific, documentably false or misleading testimony. There is a reasonable probability that such a panel would have granted reversal, remand, or new trial. Smith v. Robbins, 528 U.S. at 285–86; Strickland, 466 U.S. at 694. See G5-RA-008 (materiality / verdict-integrity prejudice anchor); G5-RA-010 (appellate relief theory).

CROSS-GROUND NOTATION:

Ground One (App. B, G1-RA-007): The Deware bank-access/signatory corrective evidence — including the exact "had never had access to the banks" trial quote, the Smith 302 statement "had control and was signatory on the NexGen account for the Kentucky business" (BATES USA-00049465), and the bank application and signature-card materials (Movant Ex. 14 / Gov't Ex. 507; Movant Ex. 15 / Gov't Ex. 508) — is fully preserved in the designated App. B entry, which is the controlling trial-record source for this representative Napue example. See App. B, G1-RA-007.

Ground Two (App. C, G2-RA-007): The Ground Two Deware bank-access and signatory-contradiction entry cross-references this entry as the appellate-IAC companion — the trial-stage failure to develop the Deware bank-access contradiction and the appellate failure to raise it as the most precisely documentable Napue example in the trial record are analytically continuous. See App. C, G2-RA-007.

Ground Three (App. D, G3-RA-004): The Ground Three trial-IAC Deware bank-access and signatory-contradiction entry cross-references this entry as the appellate-IAC companion — the three-layer contradiction (verbatim testimony, Smith 302 pre-trial discovery, Government banking exhibits) documented in both entries establishes the same Napue pattern across two successive stages of the proceeding. See App. D, G3-RA-004.

G5-RA-007 — Representative-Not-Exhaustive Incorporation: McKinnon Letter / Gov't Ex. 401 Pattern and Broader Ground One Prosecutorial-Misconduct Record

RECORD CITATION / SOURCE:

McKinnon Decl. ¶¶11–15, 73; Movant Ex. C (McKinnon Letter — authored by Movant approximately November 2018; addressed to Vance's attorney documenting Movant's limited role, fear of Chamblee, coercive circumstances, and lack of knowledge that Chamblee's reported

sales were fabricated); Gov't Ex. 401 (Vance/Hubbuch recorded interview — December 2018; the recording in which Vance disclosed to Agent Hubbuch that the McKinnon Letter existed and was in his attorney's possession); Movant Ex. F (DOJ/FBI transcript of Gov't Ex. 401 — the transcript of the December 2018 Vance/Hubbuch recorded interview); Trial Tr., ECF No. 177, PageID ##1521–1522 (Hubbuch testimony — "a letter that Molly had" — selected trial presentation of Gov't Ex. 401); Trial Tr., ECF No. 179, PageID ##1776–1779 (trial dispute / restriction on McKinnon Letter); Trial Tr., ECF No. 179, PageID #1894 (Government rebuttal — "shred of proof"; "There isn't a single item of proof in the document -- in the emails that prove that."; "a single email or document"); Napue v. Illinois, 360 U.S. 264, 269–71 (1959); Giglio v. United States, 405 U.S. 150, 153–54 (1972); App. B, G1-RA-008 (McKinnon Letter as contemporaneous state-of-mind evidence); App. B, G1-RA-009 (selected trial presentation of Gov't Ex. 401 — "a letter that Molly had"); App. B, G1-RA-010 (omitted DOJ/FBI transcript context — letter accessibility: "Because the letter is so easy for you to get"; exculpatory significance/blame framing: "if there's some letter out there that-that-that is exculpatory for you"; "all the blame on Molly"; prosecutor/AUSA follow-up: "I will ask the prosecutor, the A.U.S.A. to reach out to your attorney for this letter"; other bank accounts: "not only those bank statements but … other bank accounts"); App. B, G1-RA-011 (source distinction — recording, transcript, letter — source separation controlling entry); App. B, G1-RA-012 (trial dispute / restriction on McKinnon Letter); App. B, G1-RA-013 (rebuttal exploitation — "shred of proof"; "single item of proof"); App. B, G1-RA-014 (prejudice from excluded/omitted evidence and "shred of proof" framing); App. B, G1-RA-015 (cumulative materiality); App. B, G1-RA-001 through G1-RA-015 (full Ground One record incorporated by cross-reference); G5-RA-001

through G5-RA-006 (framework, request-and-omission, record-based foundation, and three representative Napue examples)

EXACT QUOTE OR RECORD LANGUAGE:

Source separation — controlling distinctions (Rule 8): Gov't Ex. 401 = the Vance/Hubbuch recorded interview (December 2018). This is the audio recording introduced as a Government trial exhibit. Movant Ex. F = the DOJ/FBI transcript of Gov't Ex. 401. This is the written transcript of the December 2018 recorded interview — a separate exhibit from the recording itself. Movant Ex. C = the McKinnon Letter. This is the letter authored by Movant approximately November 2018, addressed to Vance's attorney, documenting her limited role, fear of Chamblee, coercive circumstances, and lack of knowledge that Chamblee's sales were fabricated. These three are not interchangeable in any court-facing document, argument, or appendix entry. App. B, G1-RA-011. McKinnon Decl. ¶¶11–15 (McKinnon Letter — controlling declaration anchor): ¶11: "In or about November 2018, I authored a letter addressed to the attorney representing my co-defendant, Douglas Vance. In that letter, I documented my fear of Gary Chamblee, the threats and coercive circumstances under which I acted, my limited role in the businesses, and my lack of knowledge that Chamblee's reported sales were fabricated. The letter was intended to exonerate Vance with respect to matters that fell within my personal knowledge." ¶12: "I provided the letter to Vance and expressly authorized him to provide it to his attorney and to release it to the Federal Bureau of Investigation ('FBI') after I was able to retain an attorney. It is my understanding that Vance's attorney, Andy Stevens, provided the letter to Agent Christopher Hubbuch of the FBI." ¶13: "In December 2018, Vance disclosed the letter's existence to Agent Hubbuch in a recorded interview — Government Exhibit 401 — and informed Hubbuch that the letter was in his attorney's possession." ¶14: "At trial, Agent Hubbuch testified that he never

received the McKinnon Letter. The prosecution similarly stated that it had never received it. I find it highly unlikely that a seasoned FBI agent, having been told in a recorded interview that exculpatory evidence existed and was in an attorney's possession, failed to follow up and obtain that document. I also find it highly unlikely that Vance's attorney would not provide the letter to Hubbuch, particularly because the letter exonerated his client and I had authorized its release." ¶15: "The McKinnon Letter was directly relevant to the knowing and voluntary elements the Government was required to prove. Had the jury been permitted to consider the letter, it would have provided direct, contemporaneous evidence of my state of mind, my fear of Chamblee, and the coercive circumstances under which I acted." McKinnon Decl. ¶73 (appellate-counsel request — controlling anchor): "I urged my appellate counsel, Gregory Napolitano ('Napolitano'), to include prosecutorial misconduct as a ground for relief on direct appeal. I specifically identified the Government's use of false or materially misleading testimony, its failure to correct known falsehoods, and the pattern of misconduct documented in the trial transcript and the Government's own admitted exhibits. Napolitano declined to include prosecutorial misconduct as an appellate ground despite my requests." Trial Tr., ECF No. 177, PageID ##1521–1522 (selected trial presentation of Gov't Ex. 401): Hubbuch testified at trial that he understood Vance to be referring to "a letter that Molly had." App. B, G1-RA-009. Movant Ex. F (DOJ/FBI transcript — omitted interview context, exact quotes preserved): "Because the letter is so easy for you to get." (App. B, G1-RA-010 — letter accessibility.) "if there's some letter out there that-that-that is exculpatory for you" (App. B, G1-RA-010 — exculpatory significance framing.) "all the blame on Molly," (App. B, G1-RA-010 — blame framing.) "I will ask the prosecutor, the A.U.S.A. to reach out to your attorney for this letter." (App. B, G1-RA-010 — prosecutor/AUSA follow-up.) "not only those bank statements but …

other bank accounts." (App. B, G1-RA-010 — other bank accounts / investigation-completeness.) Trial Tr., ECF No. 179, PageID #1894 (Government rebuttal — exact quotes preserved): "where in the records that you've seen, where in the emails, where in the documents is there a shred of proof that Mr. Chamblee provided Ms. McKinnon information to be put into those financial documents?" (App. B, G1-RA-013.) "There isn't a single item of proof in the document -- in the emails that prove that." (App. B, G1-RA-013.) "a single email or document" (App. B, G1-RA-013.)

RECORD-PROOF POINT:

This entry serves two distinct and equally important functions in the Ground Five record architecture. The first function is the representative-not-exhaustive incorporation statement. Ground Five does not limit the omitted Napue/prosecutorial-misconduct claim to only the three specific representative examples documented in G5-RA-004 through G5-RA-006. Those three examples — the financial-summary/Bank of America completeness pattern, the Count 2 source-of-funds mischaracterization, and the Deware bank-access/signatory contradiction — are representative of the broader pattern documented in Appendix B (G1-RA-001 through G1-RA-015). Ground Five expressly incorporates the full Ground One record by cross-reference. The omitted Napue/prosecutorial-misconduct claim as Movant identified it to Napolitano encompassed the complete pattern of the Government's use of false or materially misleading testimony, its failure to correct known falsehoods, and the pattern of misconduct documented in the trial transcript and the Government's own admitted exhibits — not merely the three specifically named examples. McKinnon Decl. ¶73. The representative-not-exhaustive framing is legally significant because it establishes that the appellate claim Napolitano omitted was broader and more powerful than any single Napue example alone. A Sixth Circuit panel reviewing the

omitted claim would have evaluated it as a cumulative, multi-component prosecutorial-misconduct theory grounded in the full trial record — not as three isolated impeachment points. The second function is the documentation of the McKinnon Letter/Gov't Ex. 401 pattern as an additional, specifically significant component of the broader incorporated record. The McKinnon Letter/Gov't Ex. 401 pattern occupies a uniquely important position within the broader Napue record because it encompasses the Government's most direct and demonstrable failure to correct materially misleading evidence: Agent Hubbuch testified at trial that he never received the McKinnon Letter (McKinnon Decl. ¶14), while the December 2018 Vance/Hubbuch recorded interview (Gov't Ex. 401) — the Government's own trial exhibit — established that Hubbuch was told in a recorded pre-trial interview that the letter existed, that it was in Vance's attorney's possession, and that it was "easy to get." App. B, G1-RA-009, G1-RA-010. That sequence is a paradigmatic Napue scenario: a Government witness testified at trial to a fact (non-receipt of the letter) while the Government's own pre-trial evidence (the recorded interview in which the letter's existence and location were disclosed to Hubbuch) established that the Government had pre-trial knowledge directly relevant to the accuracy of that testimony. The Government did not correct Hubbuch's non-receipt testimony by presenting the portions of the Movant Ex. F transcript establishing that Hubbuch was informed of the letter's existence and accessibility before trial. The Government then exploited the resulting evidentiary gap in rebuttal — arguing that there was "not a shred of proof" and "not a single item of proof" supporting Movant's defense — at the precise moment the uncorrected Hubbuch non-receipt testimony and the restricted McKinnon Letter had left the jury without the contemporaneous state-of-mind evidence that would have directly addressed the Government's rebuttal theme. Trial Tr., ECF No. 179, PageID #1894; App. B, G1-RA-013. That three-stage sequence — selective

presentation of Gov't Ex. 401 creating awareness of the letter without its contents; Hubbuch non-receipt testimony left uncorrected despite the interview record establishing pre-trial knowledge of the letter's accessibility; and Government rebuttal exploiting the resulting evidentiary gap — is the most legally and factually significant component of the broader Napue pattern. App. B, G1-RA-008 through G1-RA-014.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

Under Strickland v. Washington, 466 U.S. at 687–88, and Smith v. Robbins, 528 U.S. at 288, appellate counsel's failure to raise an issue clearly stronger than those presented constitutes deficient performance. Napolitano's failure to incorporate the representative-not-exhaustive broader record and the McKinnon Letter/Gov't Ex. 401 pattern into the appellate Napue/prosecutorial-misconduct claim was deficient for two independently significant reasons. First, the representative-not-exhaustive scope. By omitting the prosecutorial-misconduct/Napue claim entirely, Napolitano did not merely fail to raise three specific Napue examples — he failed to raise the broader, cumulative, multi-component claim that those examples anchored. A competent appellate attorney presented with Movant's specific identification of the Government's use of false or materially misleading testimony, its failure to correct known falsehoods, and the pattern documented in the trial transcript and the Government's own admitted exhibits would have identified the full scope of the Napue/prosecutorial-misconduct claim and briefed it as a cumulative theory. The failure to raise the cumulative claim encompassing the full Ground One record was more damaging than the failure to raise any single example because it deprived the Sixth Circuit panel of the opportunity to evaluate a theory whose strength derived precisely from its cumulative, pattern-based character. Second, the McKinnon Letter/Gov't Ex. 401 pattern. The sequence of events documented in App. B, G1-RA-

008 through G1-RA-014 — Hubbuch's pre-trial knowledge of the letter through the December 2018 recorded interview (Gov't Ex. 401); his trial testimony that he never received the letter; the Government's failure to present or disclose the Movant Ex. F transcript context establishing the pre-trial knowledge of the letter's accessibility; the resulting trial restriction on McKinnon Letter use; and the Government's rebuttal exploitation of the evidentiary gap — was directly accessible to Napolitano in the trial record. Gov't Ex. 401 was the Government's own admitted trial exhibit. Movant Ex. F was in the record. The rebuttal quotes were in the trial transcript at Trial Tr., ECF No. 179, PageID #1894. The trial restriction dispute was in the transcript at Trial Tr., ECF No. 179, PageID ##1776–1779. The McKinnon Letter itself — Movant Ex. C — was in the exhibit record. A competent appellate attorney reviewing those materials together — and having received Movant's specific identification of the Government's use of materially misleading testimony and failure to correct known falsehoods — would have identified the McKinnon Letter/Gov't Ex. 401 sequence as the single most legally significant component of the broader Napue pattern: the component in which the Government's own pre-trial recorded interview established the investigative agent's knowledge of the letter's existence and accessibility, and in which the Government's own rebuttal argument exploited the gap created by the uncorrected testimony.

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

Every component of both the representative-not-exhaustive broader record and the McKinnon Letter/Gov't Ex. 401 pattern was available to Napolitano in the appellate record without any investigation beyond reviewing the trial transcript, admitted exhibits, and the Movant Ex. F transcript. Gov't Ex. 401 — the December 2018 Vance/Hubbuch recording establishing Hubbuch's pre-trial notice of the McKinnon Letter's existence and location — was the

Government's own admitted trial exhibit, part of the appellate record. App. B, G1-RA-009. Movant Ex. F — the DOJ/FBI transcript of that recording — containing the exact quotes establishing letter accessibility, exculpatory significance framing, blame-attribution framing, and the prosecutor/AUSA follow-up direction — was in the exhibit record and available to Napolitano. App. B, G1-RA-010. Movant Ex. C — the McKinnon Letter itself — was in the exhibit record. App. B, G1-RA-008. Hubbuch's trial testimony concerning the letter — "a letter that Molly had" — was in the trial transcript at Trial Tr., ECF No. 177, PageID ##1521–1522. App. B, G1-RA-009. The trial restriction dispute was in the transcript at Trial Tr., ECF No. 179, PageID ##1776–1779. App. B, G1-RA-012. The Government's rebuttal exploitation of the evidentiary gap — "shred of proof," "not a single item of proof," "a single email or document" — was in the trial transcript at Trial Tr., ECF No. 179, PageID #1894. App. B, G1-RA-013. All of those materials were accessible to Napolitano without any new investigation. Movant's specific identification to Napolitano of the pattern of misconduct documented in the trial transcript and the Government's own admitted exhibits — McKinnon Decl. ¶73 — was sufficient to direct a competent appellate attorney to review the Gov't Ex. 401 / Movant Ex. F / Movant Ex. C sequence as the primary and most legally significant component of the broader Napue pattern.

MATERIALITY / PREJUDICE:

Under Smith v. Robbins, 528 U.S. at 285–86, and Napue v. Illinois, 360 U.S. at 271, the appellate prejudice from omitting the representative-not-exhaustive broader record and the McKinnon Letter/Gov't Ex. 401 pattern operates on three distinct levels. The first level is the McKinnon Letter/Gov't Ex. 401 pattern level. The three-stage sequence — selective Gov't Ex. 401 presentation creating letter awareness without letter contents; Hubbuch non-receipt

testimony left uncorrected despite the pre-trial recorded interview establishing Government knowledge of the letter's existence and accessibility; Government rebuttal exploitation of the resulting evidentiary gap through the "shred of proof" and "single item of proof" arguments — constitutes the most outcome-material Napue violation in the trial record. McKinnon Decl. ¶¶13–15; App. B, G1-RA-009 through G1-RA-014. The letter's contents — documenting Movant's limited role, fear of Chamblee, coercive circumstances, and lack of knowledge that Chamblee's sales were fabricated — went directly to the central contested issues of knowledge, intent, and state of mind. McKinnon Decl. ¶15. A jury that received Hubbuch's non-receipt testimony without knowing that the Government's own December 2018 recorded interview (Gov't Ex. 401) established that Hubbuch was told the letter existed and was accessible was a jury that evaluated the Government's financial-fraud attribution and intent theory against an incomplete and materially misleading evidentiary foundation. When the Government then argued in rebuttal that there was "not a shred of proof" and "not a single item of proof" supporting Movant's defense — Trial Tr., ECF No. 179, PageID #1894 — the prejudice became direct and compounded. The second level is the cumulative representative-not-exhaustive incorporation level. The McKinnon Letter/Gov't Ex. 401 pattern does not stand alone — it is one component of the broader Napue/prosecutorial-misconduct theory that includes the financial-summary completeness pattern (G5-RA-004), the Count 2 source-of-funds mischaracterization (G5-RA-005), and the Deware bank-access/signatory contradiction (G5-RA-006), as well as the full Ground One record incorporated by cross-reference. When evaluated cumulatively, those components establish a trial presentation in which the Government's own record evidence — its own exhibits, its own witnesses' testimony, its own investigative records — consistently and systematically qualified, contradicted, or undermined its own attribution and intent theory in ways the jury did not fully

receive. The third level is the verdict-integrity level addressed in G5-RA-008. There is a reasonable probability that the Sixth Circuit, presented with the full cumulative Napue/prosecutorial-misconduct claim anchored by the McKinnon Letter/Gov't Ex. 401 pattern and supported by the three specific representative examples, would have granted reversal, remand, or new trial. Smith v. Robbins, 528 U.S. at 285–86; Strickland, 466 U.S. at 694; Napue, 360 U.S. at 271. See G5-RA-008 (materiality / verdict-integrity prejudice anchor); G5-RA-009 (clearly-stronger issue comparison); G5-RA-010 (appellate relief theory).

CROSS-GROUND NOTATION:

Ground One (App. B, G1-RA-001; G1-RA-008 through G1-RA-014): The McKinnon Letter as contemporaneous state-of-mind evidence (G1-RA-008), selected trial presentation of Gov't Ex. 401 (G1-RA-009), omitted DOJ/FBI transcript context from Movant Ex. F [Tab 6] (G1-RA-010), source-separation controlling entry (G1-RA-011), trial restriction dispute (G1-RA-012), rebuttal exploitation — "shred of proof" / "single item of proof" (G1-RA-013), and prejudice from excluded/omitted evidence (G1-RA-014) together preserve the complete three-stage McKinnon Letter/Gov't Ex. 401 sequence documented in this entry; G1-RA-001 provides the overarching attribution and entity-conflation foundation. See App. B, G1-RA-001; G1-RA-008 through G1-RA-014.

Ground Two (App. C, G2-RA-004): The Ground Two McKinnon Letter/Gov't Ex. 401 pattern anchor cross-references this entry directly — the trial-IAC failure to develop the McKinnon Letter record and the appellate-IAC failure to raise it as the most outcome-material component of the broader Napue claim are analytically continuous and cumulatively reinforcing. See App. C, G2-RA-004.

Ground Three (App. D, G3-RA-007): The Ground Three McKinnon Letter/Gov't Ex. 401 entry cross-references this entry as the appellate-IAC companion — the pre-trial recorded notice of the letter's existence and accessibility, Hubbuch's uncorrected non-receipt testimony, and the Government's rebuttal exploitation of the resulting evidentiary gap are analyzed in both entries as successive failures at the trial and appellate stages. See App. D, G3-RA-007.

G5-RA-008 — Materiality and Verdict-Integrity Appellate Prejudice: The Omitted Napue/Prosecutorial-Misconduct Claim Attacked the Foundation of the Verdict

RECORD CITATION / SOURCE:

Napue v. Illinois, 360 U.S. 264, 269–71 (1959); Giglio v. United States, 405 U.S. 150, 153–54 (1972); Smith v. Robbins, 528 U.S. 259, 285–86 (2000); Strickland v. Washington, 466 U.S. 668, 694 (1984); McKinnon Decl. ¶¶11–15, 73; App. B, G1-RA-001 through G1-RA-015 (full

Ground One record — complete trial-record basis for verdict-integrity prejudice); App. B, G1-RA-001 (entity-conflation / "Nex-Gen" attribution framework — knowledge, intent, and attribution umbrella); App. B, G1-RA-002 (Bank of America NGEP account / signer evidence — account-access and control predicate); App. B, G1-RA-004 (Count 2 $5,600 source-of-funds qualification — transaction-attribution predicate); App. B, G1-RA-005 (Hubbuch financial-investigation method; "strings" cross-examination; Gov't Ex. 501 / Movant Ex. 9 financial-summary limitation — investigation-completeness predicate); App. B, G1-RA-006 (Chamblee loan/investment qualification; Chamblee-source/Count 2/Dell Jaggers overlap — source-of-information and transaction-source predicate); App. B, G1-RA-007 (Deware account-access/signatory corrective evidence; Smith statement / BATES USA-00049465 — witness-credibility and account-control predicate); App. B, G1-RA-008 through G1-RA-014 (McKinnon Letter/Gov't Ex. 401 pattern — state-of-mind, failure-to-correct, rebuttal-exploitation sequence); App. B, G1-RA-015 (cumulative materiality / financial-summary evidence — cumulative prejudice anchor); G5-RA-001 through G5-RA-007 (framework through representative-not-exhaustive incorporation); G5-RA-009 (clearly-stronger issue comparison — forward cross-reference); G5-RA-010 (appellate relief theory — forward cross-reference)

EXACT QUOTE OR RECORD LANGUAGE:

The exact quotes establishing the materiality of the omitted Napue/prosecutorial-misconduct claim are preserved in the designated representative-example and incorporation entries and are incorporated here by cross-reference. Category 1 — Knowledge, intent, and state of mind (McKinnon Letter / Gov't Ex. 401 pattern): McKinnon Decl. ¶15: "The McKinnon Letter was directly relevant to the knowing and voluntary elements the Government was required to prove. Had the jury been permitted to consider the letter, it would have provided direct,

contemporaneous evidence of my state of mind, my fear of Chamblee, and the coercive circumstances under which I acted." McKinnon Decl. ¶14: "At trial, Agent Hubbuch testified that he never received the McKinnon Letter. The prosecution similarly stated that it had never received it." Gov't Ex. 401 (December 2018 Vance/Hubbuch recorded interview): The recording in which Vance disclosed the letter's existence to Hubbuch and informed him that the letter was in his attorney's possession — establishing the Government's pre-trial knowledge of the letter's existence and accessibility. App. B, G1-RA-009, G1-RA-010. Category 2 — Witness credibility (Deware bank-access/signatory contradiction): Trial Tr., ECF No. 174, PageID #842 — exact quote: "had never had access to the banks." BATES USA-00049465 — Movant Ex. 1 (Smith 302) — exact quote: "had control and was signatory on the NexGen account for the Kentucky business." App. B, G1-RA-007. G5-RA-006. Category 3 — Source and nature of investor funds / transaction attribution (Count 2 source-of-funds): Trial Tr., ECF No. 175, PageID ##1034–1036 — Chamblee exact quotes: "in loans to Mr. Vance"; "a lot of it was loan as well." App. B, G1-RA-006. G5-RA-005. Category 4 — Completeness of financial evidence / investigation limitations (financial-summary/Bank of America): Trial Tr., ECF No. 176, PageID #1186 — Hubbuch exact quote: "get a handle." Trial Tr., ECF No. 178, PageID ##1575–1576 (Hubbuch cross-examination — "strings" admission: "I have to tell you there were a lot of things that I could have done and strings that I could have pulled to get a more complete financial picture. But I believe that I had sufficient information.") Category 5 — Rebuttal exploitation of the evidentiary gap (verdict-integrity compounding): Trial Tr., ECF No. 179, PageID #1894 — Government rebuttal exact quotes: "where in the records that you've seen, where in the emails, where in the documents is there a shred of proof that Mr. Chamblee provided Ms. McKinnon information to be put into those financial documents?"; "There isn't a single item of proof in the

document -- in the emails that prove that."; "a single email or document." App. B, G1-RA-013. G5-RA-007.

RECORD-PROOF POINT:

This entry functions as the materiality and verdict-integrity prejudice anchor for Ground Five. It synthesizes the individual materiality analyses from G5-RA-004 through G5-RA-007 into a unified verdict-integrity theory — establishing that the omitted Napue/prosecutorial-misconduct claim was not a collection of isolated impeachment points but a coherent, cumulative challenge to the accuracy and integrity of the evidentiary foundation on which the jury evaluated the central contested issues of knowledge, intent, control, loss, and attribution. The verdict-integrity theory rests on a foundational legal and factual distinction that separates the omitted Napue/prosecutorial-misconduct claim from the three issues Napolitano chose to raise on direct appeal. The issues actually raised — limitation of testimony, sufficiency of the evidence, and sentencing reasonableness — each accepted the trial record as accurately and completely presented to the jury and challenged only what the trial court, the Government, or the sentencing court did with that record. A sufficiency claim asks whether the evidence, as presented and accepted, was legally sufficient to support the verdict. A testimony-limitation claim asks whether the trial court's evidentiary ruling was legally correct. A sentencing-reasonableness claim asks whether the sentence was within the permissible range on the facts as established. None of those claims challenges whether the record as presented to the jury accurately reflected the evidence available to the Government. The omitted Napue/prosecutorial-misconduct claim challenged precisely that foundation. It asked the Sixth Circuit to evaluate whether the evidence the jury saw accurately and completely reflected the evidence available to the Government — and whether the jury's evaluations of knowledge, intent, control, attribution, and credibility were therefore

conducted against a materially misleading evidentiary backdrop. That is a categorically different appellate theory, with categorically different implications for relief: a successful Napue/prosecutorial-misconduct claim does not merely narrow a conviction or reduce a sentence; it reverses the conviction and requires a new trial in which the jury evaluates the defendant's knowledge and intent against a complete and non-misleading record. The materiality of the omitted claim is established across five specific categories. Category 1 is knowledge and intent. The central contested issue at trial was whether Movant acted with fraudulent knowledge and intent. McKinnon Decl. ¶¶32–39. Every component of the omitted Napue claim bore on that central issue: the McKinnon Letter's contemporaneous documentation of Movant's limited role, fear of Chamblee, and lack of knowledge that Chamblee's sales were fabricated went directly to knowledge and intent (App. B, G1-RA-008; G5-RA-007); the Chamblee-source evidence chain established the basis for Movant's reliance defense (App. B, G1-RA-003, G1-RA-006; G5-RA-005); and the financial-summary completeness limitations qualified the reliability of the Government's attribution inferences (App. B, G1-RA-005; G5-RA-004). Category 2 is control and account access. The Government's attribution theory depended in part on characterizing Movant's relationship to the relevant business entities and accounts. The omitted Napue claim challenged that characterization directly: the Deware bank-access/signatory contradiction established that account access and control were distributed across the partnership structure (App. B, G1-RA-007; G5-RA-006); the Bank of America NGEP signer records established that Chamblee and Hogan — not Movant — were the account controllers on the NGEP operating account (App. B, G1-RA-002; G5-RA-004). Category 3 is loss and source of funds. The Count 2 source-of-funds mischaracterization (App. B, G1-RA-004, G1-RA-006; G5-RA-005) and the financial-summary completeness limitations (App. B, G1-RA-005; G5-RA-004) both bore on the

accuracy of the financial-attribution and loss framework the jury evaluated. Category 4 is witness credibility. The Deware bank-access/signatory contradiction is the most precisely documentable witness-credibility component: a specific Government witness, a specific verbatim statement, a specific pre-trial Government discovery document (BATES USA-00049465) directly contradicting the statement, and specific Government-produced banking exhibits corroborating the contradiction. App. B, G1-RA-007; G5-RA-006. Category 5 is verdict integrity through rebuttal exploitation. The most outcome-material component of the cumulative Napue pattern is the three-stage McKinnon Letter/Gov't Ex. 401 sequence: selective Gov't Ex. 401 presentation creating letter awareness without letter contents; Hubbuch non-receipt testimony left uncorrected despite the pre-trial recorded interview establishing Government knowledge of the letter's existence and accessibility; and Government rebuttal exploitation of the resulting evidentiary gap through the "shred of proof" and "single item of proof" arguments. Trial Tr., ECF No. 179, PageID #1894; App. B, G1-RA-009 through G1-RA-014; G5-RA-007. The Government's rebuttal argument directly derived its force from the evidentiary gap its own presentation had created through the uncorrected Hubbuch testimony. That is the essence of verdict-integrity prejudice under Napue.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

Under Strickland v. Washington, 466 U.S. at 687–88, and Smith v. Robbins, 528 U.S. at 288, appellate counsel's failure to raise an issue clearly stronger than those presented constitutes deficient performance. The verdict-integrity nature of the omitted Napue/prosecutorial-misconduct claim is the most powerful basis for establishing that Napolitano's omission of the claim constituted deficient performance — and for establishing that the omission was the failure to raise an issue clearly stronger than those presented, not merely the failure to raise a

comparable alternative. The three issues Napolitano raised on direct appeal each operated within the confines of the trial record as accurately and completely presented to the jury. Each asked the Sixth Circuit to evaluate what was done with the trial record, not whether the trial record itself was accurate and complete. A sufficiency claim that accepts the trial record as presented and asks whether the evidence was legally sufficient offers the appellate court no basis to question the accuracy of the evidentiary foundation on which the verdict rests. By contrast, the omitted Napue/prosecutorial-misconduct claim asked the Sixth Circuit to evaluate whether the evidentiary foundation itself — the record the jury actually saw and evaluated — was accurate and complete, or whether it was materially tainted by the Government's use and maintenance of false or misleading evidence. That distinction has direct and concrete implications for the strength of the appellate claim and the nature of the relief available. A successful sufficiency claim establishes only that the evidence as presented was insufficient as a matter of law. A successful Napue/prosecutorial-misconduct claim establishes that the conviction was obtained through constitutionally impermissible means — and requires a new trial in which the jury evaluates the defendant's guilt against a complete and accurate record. A competent appellate attorney — one who evaluated the trial record in light of Movant's specific identification of the prosecutorial-misconduct/Napue theory and its three components — would have recognized that the omitted claim was not merely a stronger alternative to the issues raised. It was a categorically different and categorically more powerful appellate theory: one that attacked the foundation of the verdict rather than its legal sufficiency given the foundation, and one that offered conviction-level relief rather than the narrower remedy available under the claims Napolitano chose to raise.

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

The verdict-integrity materiality of the omitted Napue/prosecutorial-misconduct claim was available to Napolitano entirely from the existing appellate record. The five categories of materiality documented in the record-proof point above — knowledge and intent (McKinnon Letter/Gov't Ex. 401 pattern); control and account access (Deware/Bank of America/NGEP signer evidence); loss and source of funds (Count 2/financial-summary limitations); witness credibility (Deware/Smith 302/BATES USA-00049465); and verdict integrity through rebuttal exploitation ("shred of proof" / "single item of proof") — each drew exclusively from trial transcripts, admitted Government exhibits, admitted defense exhibits, and BATES-stamped discovery materials that were part of the appellate record as assembled. No category required new investigation, new witnesses, or evidence outside the existing record. The rebuttal exploitation category — the most outcome-material component — was the most directly accessible of all: the Government's "shred of proof" and "single item of proof" arguments were verbatim in the trial transcript at Trial Tr., ECF No. 179, PageID #1894. The Hubbuch non-receipt testimony and its relationship to Gov't Ex. 401 were in the same trial transcript. The Movant Ex. F transcript context establishing the pre-trial letter accessibility discussion was in the exhibit record. App. B, G1-RA-009 through G1-RA-014. Movant's specific identification to Napolitano of the Government's use of false or materially misleading testimony, its failure to correct known falsehoods, and the pattern of misconduct documented in the trial transcript and Government exhibits — McKinnon Decl. ¶73 — mapped directly to specific, documentable trial-record evidence across all five materiality categories. A competent appellate attorney reviewing the trial record with that specific identification in hand would have connected each identified category to the specific trial-record documentation that supported it and would have presented the cumulative verdict-integrity theory as the strongest available appellate claim.

MATERIALITY / PREJUDICE:

Under Smith v. Robbins, 528 U.S. at 285–86, and Napue v. Illinois, 360 U.S. at 271, the prejudice standard for the omitted Napue/prosecutorial-misconduct claim is whether there is a reasonable probability that, but for Napolitano's deficient omission of the claim, the result of the appeal would have been different. The verdict-integrity theory documented in this entry establishes that standard is met across every dimension of the appellate-prejudice analysis. On the Napue materiality standard: the test under Napue is whether the false or materially misleading evidence "could in any reasonable likelihood have affected the judgment of the jury." 360 U.S. at 271. The five categories of materiality documented in this entry each independently satisfy that standard. The knowledge and intent category: the McKinnon Letter documented Movant's limited role, fear of Chamblee, and lack of knowledge that Chamblee's sales were fabricated — going directly to the knowing and voluntary elements the Government was required to prove. McKinnon Decl. ¶15. A jury that received the letter's contents, without the distortion created by Hubbuch's uncorrected non-receipt testimony, could in any reasonable likelihood have evaluated those elements differently. The witness-credibility category: a jury that knew the Government's own pre-trial FBI discovery record directly contradicted Deware's "had never had access to the banks" testimony — through BATES USA-00049465 and Movant Exs. 14 and 15 — could in any reasonable likelihood have evaluated Deware's testimony and the account-control attribution framework built on it differently. App. B, G1-RA-007; G5-RA-006. The loss and source-of-funds category: a jury that understood the Count 2 funds as originating from the NGEP Bank of America account instead of Chamblee personally could in any reasonable likelihood have evaluated the transaction-attribution and loss inferences differently. App. B, G1-RA-004, G1-RA-006; G5-RA-005. The investigation-completeness category: a jury

that understood the financial summary as an investigation-limited reconstruction — subject to the "strings" cross-examination acknowledgment and the McCracken-to-Hubbuch data-chain intermediary — could in any reasonable likelihood have evaluated the reliability and completeness of the Government's financial-attribution proof differently. App. B, G1-RA-005; G5-RA-004. The rebuttal-exploitation category: the "shred of proof" and "single item of proof" arguments derived their force from an evidentiary gap the Government's own uncorrected Hubbuch testimony and restricted McKinnon Letter presentation had created. A jury that received the complete McKinnon Letter/Gov't Ex. 401 context would have evaluated the Government's rebuttal characterization in a materially different light. Trial Tr., ECF No. 179, PageID #1894; App. B, G1-RA-013; G5-RA-007. On the Smith v. Robbins appellate-prejudice standard: there is a reasonable probability that the Sixth Circuit, presented with the cumulative five-category verdict-integrity Napue/prosecutorial-misconduct claim, would have found a reasonable likelihood that the materially misleading evidentiary foundation affected the jury's judgment — and would have granted reversal, remand, or new trial. That probability is materially stronger than the probability available from the three issues Napolitano raised, each of which accepted the trial record's integrity and sought only narrower relief at the margins of the established record. See G5-RA-009 (clearly-stronger issue comparison) and G5-RA-010 (appellate relief theory). Strickland, 466 U.S. at 694; Smith v. Robbins, 528 U.S. at 285–86; Napue, 360 U.S. at 271.

CROSS-GROUND NOTATION:

Ground One (App. B, G1-RA-001 through G1-RA-015): The complete Ground One trial-record basis for the five-category cumulative materiality and verdict-integrity analysis is preserved across all fifteen App. B entries — knowledge and intent (G1-RA-008 through G1-RA-014), control and account access (G1-RA-002, G1-RA-007), loss and source of funds (G1-RA-004, G1-RA-006), witness credibility (G1-RA-007), and verdict integrity through rebuttal exploitation (G1-RA-013, G1-RA-014) — with the cumulative materiality anchor at G1-RA-015. See App. B, G1-RA-001 through G1-RA-015.

Ground Three (App. D, G3-RA-011): The Ground Three cumulative pretrial-IAC prejudice anchor cross-references this entry — the cumulative trial-stage IAC prejudice documented in Ground Three and the

appellate-stage materiality and verdict-integrity prejudice documented here are analytically continuous and cumulatively reinforcing; each successive failure compounded the harm from the failures that preceded it. See App. D, G3-RA-011.

G5-RA-009 — The Omitted Napue/Prosecutorial-Misconduct Claim Was Clearly Stronger Than the Issues Appellate Counsel Raised: Direct-Appeal Issue Comparison

RECORD CITATION / SOURCE:

McKinnon Appeal Brief, Case No. 23-5773, Doc. 28, at 2 (Statement of Issues Presented for Review); United States v. Vance / United States v. McKinnon, Case Nos. 23-5766/5773, slip op. at 14–30; Smith v. Robbins, 528 U.S. 259, 285–86 (2000); Jones v. Barnes, 463 U.S. 745, 751–54 (1983); Strickland v. Washington, 466 U.S. 668, 687–94 (1984); Napue v. Illinois, 360 U.S. 264, 269–71 (1959); Giglio v. United States, 405 U.S. 150, 153–54 (1972); McKinnon Decl. ¶73; App. B, G1-RA-001 through G1-RA-015 (full Ground One record — evidentiary foundation for the clearly-stronger omitted claim); G5-RA-001 through G5-RA-008 (framework through materiality/verdict-integrity anchor); G5-RA-010 (appellate relief theory — forward cross-reference)

EXACT QUOTE OR RECORD LANGUAGE:

Issues actually raised on direct appeal (McKinnon Appeal Brief, Case No. 23-5773, Doc. 28, at 2): The three issues Napolitano presented in the McKinnon direct-appeal brief were: (1) Whether the district court erred in limiting Movant's trial testimony; (2) Whether the evidence was sufficient to support the convictions; and (3) Whether the sentence was procedurally and substantively reasonable. Each of those issues is documented in the appellate brief's Statement of Issues Presented for Review and addressed in the Sixth Circuit's opinion. United States v. Vance / United States v. McKinnon, Case Nos. 23-5766/5773, slip op. at 14–30. Omitted issue —

Napue/prosecutorial-misconduct claim (McKinnon Decl. ¶73): "I urged my appellate counsel, Gregory Napolitano ('Napolitano'), to include prosecutorial misconduct as a ground for relief on direct appeal. I specifically identified the Government's use of false or materially misleading testimony, its failure to correct known falsehoods, and the pattern of misconduct documented in the trial transcript and the Government's own admitted exhibits. Napolitano declined to include prosecutorial misconduct as an appellate ground despite my requests." Clearly-stronger standard (Smith v. Robbins, 528 U.S. at 288): "Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome." Napue materiality standard (Napue v. Illinois, 360 U.S. at 271): "A conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment." The knowing use of false testimony that "could in any reasonable likelihood have affected the judgment of the jury" violates due process. Id. Jones v. Barnes appellate-issue selection framework (463 U.S. at 751–54): While appellate counsel need not raise every nonfrivolous issue and may exercise reasonable professional judgment in selecting among issues, that judgment does not protect the omission of a claim clearly stronger than those chosen — particularly after the client has specifically identified and requested the stronger claim. Smith v. Robbins appellate-IAC prejudice standard (528 U.S. at 285–86): The prejudice standard for appellate IAC requires a showing of a reasonable probability that, but for counsel's deficient omission of the stronger issue, the result of the appeal would have been different.

RECORD-PROOF POINT:

This entry establishes the direct, issue-by-issue comparison between the three claims Napolitano raised on direct appeal and the omitted Napue/prosecutorial-misconduct claim that Movant specifically identified and requested — applying Smith v. Robbins' clearly-stronger standard to

the specific appellate record in this case. The comparison is organized along four analytical dimensions: (1) the nature and theory of each claim; (2) the evidentiary foundation each claim required; (3) the relief each claim could achieve; and (4) the comparative strength of each claim given the trial record. Dimension 1 — Nature and theory of each claim. The three issues Napolitano raised each operated within the confines of the trial record as accurately and completely presented to the jury. The testimony-limitation claim asked the Sixth Circuit to evaluate whether the district court's evidentiary ruling restricting Movant's testimony was legally correct — accepting the record as presented and challenging only the trial court's management of that record. McKinnon Appeal Brief, Case No. 23-5773, Doc. 28, at 2. The sufficiency claim asked the Sixth Circuit to evaluate whether the evidence, as presented and accepted by the jury, was legally sufficient to support the verdict — accepting the evidentiary foundation as complete and accurate and challenging only whether that foundation met the legal threshold for conviction. Id. The sentencing-reasonableness claim asked the Sixth Circuit to evaluate whether the sentence was within the permissible range on the facts as established at sentencing — accepting the trial and sentencing record as presented and challenging only the sentencing court's exercise of discretion within that record. Id. By contrast, the omitted Napue/prosecutorial-misconduct claim did not accept the trial record as accurately or completely presented to the jury. It challenged the evidentiary foundation itself — asserting that the jury evaluated the central contested issues of knowledge, intent, control, loss, and attribution against a materially misleading factual framework that the Government's own evidence contradicted, qualified, and undermined without correction. McKinnon Decl. ¶73; App. B, G1-RA-001 through G1-RA-015; G5-RA-003 through G5-RA-008. That is a categorically different appellate theory — one that operates at the level of evidentiary integrity rather than legal sufficiency of the

evidence as presented, evidentiary ruling correctness, or sentencing reasonableness. Dimension 2 — Evidentiary foundation each claim required. Each of the three issues Napolitano raised was dependent on the trial record as presented — and as the Sixth Circuit found it. A sufficiency claim succeeds only if the appellate court concludes that no rational trier of fact could have found the essential elements beyond a reasonable doubt given the evidence presented. That is an exceptionally high standard that favors the Government in virtually all fraud cases in which the core facts are undisputed. The testimony-limitation claim required the Sixth Circuit to find that the district court abused its discretion — a deferential standard unlikely to be satisfied absent a clear legal error. The sentencing-reasonableness claim required the Sixth Circuit to find procedural or substantive sentencing error — evaluated under an abuse-of-discretion standard that again favors the sentencing court. The omitted Napue/prosecutorial-misconduct claim, by contrast, did not depend on an exceptionally high standard or a deferential review of a trial court ruling. It required the Sixth Circuit to apply the Napue standard — whether the false or materially misleading evidence could in any reasonable likelihood have affected the judgment of the jury — to a specific, transcript-documented, exhibit-supported, discovery-corroborated set of contradictions between the Government's trial presentation and the evidence available to the Government. Napue, 360 U.S. at 271. That standard is meaningfully more favorable to the appellant than any of the three standards governing the issues Napolitano raised. Dimension 3 — Relief each claim could achieve. The testimony-limitation claim, if successful, would result at most in a remand for a new trial on the counts most directly affected by the restricted testimony — and only if the Sixth Circuit also found that the error was not harmless. The sufficiency claim, if successful on any count, would result in vacatur of that count with no retrial — but the high threshold made the probability of success low. The sentencing-reasonableness claim, if

successful, would result in remand for resentencing — providing no relief from the convictions themselves. The omitted Napue/prosecutorial-misconduct claim, if successful, would result in reversal of the convictions and a new trial — in which the jury evaluates Movant's knowledge, intent, and attribution against a complete and non-misleading evidentiary record. That is the broadest available appellate relief short of outright acquittal, and it is the only relief theory among the four claims that directly challenges the validity of the convictions on all affected counts based on the constitutional integrity of the trial process. Dimension 4 — Comparative strength given the trial record. The comparative strength of the omitted Napue/prosecutorial-misconduct claim is established by the complete record documented in G5-RA-003 through G5-RA-008. The claim was: entirely record-based, requiring no new evidence or investigation beyond reviewing the trial transcript and admitted exhibits (G5-RA-003); supported by three specific, documentable representative Napue examples across distinct categories of evidence (G5-RA-004 through G5-RA-006), each independently satisfying the Napue materiality standard; supported by the broader McKinnon Letter/Gov't Ex. 401 pattern encompassing the Government's pre-trial recorded notice of the letter's existence, Hubbuch's uncorrected non-receipt testimony, and the Government's rebuttal exploitation of the resulting evidentiary gap (G5-RA-007); and supported by the cumulative five-category verdict-integrity theory establishing that the jury evaluated knowledge, intent, control, loss, and witness credibility against a materially misleading evidentiary foundation across every dimension of the Government's attribution and intent proof (G5-RA-008). Under Smith v. Robbins, 528 U.S. at 288, that comparison establishes that the omitted claim was clearly stronger than those presented.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

Under Smith v. Robbins, 528 U.S. at 288, only when ignored issues are clearly stronger than those presented will the presumption of effective assistance of counsel be overcome, and appellate counsel's failure to raise such a clearly stronger claim constitutes deficient performance under Strickland regardless of counsel's subjective rationale for the omission. The four-dimensional comparison documented in the record-proof point above establishes that standard is satisfied here across every analytical dimension. On the nature and theory dimension: the omitted claim challenged the constitutional integrity of the evidentiary foundation on which the verdict rested — a categorically more powerful appellate theory than claims that accept the evidentiary foundation and challenge only what was done with it. On the evidentiary foundation dimension: the omitted claim was subject to the Napue reasonable-likelihood standard — meaningfully more favorable to the appellant than the deferential abuse-of-discretion standards governing the testimony-limitation and sentencing-reasonableness claims, and meaningfully more accessible than the high sufficiency threshold. On the relief dimension: the omitted claim sought reversal of the convictions and a new trial — the broadest available appellate relief — while the claims Napolitano raised sought at most a remand for resentencing or retrial on restricted grounds. On the comparative-strength dimension: the omitted claim was entirely record-based, supported by specific verbatim transcript quotes, identified BATES-stamped discovery documents, admitted Government exhibits, and a settled legal framework — while the claims Napolitano raised depended on the Sixth Circuit finding that specific trial court rulings were erroneous under deferential review standards or that the evidence as presented was legally insufficient despite the jury's verdict. Jones v. Barnes, 463 U.S. at 751–54, protects reasonable professional judgments about which issues to raise among comparable alternatives. It does not protect the omission of a claim that is categorically stronger — in theory, evidentiary foundation, available relief, and

record support — than all of the claims actually raised, particularly after the client has specifically identified and requested the stronger claim and provided the specific factual categories grounding it. McKinnon Decl. ¶73. The comparison between the omitted Napue/prosecutorial-misconduct claim and the three issues Napolitano raised does not present a close professional judgment between comparable alternatives. It presents a categorical disparity: a record-based, constitutionally grounded, verdict-integrity claim subject to a favorable standard of review and offering conviction-level relief, omitted in favor of three claims that accepted the conviction's factual foundation, were subject to deferential standards, and sought at most remand-level relief. That disparity, established across all four analytical dimensions and supported by the complete trial record documented in Appendix B and G5-RA-003 through G5-RA-008, establishes deficient performance under Strickland, 466 U.S. at 687–88, and Smith v. Robbins, 528 U.S. at 288.

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

The clearly-stronger nature of the omitted Napue/prosecutorial-misconduct claim — across all four analytical dimensions — was established entirely from materials available to Napolitano without any investigation beyond reviewing the appellate record and applying settled legal standards. The trial transcript across ECF Nos. 174 through 179 and ECF No. 219 — containing the specific testimony, cross-examination evidence, rebuttal arguments, and trial-restriction dispute documented in G5-RA-004 through G5-RA-008 — was part of the appellate record available to Napolitano as counsel of record on appeal. The admitted Government and defense exhibits — including Gov't Ex. 401, Movant Ex. F, Movant Ex. C, Movant Ex. 9 (Gov't Ex. 501), Movant Ex. 14 (Gov't Ex. 507), Movant Ex. 15 (Gov't Ex. 508), and Movant Ex. 1 (BATES USA-00049465) — were in the exhibit record available to Napolitano. The

Napue/Giglio legal framework — settled law since 1959 and 1972 respectively — required no novel legal research. The comparative weakness of the three issues actually raised — their dependence on deferential review standards, their acceptance of the trial record's integrity, and their limited relief potential — would have been apparent to a competent appellate attorney reviewing the record and evaluating the claims' relative strength. A competent appellate attorney reviewing the trial record in light of Movant's specific identification of the prosecutorial-misconduct/Napue theory and its three factual categories — McKinnon Decl. ¶73 — would have identified the omitted claim's record foundation, recognized the Napue/Giglio framework as the controlling legal standard, evaluated the comparative strength of the omitted claim against the three claims under consideration, and recognized that the omitted claim was clearly stronger across all four analytical dimensions. That evaluation required no investigation beyond reviewing the appellate record and the settled legal framework.

MATERIALITY / PREJUDICE:

Under Smith v. Robbins, 528 U.S. at 285–86, the prejudice standard for appellate IAC requires a showing of a reasonable probability that, but for counsel's deficient omission of the stronger issue, the result of the appeal would have been different. The clearly-stronger issue comparison documented in this entry establishes that standard is satisfied — and that the probability of a different appellate result from the omitted claim was materially higher than the probability from any of the three claims Napolitano raised. On the comparative-probability analysis: the testimony-limitation claim was evaluated by the Sixth Circuit under an abuse-of-discretion standard and denied. United States v. Vance / United States v. McKinnon, Case Nos. 23-5766/5773, slip op. at 14–30. The sufficiency claim was evaluated against the high rational-trier-of-fact standard and denied. Id. The sentencing-reasonableness claim was evaluated under an

abuse-of-discretion standard and denied. Id. Each of those claims was denied on its merits by the Sixth Circuit — establishing that the three claims Napolitano raised did not, in fact, achieve any relief. By contrast, the omitted Napue/prosecutorial-misconduct claim was never presented to the Sixth Circuit and was therefore never evaluated. The question under Smith v. Robbins is whether there is a reasonable probability the result would have been different had the stronger claim been raised. A Sixth Circuit panel evaluating the omitted claim would have applied the Napue reasonable-likelihood standard — not an abuse-of-discretion standard or a rational-trier-of-fact standard — to a specific, transcript-documented, exhibit-supported, discovery-corroborated set of trial-record contradictions across five independent materiality categories (G5-RA-008). Each of those five categories independently satisfies the Napue threshold of evidence that could in any reasonable likelihood have affected the jury's judgment. 360 U.S. at 271. Cumulatively, they establish a verdict-integrity theory whose strength derived precisely from its cumulative, pattern-based character. The probability that a Sixth Circuit panel, applying the Napue reasonable-likelihood standard to the five-category cumulative record, would have found that the materially misleading evidentiary foundation could in any reasonable likelihood have affected the jury's judgment is materially higher than the probability that the three claims Napolitano raised — each of which was denied on deferential review of the trial record as presented — would have succeeded. There is a reasonable probability that the Sixth Circuit, presented with the omitted Napue/prosecutorial-misconduct claim and the cumulative five-category verdict-integrity record, would have granted reversal, remand, or new trial — relief that the three claims Napolitano raised were unable to achieve. Smith v. Robbins, 528 U.S. at 285–86; Strickland, 466 U.S. at 694; Napue, 360 U.S. at 271. See G5-RA-010 (appellate relief theory).

CROSS-GROUND NOTATION:

Ground One (App. B, G1-RA-001 through G1-RA-015): The full Ground One trial-record basis for the four-dimensional clearly-stronger comparison — the record foundation the omitted Napue/prosecutorial-misconduct claim required and that Napolitano had available to him — is preserved across all fifteen App. B entries and is incorporated here by cross-reference as the evidentiary substrate of the comparative analysis. See App. B, G1-RA-001 through G1-RA-015.

Ground Three (App. D, G3-RA-001; G3-RA-010; G3-RA-011): All three designated Ground Three entries cross-reference this entry — the sentencing-framework anchor, the Day 6 preservation anchor, and the cumulative pretrial-IAC prejudice anchor each identify the clearly-stronger comparison as analytically continuous with the trial-stage failures that formed the trial-record foundation for the omitted claim and established that the Napue/prosecutorial-misconduct theory was categorically stronger, on a more favorable standard of review, and offering broader relief, than any of the three claims Napolitano raised. See App. D, G3-RA-001; G3-RA-010; G3-RA-011.

G5-RA-010 — Appellate Prejudice and Relief Theory: Reasonable Probability the Sixth Circuit Would Have Granted Reversal, Remand, or New Trial Had the Napue/Prosecutorial-Misconduct Claim Been Raised

RECORD CITATION / SOURCE:

McKinnon Decl. ¶73; Strickland v. Washington, 466 U.S. 668, 694 (1984); Smith v. Robbins, 528 U.S. 259, 285–86 (2000); Napue v. Illinois, 360 U.S. 264, 269–71 (1959); Giglio v. United States, 405 U.S. 150, 153–54 (1972); United States v. Vance / United States v. McKinnon, Case Nos. 23-5766/5773, slip op. at 14–30; McKinnon Appeal Brief, Case No. 23-5773, Doc. 28, at 2; App. B, G1-RA-001 through G1-RA-015 (full Ground One record — complete evidentiary foundation for appellate-relief theory incorporated by cross-reference); G5-RA-001 (framework anchor — appellate IAC theory / Napolitano's omission); G5-RA-002 (request-and-omission anchor — Movant's specific pre-brief identification and Napolitano's declination); G5-RA-003 (record-based / non-speculative foundation — omitted claim entirely grounded in existing appellate record); G5-RA-004 (first representative Napue example — financial-summary/Bank of America/McCracken-to-Hubbuch chain); G5-RA-005 (second representative Napue example — Count 2 source-of-funds/intercompany transfer); G5-RA-006 (third representative Napue

example — Deware bank-access/signatory contradiction/BATES USA-00049465); G5-RA-007 (representative-not-exhaustive incorporation — McKinnon Letter/Gov't Ex. 401 pattern/rebuttal exploitation); G5-RA-008 (materiality/verdict-integrity prejudice anchor — five-category cumulative harm analysis); G5-RA-009 (clearly-stronger issue comparison — four-dimensional comparative analysis)

EXACT QUOTE OR RECORD LANGUAGE:

McKinnon Decl. ¶73 (controlling appellate-IAC anchor): "I urged my appellate counsel, Gregory Napolitano ('Napolitano'), to include prosecutorial misconduct as a ground for relief on direct appeal. I specifically identified the Government's use of false or materially misleading testimony, its failure to correct known falsehoods, and the pattern of misconduct documented in the trial transcript and the Government's own admitted exhibits. Napolitano declined to include prosecutorial misconduct as an appellate ground despite my requests." Smith v. Robbins, 528 U.S. at 285–86 (appellate-IAC prejudice standard): To establish prejudice from appellate counsel's failure to raise a claim, the movant must demonstrate a reasonable probability that, but for counsel's deficient performance in omitting the stronger issue, the result of the appeal would have been different — that the Sixth Circuit would have granted relief had the stronger claim been presented. Napue v. Illinois, 360 U.S. at 269–71 (Napue materiality and relief standard): "A conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment." The remedy for a Napue/due-process violation is reversal of the conviction. The knowing use of false testimony that "could in any reasonable likelihood have affected the judgment of the jury" violates due process and requires reversal. Id. at 271. Giglio v. United States, 405 U.S. at 153–54 (failure-to-correct standard and remedy): The Government's obligation to correct materially misleading testimony encompasses

any evidence bearing on the credibility of its witnesses; suppression or failure to correct materially misleading testimony that the Government knew or should have known was false constitutes a due-process violation requiring reversal. Smith v. Robbins, 528 U.S. at 288 (clearly-stronger standard): "Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome." Issues actually raised on direct appeal and results (McKinnon Appeal Brief, Case No. 23-5773, Doc. 28, at 2; slip op. at 14–30): Three issues raised — testimony limitation, sufficiency of evidence, sentencing reasonableness — all denied by the Sixth Circuit on deferential review of the trial record as presented.

RECORD-PROOF POINT:

This entry functions as the appellate-prejudice and relief-theory anchor — the capstone of the Ground Five record architecture. It synthesizes the complete G5-RA-001 through G5-RA-009 record into a unified statement of the appellate relief theory: had Napolitano raised the Napue/prosecutorial-misconduct claim Movant specifically identified and requested, there is a reasonable probability the Sixth Circuit would have granted reversal, remand, or new trial. The relief theory is built from four independently sufficient and cumulatively reinforcing foundations, each documented in the preceding entries. Foundation 1 — The request-and-omission sequence (G5-RA-002). Movant specifically identified the prosecutorial-misconduct/Napue claim to Napolitano before the direct-appeal brief was filed, providing the legal theory, the factual categories, and the record foundation. McKinnon Decl. ¶73. Napolitano declined despite that specific identification. That sequence eliminates any inference that the omission was a reasonable professional judgment between comparable alternatives — it was a decision to exclude a specifically requested, record-grounded, verdict-integrity claim in favor of

three claims that accepted the trial record's integrity and offered only narrower, deferential-review-dependent relief. Foundation 2 — The non-speculative, entirely record-based nature of the omitted claim (G5-RA-003). The Napue/prosecutorial-misconduct claim Movant identified was not speculative, novel, or dependent on evidence outside the appellate record. It was grounded in specific trial transcripts (ECF Nos. 174 through 179), admitted Government exhibits (Gov't Ex. 401, Movant Ex. 9 / Gov't Ex. 501, Movant Ex. 14 / Gov't Ex. 507, Movant Ex. 15 / Gov't Ex. 508), admitted defense exhibits (Movant Ex. C, Movant Ex. F), and BATES-stamped discovery materials (BATES USA-00049465 / Movant Ex. 1) — all part of the appellate record as assembled. A record-based Napue claim is a recognized, viable appellate theory under settled Sixth Circuit and Supreme Court precedent. A Sixth Circuit panel reviewing such a claim applies the Napue reasonable-likelihood standard — not the deferential abuse-of-discretion or rational-trier-of-fact standards governing the three claims Napolitano raised. That more favorable standard of review materially increases the probability of appellate relief. Foundation 3 — The three representative Napue examples and the broader incorporated record (G5-RA-004 through G5-RA-007). The omitted claim was supported by three specific, independently documentable representative Napue examples — the financial-summary/Bank of America/McCracken-to-Hubbuch chain (G5-RA-004), the Count 2 source-of-funds/intercompany transfer (G5-RA-005), and the Deware bank-access/signatory contradiction (G5-RA-006) — each satisfying the Napue materiality threshold on its own. The Deware bank-access example is the most precisely documentable: a specific Government witness (Deware) testified to a specific fact ("had never had access to the banks," Trial Tr., ECF No. 174, PageID #842) that the Government's own pre-trial FBI discovery record (Smith 302, BATES USA-00049465: "had control and was signatory on the NexGen account for the Kentucky business") and the Government's own admitted

banking exhibits (Movant Ex. 14 / Gov't Ex. 507; Movant Ex. 15 / Gov't Ex. 508) directly and specifically contradicted — establishing Government knowledge before trial and failure to correct at trial. App. B, G1-RA-007. The McKinnon Letter/Gov't Ex. 401 pattern (G5-RA-007) — the most outcome-material component — established the three-stage sequence in which the Government's own recorded pre-trial interview (Gov't Ex. 401, December 2018) disclosed the McKinnon Letter's existence and accessibility to Agent Hubbuch; Hubbuch testified at trial that he never received the letter; the Government failed to correct that testimony using the Movant Ex. F transcript context that established pre-trial knowledge of the letter's existence and location; and the Government then exploited the resulting evidentiary gap in rebuttal through the "shred of proof" and "single item of proof" arguments — Trial Tr., ECF No. 179, PageID #1894 — at the precise moment the jury was evaluating Movant's knowledge, intent, and state of mind. App. B, G1-RA-008 through G1-RA-014. Foundation 4 — The five-category verdict-integrity cumulative prejudice theory and the clearly-stronger issue comparison (G5-RA-008 and G5-RA-009). The materiality of the omitted claim is established cumulatively across five independent categories — knowledge and intent, control and account access, loss and source of funds, witness credibility, and verdict integrity through rebuttal exploitation — each of which independently satisfies the Napue reasonable-likelihood threshold and all of which, evaluated together, establish that the jury's evaluation of the central contested issues at trial was conducted against a materially misleading evidentiary foundation built from the Government's own evidence. G5-RA-008. The clearly-stronger issue comparison across four analytical dimensions — theory, evidentiary foundation, available relief, and record support — establishes that the omitted claim was not merely a stronger alternative to the claims Napolitano raised but was categorically more powerful on every dimension relevant to appellate success. G5-RA-009.

Together, these four foundations establish the appellate-relief theory with specificity and force: there is a reasonable probability that the Sixth Circuit, presented with the full cumulative Napue/prosecutorial-misconduct claim, would have found a reasonable likelihood that the Government's use and maintenance of materially misleading evidence affected the jury's judgment on knowledge, intent, attribution, witness credibility, and ultimately the verdict — and would have granted reversal, remand, or new trial.

DEFICIENT PERFORMANCE / COUNSEL'S FAILURE:

The deficient performance establishing the predicate for the appellate-relief theory is fully documented in G5-RA-001 through G5-RA-009 and is synthesized here in its final form. Under Strickland v. Washington, 466 U.S. at 687–88, and Smith v. Robbins, 528 U.S. at 288, Napolitano rendered constitutionally deficient appellate representation by omitting the prosecutorial-misconduct/Napue claim that Movant specifically identified, requested, and grounded in three specific factual categories before the direct-appeal brief was filed. McKinnon Decl. ¶73. The deficiency is established at three levels. At the notice level: Movant provided Napolitano with direct, specific, pre-brief identification of the legal theory and factual categories grounding the omitted claim — eliminating any inference that the omission reflected reasonable professional judgment under an information deficit. G5-RA-002. At the claim-availability level: the omitted claim was available entirely from the existing appellate record, required no new investigation, and was grounded in settled Napue/Giglio constitutional law — eliminating any inference that the omission was necessitated by unavailability of the record or novelty of the legal theory. G5-RA-003. At the comparative-strength level: the omitted claim was clearly stronger than the three claims Napolitano raised across all four analytical dimensions — theory, evidentiary foundation, available relief, and record support — and the three claims he raised

were all denied by the Sixth Circuit on deferential review, while the omitted claim was never presented. G5-RA-009. The combination of specific client notice, full appellate-record availability, settled legal framework, and categorical comparative strength across all four analytical dimensions establishes deficient performance that directly caused the loss of the strongest available appellate path — a path that, had it been taken, would have presented the Sixth Circuit with a cumulative, five-category, verdict-integrity Napue claim grounded in the Government's own evidence and offering the broadest available appellate relief.

AVAILABLE EVIDENCE / NOTICE TO COUNSEL:

The complete evidentiary foundation for the appellate-relief theory — across all four foundations identified in the record-proof point — was available to Napolitano without any investigation beyond reviewing the appellate record and applying settled legal standards. The specific trial-record materials grounding each of the four foundations are documented in the designated preceding entries and incorporated here by cross-reference: G5-RA-003 (complete appellate-record inventory); G5-RA-004 through G5-RA-007 (specific transcript citations, exhibit numbers, and BATES references for each representative Napue example and the broader incorporated McKinnon Letter/Gov't Ex. 401 pattern); G5-RA-008 (five-category materiality documentation with specific record anchors); G5-RA-009 (comparative analysis of the three issues raised and their results against the omitted claim's record foundation and relief theory). Every source is drawn from the trial transcripts (ECF Nos. 174 through 179), admitted Government exhibits, admitted defense exhibits, and BATES-stamped discovery materials that were part of the appellate record as assembled at the time of appeal. The Napue/Giglio legal framework is settled law requiring no novel research — only application of established precedent to the specific trial-record contradictions documented in the record. Movant's specific

identification of the claim's theory and factual categories before the brief was filed placed Napolitano on direct notice of every dimension of the omitted claim's foundation. McKinnon Decl. ¶73. No additional notice, no additional investigation, and no additional evidence outside the existing appellate record was required to identify, develop, brief, and present the full cumulative Napue/prosecutorial-misconduct claim to the Sixth Circuit. The complete foundation for the appellate-relief theory was in place before Napolitano filed the brief — and it remained unraised not because it was unavailable but because Napolitano declined to present it despite Movant's specific, direct, and repeated requests.

MATERIALITY / PREJUDICE:

Under Smith v. Robbins, 528 U.S. at 285–86, the prejudice standard for appellate IAC is a reasonable probability that, but for counsel's deficient omission of the stronger issue, the result of the appeal would have been different — that the Sixth Circuit would have granted relief that Napolitano's chosen claims could not achieve. That standard is satisfied here, and it is satisfied with a degree of probability that the prior appellate record makes concrete rather than speculative: the three claims Napolitano raised were all denied by the Sixth Circuit. None achieved any relief. The omitted claim was never presented. The question is whether there is a reasonable probability the omitted claim would have fared differently — and the answer is established by the complete G5-RA-001 through G5-RA-009 record across five independently sufficient grounds. First ground — The Napue standard is more favorable than the standards governing the claims that were raised and denied. The Napue reasonable-likelihood standard — whether the false or materially misleading evidence could in any reasonable likelihood have affected the jury's judgment, 360 U.S. at 271 — is meaningfully more accessible to the appellant than the rational-trier-of-fact sufficiency threshold, the abuse-of-discretion standard governing

the testimony-limitation claim, or the abuse-of-discretion standard governing the sentencing-reasonableness claim. All three of those standards were applied and denied. The Napue standard — applied to the specific, transcript-documented, exhibit-supported, discovery-corroborated trial-record contradictions documented in G5-RA-004 through G5-RA-007 — would have placed the Sixth Circuit panel in a different analytical position: evaluating whether specific documented contradictions between the Government's trial presentation and the underlying evidence could in any reasonable likelihood have affected the jury's judgment on knowledge, intent, attribution, and credibility. Second ground — Each of the five materiality categories independently satisfies the Napue reasonable-likelihood threshold. The knowledge and intent category: Hubbuch's uncorrected non-receipt testimony deprived the jury of contemporaneous state-of-mind evidence going directly to the knowing and voluntary elements of conviction. McKinnon Decl. ¶15; App. B, G1-RA-008 through G1-RA-014; G5-RA-007. A jury evaluating those elements against the corrected record could in any reasonable likelihood have reached a different judgment. The witness-credibility category: Deware's "had never had access to the banks" testimony — contradicted by the Government's own pre-trial FBI discovery record (BATES USA-00049465) and its own admitted banking exhibits (Movant Exs. 14 and 15) — presented the jury with materially false account-access evidence on which the Government's account-control attribution framework depended. App. B, G1-RA-007; G5-RA-006. The loss and source-of-funds category: the simplified personal-payment characterization of the Count 2 transaction — contradicted by the NGEP Bank of America account documentation — affected the jury's evaluation of a specific charged count of conviction. App. B, G1-RA-004, G1-RA-006; G5-RA-005. The investigation-completeness category: the financial-summary completeness representation — qualified by the cross-examination "strings" acknowledgment and the McCracken-to-Hubbuch

Bank of America data-chain intermediary — affected the jury's evaluation of the reliability of the Government's attribution and intent proof. App. B, G1-RA-005; G5-RA-004. The verdict-integrity through rebuttal-exploitation category: the Government's "shred of proof" and "single item of proof" rebuttal arguments — Trial Tr., ECF No. 179, PageID #1894 — derived their force directly from the evidentiary gap the uncorrected Hubbuch testimony and restricted McKinnon Letter presentation had created. App. B, G1-RA-013, G1-RA-014; G5-RA-007. Third ground — The cumulative five-category verdict-integrity theory is greater than the sum of its individual parts. Each of the five categories satisfies the Napue threshold independently. Evaluated cumulatively, they establish that the jury's evaluation of every central contested issue — knowledge, intent, control, loss, attribution, and witness credibility — was conducted against a materially misleading evidentiary foundation built from the Government's own evidence across every dimension of its attribution and intent proof. App. B, G1-RA-015; G5-RA-008. A Sixth Circuit panel evaluating the cumulative pattern under Napue and Giglio would have assessed a materially stronger prejudice basis than any single category alone provides. Fourth ground — The available relief from the omitted claim is broader and more powerful than any relief available from the claims that were raised. The omitted Napue/prosecutorial-misconduct claim, if successful, would have resulted in reversal of the convictions and a new trial — in which the jury evaluates Movant's knowledge, intent, and attribution against a complete and non-misleading record. That is the broadest available appellate relief in a post-conviction criminal case short of outright acquittal, and it is the only relief theory among the four claims that directly attacks the constitutional validity of the convictions rather than the correctness of any discrete ruling or the legal sufficiency of the evidence as presented. Fifth ground — The Sixth Circuit denied all three claims Napolitano raised; the omitted claim was never evaluated. Smith v. Robbins requires only

a reasonable probability of a different result, not certainty. The omitted claim, evaluated against the Napue reasonable-likelihood standard, the five-category cumulative materiality record, and the favorable standard of review that distinguishes it from the three denied claims, presents a materially stronger probability of a different appellate result than any of the three claims Napolitano chose to raise. There is a reasonable probability — established by the complete G5-RA-001 through G5-RA-009 record — that the Sixth Circuit, presented with the full cumulative Napue/prosecutorial-misconduct claim, would have found that the Government's use and maintenance of materially misleading evidence across five independent categories of trial-record proof could in any reasonable likelihood have affected the jury's judgment on knowledge, intent, attribution, witness credibility, and ultimately the verdict — and would have granted reversal, remand, or new trial. That is the relief Movant specifically requested Napolitano seek. It is the relief the trial record supports. It is the relief the omitted claim could have achieved. And it is the relief that Napolitano's declination — made after receiving Movant's specific and direct identification of the claim and its record basis — foreclosed. Strickland, 466 U.S. at 694; Smith v. Robbins, 528 U.S. at 285–86; Napue, 360 U.S. at 271; Giglio, 405 U.S. at 153–54.

CROSS-GROUND NOTATION:

Ground One (App. B, G1-RA-001 through G1-RA-015): The complete Ground One trial-record basis for all five grounds of the appellate-relief theory — each of the five independently sufficient Napue materiality categories that would have supported reversal, remand, or new trial — is preserved across all fifteen App. B entries and incorporated here by cross-reference as the complete evidentiary foundation on which the appellate-relief theory rests. See App. B, G1-RA-001 through G1-RA-015.

Ground Three (App. D, G3-RA-010; G3-RA-011): The Ground Three Day 6 preservation anchor and cumulative pretrial-IAC prejudice anchor both cross-reference this entry — the trial-stage preservation failures documented in Ground Three are analytically continuous with the appellate-relief path the omitted Napue/prosecutorial-misconduct claim would have provided; Napolitano's declination of that path was the final link in the chain of successive failures documented across Grounds Two through Five. See App. D, G3-RA-010; G3-RA-011.

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