

UNITED STATES DISTRICT COURT
for the
Northern District of California

FILED
Sep 17 2020
SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

United States of America
v.
ALAN VARELA and
WILLIAM GILMARTIN III,
Defendant(s)

Case No. 3-20-71327 TSH

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of February 18, 2019 in the counties of Napa and Sonoma in the Northern District of California, the defendant(s) violated:

Table with 2 columns: Code Section, Offense Description. Row 1: 18 U.S.C. § 666(a)(2), Bribery of Local Official. Row 2: Maximum Penalties: 10 years' imprisonment, \$250,000 fine or not more than the greater of twice the gross gain or twice the gross loss, 3 years' supervised release, \$100 special assessment.

This criminal complaint is based on these facts:

Please see the attached affidavit of FBI Special Agent James A Folger.

Continued on the attached sheet.

Approved as to form Scott Joiner
AUSA Scott Joiner

/s/ via telephone
Complainant's signature
James A. Folger, Special Agent, FBI
Printed name and title

Attested to by the applicant by telephone in accordance with the requirements of Fed. R. Crim. P. 4.1.

Date: September 16, 2020

Thomas S. Hixson
Judge's signature

City and state: San Francisco, CA

Hon. Thomas S. Hixson, U.S. Magistrate Judge
Printed name and title

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- I. INTRODUCTION AND AGENT QUALIFICATIONS.....1
- II. COUNT 1: BRIBERY OF LOCAL OFFICIAL (18 U.S.C. §§ 666 (a)(2) AND 2).....3
- III. APPLICABLE LAW4
- IV. FACTS ESTABLISHING PROBABLE CAUSE6
 - A. Individuals.....6
 - B. Overview.....6
 - C. Corrupt Intent to Influence NURU in Connection With City Business.....7
 - D. Bribes in Connection with Asphalt Plant Project9
 - E. VARELA Delivers the John Deere Tractor22
- V. CONCLUSION.....29

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, James A. Folger, Special Agent with the Federal Bureau of Investigation, being duly sworn, hereby depose and state the following:

I. INTRODUCTION AND AGENT QUALIFICATIONS

1. I submit this affidavit in support of a criminal complaint against Alan Varela (“VARELA”) and William “Bill” Gilmartin III (“GILMARTIN”). As set forth below, there is probable cause to believe VARELA and GILMARTIN bribed Mohammed NURU, the former Director of San Francisco Public Works, in violation of Title 18, United States Code, Section 666(a)(2).

2. I am a Special Agent of the FBI and have been so employed since entering the FBI Academy in August 2012. I am sworn and empowered to investigate criminal activity involving violations of federal law. I am currently assigned to FBI’s San Francisco Division Public Corruption Squad, which investigates abuse of public office in violation of criminal law, which includes fraud, bribery, extortion, conflicts of interest, and embezzlement. My investigative experience includes, but is not limited to: conducting wire communication interceptions; interviewing subjects, targets and witnesses; executing search and arrest warrants; handling and supervising confidential human sources; conducting surveillance; and analyzing phone records and financial records. Additionally, I received *juris doctor* and Master of Business Administration degrees from the University of San Francisco in 2012.

3. During my employment with the FBI, I have received formal classroom and field training at the FBI Academy in Quantico, Virginia and graduated from the New Agent Training Program. My training and experience includes, but is not limited to: public corruption, fraud against the government, drug trafficking, gangs, organized crime, and RICO investigations. I have also received additional formal and on-the-job training from the FBI, as well as from the United States Attorney’s Office and other federal agents who have done extensive work in the areas of financial crimes and public corruption. I have participated in several investigations involving public corruption, bribery, and fraud, and I have been the lead agent on several of those cases. I have worked on multiple wiretaps while investigating public corruption and criminal gangs. I have received formal training in wiretaps at the FBI academy in Quantico, Virginia as well as on the job training while working on wiretaps in active

1 investigations. I have also received training on phone records and cell tower analysis from members of
2 the Cellular Analysis Survey Team (CAST) and have used this knowledge in numerous investigations.

3 4. To successfully conduct these investigations, I have utilized a variety of investigative
4 techniques and resources including, but not limited to: physical and electronic surveillance, witness
5 interviews, various types of infiltration to include confidential human sources, and cooperating sources.
6 I have utilized pen register and trap and trace devices, mail covers, pole cameras, stationary video
7 recording vehicles, undercover operations, and audio and audio/video recording devices.

8 5. I make this Affidavit based upon personal knowledge derived from my participation in
9 this investigation and upon information I believe to be reliable from the following sources, among
10 others:

- 11 a. my experience investigating honest services wire fraud, bribery, and other illegal
12 activity relating to public corruption;
- 13 b. oral and written reports about this investigation that I have received from
14 members of the FBI;
- 15 c. physical surveillance conducted by the FBI, the results of which have been
16 reported to me either directly or indirectly;
- 17 d. information obtained from undercover agents;
- 18 e. recorded conversations; and
- 19 f. confidential human sources.

20 6. Because this affidavit is being submitted for the purpose of establishing probable cause in
21 support of the requested Complaint, it does not set forth each and every fact that I, or others, have
22 learned during the course of the investigation. Rather, I have set forth only those facts I believe are
23 necessary to establish probable cause and to provide the Court with an overview of the facts that
24 establish VARELA and GILMARTIN's pattern of corrupt conduct and intent to influence or reward
25 NURU in connection with a transaction or series of transactions with the City and County of San
26 Francisco that involved \$5,000 or more.

27 7. Unless otherwise indicated, where actions, conversations, and statements of others are
28 described below, they are related in substance and in part. In addition, unless otherwise noted, wherever

1 in this Affidavit I assert a statement was made, the information was provided by another FBI agent, law
2 enforcement officer, recording, or witness who may have had either direct or hearsay knowledge of that
3 statement and to whom I or others have spoken, or whose reports I have reviewed.

4 8. The conversations I summarize below were derived in large part from various intercepted
5 communications. Collectively, these communications were documented in FBI reports and summaries.
6 These reports and summaries describe recorded conversations involving subjects of the investigation,
7 during which the subjects at times use code words and/or cryptic language to disguise conversations
8 about their criminal schemes and related activities. The reports are summarized based on agents'
9 interpretations of the conversations. Some of these reports and summaries contain interpretations of
10 coded words, cryptic language, and vague identifiers. It may be that subsequent review of the recorded
11 conversations and verbatim transcripts may show changes from the summaries initially prepared.
12 Quotations from the recordings are based on informal transcriptions of portions of certain key
13 recordings, which may not be exactly the same as formal transcriptions that are later prepared.

14 **II. COUNT 1: BRIBERY OF LOCAL OFFICIAL (18 U.S.C. §§ 666 (a)(2) AND 2)**

15 9. At all times material to this Complaint, the City and County of San Francisco (also
16 referred to below as the "City"), was a local government that received federal assistance in excess of
17 \$10,000 during a one-year period within twelve months before or after February 18, 2019.¹

18 10. At all times material to this Complaint, Mohammed NURU was the Director of Public
19 Works (DPW) for the City and County of San Francisco. Based on publicly available data, the total
20 DPW budget regularly encompassed hundreds of millions of dollars. As Director, NURU had great
21 official influence over contracts and construction projects granted by DPW. He also had significant
22

23 ¹ According to the Budget and Appropriations Ordinance passed by the Board of Supervisors on
24 July 25, 2017, for the Fiscal Year ended June 30, 2018, 5.1% of all funds appropriated for use by City
25 departments came from federal funding, a total in excess of \$400 million. This included \$55 million in
26 federal grant money passed-through to DPW. Federal funding also constituted 5.1% of the City's
27 general fund, a total in excess of \$260 million. *See* File No. 170653, Ordinance No. 156-17 (Budget and
28 Appropriation Ordinance) (available at <https://sfbos.org/ordinances>).

For the Fiscal Year ending June 30, 2019, 4.4% of all funds appropriated for use by City
departments came from federal funding, a total in excess of \$480 million. Federal funding also
constituted 5.1% of the City's general fund, a total in excess of \$270 million. *See* File No. 180574,
Ordinance No. 181-18 (Budget and Appropriation Ordinance) (available at <https://sfbos.org/ordinances>).

1 influence with other City departments.²

2 11. On or about February 18, 2019, in the Northern District of California, Alan VARELA
3 and William GILMARTIN, aided and abetted by each other, did corruptly give, offer, and agree to give
4 a thing of value to NURU, namely a tractor worth approximately \$40,000, intending to influence and
5 reward NURU in connection with a transaction and series of transactions of the City and County of San
6 Francisco involving \$5,000 or more.

7 12. As described below, this bribe was part of a much larger pattern and course of conduct in
8 which GILMARTIN, VARELA, and Balmore HERNANDEZ³ repeatedly provided items of value to
9 NURU, intending to influence and reward NURU in connection with his help steering City business
10 their way or otherwise resolving issues they encountered in connection with City contracts and
11 approvals.

12 **III. APPLICABLE LAW**

13 13. Title 18, United States Code, Section 666(a)(2), prohibits bribery of local officials who
14 are agents of an organization receiving federal funds. The elements of the offense include the following:

- 15 a. A person was an agent of an organization, a state, local or tribal government, or an
16 agency of a state, local, or tribal government.⁴
- 17 b. The organization, state or local government received federal assistance in excess of
18 \$10,000 in a one-year period.
- 19 c. The one-year period of federal assistance was within twelve months before or after the
20 commission of the offense.

22 ² While still serving as Director of DPW, NURU was charged by Criminal Complaint with
23 Honest Services Wire Fraud (18 U.S.C. §§ 1343, 1346) on January 15, 2020, and by a separate Criminal
24 Complaint with False Statement in violation of 18 U.S.C. § 1001 on January 28, 2020.

25 ³ HERNANDEZ was charged on June 4, 2020, by Complaint with one count of Bribery, in
26 violation of Title 18, United States Code, Section 666(a)(2). He has agreed to enter a guilty plea to a
27 single count of Conspiracy to Commit Honest Services Wire Fraud, in violation of Title 18, United
28 States Code, Sections 1343, 1346 and 1349. As a condition of that plea agreement, HERNANDEZ has
agreed to cooperate with the government's investigation.

⁴“Agent” is defined in 18 U.S.C. § 666(d)(1). An “agent” need not have direct authority over the
day-to-day decisions; “general authority” to act for the agency and control its funds is sufficient. *See*,
e.g., *United States v. Shoemaker*, 2014 WL 1226719 (5th Cir. Mar. 25, 2014); *see also United States v.*
Fernandez, 2013 WL 3215461 (1st Cir. June 26, 2013) (state legislator).

1 d. The defendant gave, offered, or agreed to give a thing of value to any person.

2 e. The defendant intended to influence or reward the agent of the organization or agency in
3 connection with a transaction or series of transactions of the organization or agency that
4 involved \$5,000 or more.

5 f. The defendant acted corruptly.

6 14. Title 18, United States Code, Section 2, provides that “[w]hoever commits an offense
7 against the United States or aids, abets, counsels, commands, induces or procures its commission, is
8 punishable as a principal.”

9 15. The bribe need not be completed or successful. *See United States v. Kimbrew*, 944 F.3d
10 810, 815 (9th Cir. 2019) (liability for bribery of a public official, in violation of 18 U.S.C. §
11 201(b)(2)(A), “does not depend on an outcome; the offense is complete at the moment of agreement, and
12 that agreement need not even be accompanied by the bribe recipient’s genuine intentions to follow
13 through.”).

14 16. In addition, “[i]n order to obtain jurisdiction of a defendant under section 666, the
15 government need not prove that the funds actually stolen by the defendant were of federal origin. So
16 long as the [official] is an agent of an organization that receives more than \$10,000 in federal benefits in
17 any given year, it is not necessary that the particular funds stolen be among those ‘benefits.’” *United*
18 *States v. Wyncoop*, 11 F.3d 119, 122 (9th Cir. 1993). *See also Sabri v. United States*, 541 U.S. 600,
19 605–06 (2004) (funds subject to abuse by bribed agent need not be traceable to federal funds)

20 17. Nor does the government need to show “that the defendant intended for his payments to
21 be tied to specific official acts (or omissions). Bribery requires the intent to effect an exchange of money
22 (or gifts) for specific official action (or inaction), but each payment need not be correlated with a
23 specific official act.” *See United States v. Jennings*, 160 F.3d 1006, 1014 (4th Cir. 1998). The
24 requirement of the statute is satisfied “so long as the evidence shows a ‘course of conduct of favors and
25 gifts flowing to a public official in exchange for a pattern of official actions favorable to the donor.’ *Id.*
26 (citation omitted). Payments may be made “with the intent to retain the official's services on an ‘as
27 needed’ basis, so that whenever the opportunity presents itself the official will take specific action on the
28 payor's behalf.” *Id. See also United States v. Kemp*, 500 F.3d 257, 282 (3d Cir. 2007); *United States v.*

1 *Menendez*, 291 F. Supp. 3d 606, 613 (D.N.J. 2018).⁵

2 **IV. FACTS ESTABLISHING PROBABLE CAUSE**

3 **A. Individuals**

4 18. Alan VARELA founded ProVen Management (“ProVen”) in 1991, a Bay Area civil
5 engineering and construction firm that specializes in large-scale infrastructure projects. VARELA is the
6 President of ProVen and GILMARTIN is the Vice President. VARELA and GILMARTIN also share
7 ownership in several construction-related businesses. ProVen has received a number of public contracts
8 from the City and County of San Francisco.

9 19. Balmore HERNANDEZ is the CEO and Vice President of AzulWorks, Inc. (AzulWorks),
10 which has received numerous contracts with the City and County of San Francisco, including contracts
11 with DPW in 2018 worth millions of dollars. Prior to forming AzulWorks, Inc., HERNANDEZ was a
12 longtime employee of DPW. I have learned over the course of this investigation that NURU and
13 HERNANDEZ have a close relationship. They were in frequent contact during the relevant time periods
14 described below. I have also learned HERNANDEZ and VARELA have a close relationship.

15 **B. Overview**

16 20. Agents have intercepted and/or reviewed multiple communications concerning items of
17 value given to NURU by GILMARTIN, HERNANDEZ and/or VARELA in exchange for NURU’s
18 assistance with business with the City. The scheme to bribe NURU focused heavily, though not
19 exclusively, on an attempt to win a contract through DPW to operate an asphalt plant on land owned by
20 the Port of San Francisco – an effort which lasted years and was still ongoing until NURU’s arrest in
21 January 2020. The bribes were frequently connected to NURU’s vacation home in Northern California
22 on Lodoga Stonyford Road in Stonyford.⁶ The home, which NURU and HERNANDEZ often referred
23 to as the “ranch,” was built from scratch by contractors largely from San Francisco or the Bay Area.

24 _____
25 ⁵ Other courts, including the Ninth Circuit, have held that bribery under 18 U.S.C. § 666 does not
26 require a quid pro quo. *See United States v. Garrido*, 713 F.3d 985, 996 (9th Cir. 2013) (citing *United*
27 *States v. McNair*, 605 F.3d 1152, 1187–89 (11th Cir.2010)).

28 ⁶ Although the home is technically located in Stonyford, intercepted communications show that
NURU and other subjects often refer to the vacation home as being in “Ladoga” or “Lodoga” (Lodoga,
CA is next to Stonyford, CA). For purposes of this affidavit, I use both Stonyford and Lodoga to refer
to NURU’s vacation home/ranch.

1 HERNANDEZ paid for and provided a substantial portion of the labor and materials to build the house
2 and improve the property (which consists of two adjacent 10-acre parcels). Based on my review of
3 intercepted communications and records from AzulWorks, Inc., I estimate that between late 2016 and
4 the end of 2018, HERNANDEZ supplied in excess of \$250,000 in labor and materials to help NURU
5 build the home and related improvements at the ranch.⁷ The investigation has analyzed known financial
6 accounts for NURU. Although the investigation identified more than \$200,000 that NURU spent on
7 home improvement (between approximately January 2017 and May 2019), no payments to
8 HERNANDEZ or AzulWorks have been identified.

9 21. During the relevant period, GILMARTIN also paid for extravagant dinners for NURU
10 and HERNANDEZ and appears to have subsidized some of the materials for NURU's ranch. After
11 reviewing business records, I estimate that GILMARTIN spent in excess of \$20,000 on meals with
12 NURU using a ProVen company credit card.

13 22. On or about February 18, 2019, as part of the bribery scheme, VARELA and
14 GILMARTIN arranged to purchase and deliver to NURU a tractor and attachments valued at
15 approximately \$40,000. Based on my review of business records, the tractor was financed through one
16 of VARELA's and GILMARTIN's companies along with other construction equipment, thereby
17 indicating a business purpose rather than a personal one. VARELA, GILMARTIN and HERNANDEZ
18 then coordinated delivery of the tractor to NURU, telling NURU that they had listed the contact for the
19 delivery under NURU's girlfriend's first name rather than NURU's name. Based on my training and
20 experience and the facts described below, I believe they did so to conceal and disguise the nature and
21 existence of the bribe payment.

22 **C. Corrupt Intent to Influence NURU in Connection With City Business**

23 23. HERNANDEZ acted as the primary contact between NURU and GILMARTIN and
24 VARELA. His actions, both during the scheme and when confronted by the FBI, provide strong
25 evidence of the trio's corrupt intent.

26
27 ⁷ This number does not include the tractor and related attachments (described below) that
28 VARELA, GILMARTIN and HERNANDEZ helped provide NURU in February 2019. Based on my
review of business records and publicly available data, I believe the tractor and attachments delivered to
NURU in February 2019 are worth in excess of \$40,000.

1 24. On January 27, 2020, another FBI agent and I interviewed HERNANDEZ at his home in
2 Burlingame, CA. HERNANDEZ confirmed he had known NURU for fifteen to twenty years and they
3 talked several times per month, including on the previous day. HERNANDEZ stated he first met NURU
4 while working at DPW. HERNANDEZ had worked at DPW as a civil engineer for 24 years before
5 leaving for the private sector. HERNANDEZ then made the following false and misleading statements,
6 among others, which I believe provide evidence of HERNANDEZ’s consciousness of guilt and corrupt
7 intent:

- 8 a. HERNANDEZ said he had not done any construction work on NURU’s vacation home in
9 Lodoga.
- 10 b. HERNANDEZ claimed his assistance with the vacation home was “as a friend,” and had
11 been limited to reviewing construction plans and paying two invoices – one for
12 approximately \$10,000 worth of lumber and the other for approximately \$10,000 of
13 electrical work.
- 14 c. HERNANDEZ claimed he did not expect anything in return for his assistance.

15 25. These statements were each false or highly misleading, as HERNANDEZ later confirmed
16 after he began cooperating with the investigation. Based on my review of time sheets and copies of
17 checks from AzulWorks, HERNANDEZ paid more than \$100,000 for labor at NURU’s Lodoga
18 property between at least as early as December 2016 and September 2018. His work crews often spent
19 multiple days or weeks at a time working on the property. I have also reviewed dozens of text messages
20 between NURU and HERNANDEZ over the same period of time where the two exchanged photos and
21 other updates about the progress of the work on NURU’s vacation home. Records provided by
22 AzulWorks further indicate HERNANDEZ spent more than \$100,000 on materials for NURU’s ranch,
23 including tiles, stone, doors, windows, and PVC pipe. According to AzulWorks receipts,
24 HERNANDEZ spent more than \$35,000 on windows alone, and close to \$10,000 on patio doors for
25 NURU.

26 26. HERNANDEZ’s claim that he expected nothing in return from NURU is contradicted by
27 his own communications with NURU. For example, on April 14, 2017, during a trip to China, NURU
28 texted HERNANDEZ a photo. NURU wrote “Getting ready to start heading home. How are you?”

1 Picture is me getting watered down with blessings of good luck in the new year. Greetings to everyone.
2 Thanks.” HERNANDEZ replied, “Bring me some blessings. I need some jobs.”

3 27. At the same time HERNANDEZ was texting “Bring me some blessings. I need some
4 jobs,” AzulWorks had a crew at NURU’s ranch in Lodoga. Company records show AzulWorks issued a
5 check on the same day of the text, for \$5,802, to cover work performed for NURU. On April 21, 2017,
6 AzulWorks issued two more checks, totaling \$15,191.25, for work on the ranch. The corresponding
7 time sheet shows the payment covered a team of eleven workers who logged hours between April 10
8 and April 15, 2017.⁸

9 **D. Bribes in Connection with Asphalt Plant Project**

10 28. The investigation has revealed that at least as early as 2013, HERNANDEZ and
11 GILMARTIN, began planning to use HERNANDEZ’s relationship with NURU to win a contract
12 through DPW to operate an asphalt plant on land owned by the Port of San Francisco. VARELA was
13 later included on emails from HERNANDEZ passing along inside information from NURU.

14 29. The efforts appear to have begun as early as February 2013. In an internal email
15 explaining expenses for accounting purposes, GILMARTIN wrote that an \$812.10 charge at Morton’s
16 on February 8, 2013, was for “dinner with Mohammad head of DPW and Balmore HERNANDEZ
17 discussing asphalt plant deal.”

18 30. On May 16, 2013, GILMARTIN expressed his appreciation for HERNANDEZ’s efforts
19 pursuing the deal, writing: “I have used you to help negotiate this deal because of your ability to
20 understand and present our proposal without making the other side nervous. For this you are entitled to
21 ownership.”

22 31. Communications concerning the asphalt plant and NURU (via email, text, and phone)
23 continued between GILMARTIN and HERNANDEZ from 2013 through at least 2019. As noted above,
24 VARELA was also involved in early communications about the asphalt plant project and later helped
25

26 ⁸ Based on my training and experience, I believe the payment was split into two parts to bring the
27 amount under \$10,000 to avoid bank reporting requirements and potential scrutiny from government
28 authorities, which further underscores HERNANDEZ’s efforts to conceal the corrupt nature of his
dealings with NURU. AzulWorks issued the checks to the same person on the same day – one for
\$8,000 and the other for \$7,191.25. Together the checks match the timesheet total for work performed
at Lodoga between April 10, 2017 and April 15, 2017.

1 deliver one of the largest bribes – a tractor – to NURU in February 2019.

2 32. In their communications, HERNANDEZ and GILMARTIN usually referred to NURU
3 only as “our friend,” and the group appears to almost always have met at the same restaurant in San
4 Mateo (RESTAURANT 1). Based on credit card statements, text messages, and recorded phone calls,
5 the dinner meetings appear to have occurred for a number of years, at times on what appears to be
6 almost a monthly or bi-monthly basis.

7 33. By the end of 2013, email and text communications among HERNANDEZ, VARELA,
8 GILMARTIN, and NURU indicate NURU was providing inside information on how DPW and the Port
9 of San Francisco (“Port”) were approaching a Request for Qualifications/Proposals (RFQ-P or RFP) for
10 the asphalt plant on Port land. Based on my training and experience and witness interviews conducted
11 in this investigation, I know this type of information is generally sensitive and can provide an unfair
12 competitive advantage to bidders who receive it before it is made public or shared with other bidders.

13 34. For example, on October 3, 2013, NURU forwarded an internal DPW email about the
14 carbon impact of the contemplated asphalt plant from his work account to his personal email account.
15 Three days later he then sent it to HERNANDEZ from his personal email account and added “This may
16 interest you.” HERNANDEZ forwarded the email three minutes later to GILMARTIN writing “Fyi
17 There is also a company in San Jose proposing cold asphalt paving. We need to address both if [sic]
18 these issues in our proposal.”

19 35. On December 11, 2013, HERNANDEZ sent VARELA and GILMARTIN an email re
20 “Asphalt RFP” and wrote:

21 This DRAFT is very close to the final product but it has substantial
22 changes from the previous version that may not be in our best interest.
23 Let’s review it carefully, and provide a page by page commentary for the
24 changes we need to implement. For example, this RFP makes reference to
25 the City Standards for mix designs which in turn makes reference to
26 CALTRANS RAP percentages which are much lower than we had
27 discussed. Let’s put together a schedule for getting back to them with
28 comments

26 36. I believe this email contained an internal draft RFP from DPW about the asphalt plant
27 that had not yet been publicly released.

28 37. The following day, GILMARTIN responded to the December 11, 2013 email with

1 concerns about the proposed site and other items. He did not copy VARELA. HERNANDEZ
2 responded: “We need to print the RFP on paper and get together and mark it up with our corrections or
3 changes that we want made. The RFP is incorrect with the site as our friend still want us at the site we
4 discussed. Let me know when we can meet.”

5 38. On January 2, 2014, HERNANDEZ again forwarded what appeared to be another
6 internal City email (subject “FW: Latest Draft of Request for Proposals and Memorandum of
7 Understanding for Asphalt and Concrete Production Lease Opportunity”) to VARELA and
8 GILMARTIN. HERNANDEZ wrote, “Bill, Attached is the latest DRAFT for our review and
9 comments.”

10 39. On January 6, 2014, GILMARTIN responded to HERNANDEZ with concerns about the
11 amount of security being demanded by the City. “They need to give us a guaranty sale of quantity for
12 asphalt and concrete. If they can ask for this kind of security I would hope they can offer something in
13 return.” HERNANDEZ replied to that email by suggesting a meeting with their “friend” and again
14 referencing the need to print out the RFP: “We need to set up a meeting with our friend to let him know
15 our concerns and propose to eliminate those security requirements. Just print the RFP and I will set up a
16 meeting, let me know your availability this week.”

17 40. On February 14, 2014, text messages between VARELA and HERNANDEZ indicate
18 they attended the Chinese New Year’s Parade in San Francisco, CA together.

19 41. On February 21, 2014, in response to what appears to be a missed call from VARELA,
20 HERNANDEZ texted VARELA:

21 Can't talk right now...I'll call you later.
22 Text me your comments
23 I am in a meeting
24 Email me comments, I will call you in 1 hour

25 42. Later in March, on March 20, 2014, HERNANDEZ texted GILMARTIN:

26 BH: “Do we still need to meet with Mohammed?”
27 GILMARTIN: “Yes ASAP
28 BH: “Mtg confirmed for 6 pm”

43. GILMARTIN then provided the address of RESTAURANT 1 in San Mateo. Credit Card

1 statements for GILMARTIN reflect a charge at RESTAURANT 1 for \$667.66 on March 20, 2014.

2 44. Based on the investigation and my training and experience, I believe GILMARTIN and
3 HERNANDEZ provided NURU with an expensive dinner in connection with their efforts to obtain his
4 continued assistance with the asphalt plant and other City business.

5 45. Roughly one month later, on April 15, 2014, HERNANDEZ texted GILMARTIN: “We
6 are getting a list of bidders for the asphalt plant and if we were 2nd, he will ask to call us for
7 negotiations.” On April 21, 2014, HERNANDEZ texted GILMARTIN: “Please review the info on the
8 asphalt plant and provide me with any comments. Take a look at the proposed lay-outs.”

9 46. On May 22, 2014, HERNANDEZ texted GILMARTIN: “Spoke with our friend and he
10 made a call. Call me.”

11 47. At that point, GILMARTIN appears to have felt increasingly confident that they would
12 obtain the asphalt plant deal and that it would be profitable. He also acknowledged the clandestine
13 “back channel” nature of their efforts. In a May 23, 2014 email to a work colleague, he wrote:

14 “the back channels of negotiating are in full swing for the candlestick
15 phase 2. I need to send a PDF file of the asphalt plant and concrete plant to
16 [well known business person]. This will be done through back channels
17 from Mohammad. Could you send again to me for the 10th time our
18 proposal for the plants, a PDF file excluding the financial performas. [sic]
19 This will be forwarded through various ways to get to him this am.

20 Just so you know there was a a [sic] meeting last night that figured out the
21 left hand needs to work with the right hand and two hands are better the
22 one!!! Please keep this information between you and me. All deals can
23 blow up. Loose lips sink ships.

24 It's not a done deal, keep your figures crossed this could be great for us”

25 48. In the summer of 2014, HERNANDEZ went on a trip to Africa with NURU, their
26 families, and others.

27 49. In the fall of 2014, communications increased concerning the asphalt plant. On
28 September 10, 2014, NURU emailed HERNANDEZ electrical plans for his Lodoga vacation property.

50. Then, on September 16, 2014, NURU forwarded an internal email from his work account
to his personal account. The email concerned an internal discussion among City employees and
summary of suggested next steps for an environmental assessment of the proposed Pier 94 asphalt batch
plant, among other things. NURU then forwarded the email (Fwd: SW Environmental Analysis –

1 Outcomes”) from his personal account to HERNANDEZ, writing “Going to Port Commission in two
2 weeks.” HERNANDEZ forwarded the email to GILMARTIN, who replied the following day: “Thanks.
3 I hope all of our efforts pay off some day. It seems that it is close.”

4 51. NURU appears to have met with HERNANDEZ and GILMARTIN again at
5 RESTAURANT 1 on October 22, 2014. On October 20, HERNANDEZ texted GILMARTIN:

6 BH: Our friend is available on Wednesday to meet for dinner, does it work for you?

7 GILMARTIN: Yes absolutely [RESTAURANT 1] again??

8 BH: Yes I am with him now so it is confirmed.

9 52. Credit card records show a charge on GILMARTIN’s credit card statement from
10 RESTAURANT 1 on October 22, 2014, for \$287.08.

11 53. On November 20, 2014, HERNANDEZ sent GILMARTIN an internal City email chain
12 between DPW and Port staff concerning the asphalt plant that ultimately went to NURU. I believe
13 HERNANDEZ obtained this email from NURU. Based on the email chain it appears NURU had asked
14 DPW employees for information on the asphalt plant on November 5, 2014. A DPW employee
15 responded to NURU the same day with a number of internal documents and also described various
16 specifications that were under consideration for the RFP. HERNANDEZ forwarded the email to
17 GILMARTIN with the message: “Here is the complete package fyi.” Attachments to the forwarded
18 email included an executive summary, draft RFP, appendices to the RFP, and a draft Memorandum of
19 Understanding between DPW and the Port.

20 54. On December 1, 2014, HERNANDEZ forwarded another internal Port email which he
21 had received from NURU. Among other items, the email contained internal communications between
22 Port staff and a Port Commissioner discussing the Port’s reaction to DPW’s request for a 10-acre site as
23 opposed to 4.7 acres for the asphalt plant, including what the Port expected to charge for rent.

24 55. On December 16, 2014, NURU forwarded another internal DPW email about the asphalt
25 plant from his DPW account to his personal email, and then to HERNANDEZ. The email concerned the
26 proposed site of the asphalt plant.

27 56. On January 28, 2015, NURU sent HERNANDEZ an electrical layout plan for his Lodoga
28 property. Two days later, on January 30, 2015, NURU forwarded an internal DPW/Port email (subject:

1 “RFQ/P with draft Port edits”) from his work email to his personal email, then sent it to HERNANDEZ,
2 who sent it to GILMARTIN. HERNANDEZ wrote: “[P]lease review this FINAL DRAFT. As you can
3 see, the Port is moving to request authorization for DPW to issue the RFP. Mark it up with your
4 comments and lets meet early next week to discuss. Next week is our last chance to suggest changes.”

5 57. The attachment to the email was titled “DRAFT-Asphalt-Concrete-Production-Lease-
6 Opportunity-Request-For-Proposal....docx” and was originally forwarded by DPW staff to NURU and
7 others (after DPW staff received it from Port staff with the message “Attached please find the draft RFP
8 with proposed Port edits”).

9 58. On February 2, 2015, NURU again forwarded an internal DPW/Port email (“Form of
10 Asphalt and Concrete Batch Plant Transaction”) from his work account to his personal email, then to
11 Balmore HERNANDEZ. Within minutes, HERNANDEZ forwarded it to GILMARTIN. The email
12 described plans for the Port and DPW to enter into a transaction for a concrete and asphalt batch plant.
13 The originating DPW employee wrote to NURU and one other senior DPW employee: “Reference e-
14 mail below. After speaking with their attorney, below is what the Port feels works best. They would
15 handle the lease negotiations and lease; and public works would handle the supply contract. Currently,
16 they plan to go before the Port Commission on 2/10 to clear Item #1 approval. If ok, I’ll respond... and
17 provide a schedule.”

18 59. That same day, GILMARTIN forwarded the email to a work colleague. After the
19 colleague expressed concern about being fully prepared for the Port Commission meeting, GILMARTIN
20 responded: “don't worry ... this is set up for us to win.”

21 60. On February 5, 2015, NURU again forwarded an internal email to HERNANDEZ that he
22 previously forwarded from his work account to his personal account. HERNANDEZ then forwarded it
23 to GILMARTIN. The email attached a redline draft memo of the February 10 Port Commission Staff
24 Report concerning the asphalt and concrete facilities. DPW staff had received it from Port staff and
25 forwarded it to NURU and another senior DPW employee writing: “FYI...providing comments by the
26 end of the day to the Port’s memo to the Port Commission on the Asphalt and Concrete facilities
27 (attached draft memo).” When forwarding the email, HERNANDEZ wrote to GILMARTIN: “Review
28 and call me or send me comments. We need to provide comments today by end of day.”

1 61. Four days later, on February 9, 2015, NURU emailed HERNANDEZ an invoice for
2 electrical work performed at his Lodoga property for \$10,244.44. A balance of \$5,244.44 remained
3 outstanding according to the document.

4 62. On February 10, 2015, the San Francisco Port Commission passed Resolution 15-07,
5 which requested authorization for San Francisco Public Works, in consultation with Port staff, to issue a
6 Competitive Solicitation for an Asphalt and Concrete Batching Plant at Seawall Lot 352 (located along
7 Amador Street) with a Bulk Maritime Terminal Component at Pier 94.

8 63. The following morning, on February 11, 2015, HERNANDEZ texted GILMARTIN:
9 “Everything went well last night. It is up to us when to issue RFP.” Based on my training and experience
10 and the context of the investigation, I believe this text shows the extent to which HERNANDEZ,
11 GILMARTIN, and VARELA were able to control the structure and timing of the RFP for the asphalt
12 plant through NURU.

13 64. It appears NURU met HERNANDEZ and GILMARTIN again for dinner on March 4,
14 2020. On March 3, 2015, HERNANDEZ texted GILMARTIN: “Confirmed for tomorrow at 730 at the
15 same place.” GILMARTIN responded: “Ok great I'll see you then.” Credit card statements for
16 GILMARTIN show a charge of \$344.93 at RESTAURANT 1 on March 4, 2015.

17 65. The RFP for the asphalt plant was ultimately issued by DPW on April 7, 2015. It was
18 later revised on May 13, 2015.

19 66. On May 21, 2015, NURU placed a purchase order for a manufactured home from a
20 company in Chico, CA. The invoice listed a cost of \$138,551.48 and an unpaid balance of \$128,051.48
21 after the down payment.

22 67. On June 7, 2015 (nine days before final bids were submitted), GILMARTIN emailed
23 VARELA about the asphalt plant: “Why are we even involved? Because I've pursued this for 3 plus
24 years and the deal is finally here[.] We Don't [sic] have the capital or the experience to do this deal but
25 we are in the middle of it... The city people insist this is our deal to have. If I walk away I may lose
26 credibility in the city, part of me says so what.” He concluded by asking for help thinking through who
27 they should partner with on the deal.

1 68. VARELA responded, "Let's talk about this. I want to make sure we do this for us and not
2 for others. I also know we are shirt in [sic] cash and we also have not run an asphalt plant or concrete
3 plant."

4 69. On or about June 16, 2015, four bids were submitted for the asphalt plant, including a bid
5 from a proposed joint venture involving ProVen - VARELA and GILMARTIN's company.

6 70. That same night GILMARTIN texted HERNANDEZ: "It's in now we cross our fingers
7 that we get the entire deal [development company] and the rfp. Your help has been key to the entire
8 deal, thank you. Tell our friend thanks for the opportunity. The way this all came down was maybe the
9 most ironic deal I've ever been involved with. You and I hopefully played this like a fine violin. Time
10 now will tell. I'll see you in the am. I'm going to go get drunk now !!!"

11 71. On June 19, 2015, GILMARTIN exchanged text messages with HERNANDEZ about the
12 status if the RFP. HERNANDEZ responded with information about the composition of the selection
13 panel:

14 GILMARTIN: Any news on the rfp

15 ????

16 HERNANDEZ: No [sic] yet

17 Finishing panel selection before they can start review

18 Panel is 2 from DPW, 1 PUC, 1 PORT

19 1mta

20 GILMARTIN: Just do your thing and make it ALL happen!!

21 72. On August 3, 2015, text messages between HERNANDEZ and GILMARTIN indicated
22 they were again planning to meet with NURU for dinner, who they referred to as their "friend."
23 HERNANDEZ texted "How about dinner with our friend this Wednesday. We are here together."
24 GILMARTIN replied that Wednesday was good, and HERNANDEZ texted "We have some info to prep
25 you. Same place at 7:30."

26 73. Based on my training and experience, my review of other evidence in this investigation,
27 and the context and timing of this communication, I believe NURU and HERNANDEZ were meeting
28

1 with GILMARTIN to prepare him for an interview with the panel that was reviewing bids on the asphalt
2 plant.

3 74. Credit card statements for GILMARTIN show a charge of \$394.07 at RESTAURANT 1
4 on Wednesday, August 5, 2015.

5 75. The next day, on August 6, 2015, NURU sent HERNANDEZ a copy of the manufactured
6 home purchase order (dated 5/21/15 and referenced above) from a company in Chico, CA for
7 \$138,551.48. The unpaid balance after down payment was \$128,051.48. In the same email, NURU
8 included related documents and an updated agreement with the same company, dated 8/1/2015, with a
9 higher cost of \$194,257.91.

10 76. On August 11, 2015, at 8:16 AM, HERNANDEZ texted GILMARTIN “Good luck
11 today!!!!!!”

12 77. On August 21, 2015, HERNANDEZ texted GILMARTIN “The scoring is done and it is
13 all good.” I believe this refers to the scoring performed by the panel on the bids for the asphalt plant and
14 that NURU provided this information to HERNANDEZ before it was publicly available.

15 78. Credit card statements for GILMARTIN and text messages between HERNANDEZ and
16 GILMARTIN indicate they again met for dinner with NURU at RESTAURANT 1 on Tuesday,
17 September 8, 2015. HERNANDEZ texted GILMARTIN on September 2, 2015: “Our friend will meet
18 you on Tuesday at the same place at 7pm.” The total this time, according to GILMARTIN’s credit card
19 records, was \$547.84.

20 79. Two weeks later, on September 22, 2015, the San Francisco Port Commission selected
21 VARELA and GILMARTIN’s joint venture as the most responsive bid and directed Port staff to enter
22 into an Exclusive Negotiation Agreement with the venture.

23 80. Based on my review of email communications and other records, I believe VARELA and
24 GILMARTIN’s joint venture may not have been the most qualified bidder, and benefitted significantly
25 (and was intended to benefit significantly) from NURU’s influence on the process in exchange for the
26 items of value conferred on NURU by VARELA, HERNANDEZ, and GILMARTIN.

27 81. For example, in the June 7, 2015 email regarding the asphalt plant to VARELA
28 (described above), GILMARTIN wrote “Why are we even involved? Because I’ve pursued this for 3

1 plus years and the deal is finally here[.] We Don't [sic] have the capital or the experience to do this deal
2 but we are in the middle of it.” He concludes by asking for help thinking through who they should
3 partner with on the deal. VARELA responded, “Let's talk about this. I want to make sure we do this for
4 us and not for others. I also know we are shirt in [sic] cash and we also have not run an asphalt plant or
5 concrete plant.”

6 82. On October 25, 2015, following the Port’s September decision to enter into an Exclusive
7 Negotiation Agreement with VARELA and GILMARTIN’s joint venture, NURU texted HERNANDEZ
8 pictures of the work completed at his Lodoga property and wrote: “Thanks so much for all the help this
9 weekend. We definitely moved the project to another level. There's no way we could have gotten this far
10 without your leadership. God will bless you and your family for your kindness.”

11 83. Text messages between HERNANDEZ and GILMARTIN and credit card receipts
12 indicate they met with NURU again at RESTAURANT 1 on November 5, 2015. The November meal
13 cost \$394.34.

14 84. An email from GILMARTIN to a business associate about another venture the following
15 day, on November 6, 2015, shows the bribery scheme with NURU extended beyond the asphalt plant.
16 After discussing the other venture, GILMARTIN described the leverage he wielded though NURU:
17 “Our biggest strength is our access to San Francisco. I had dinner with Mohammad last night and
18 discussed this project. He is on board to help expedite this project and he's on board to delay the
19 project.”

20 85. There was another dinner at RESTAURANT 1 in December. On December 22, 2015,
21 HERNANDEZ texted GILMARTIN: “Our friend would like to meet, let me know when you are
22 available.” GILMARTIN replied and agreed to meet at 7:00 “at the same place” the following day.

23 86. The following day, December 23, 2015, GILMARTIN texted HERNANDEZ: “I'm here
24 we have a booth tonight important !!! Bottle of opus ready when our friend is here !” Credit card
25 statements show a charge to GILMARTIN from RESTAURANT 1 of \$475.85.

26 87. An entry on NURU’s calendar, titled “Asphalt RFQ/P Update & Presentation,” indicates
27 he met at City Hall with GILMARTIN and other principals from the joint venture, DPW, and the Port,
28 to discuss the asphalt plant a few weeks later, on January 19, 2016.

1 88. On February 23, 2016, the Port Commission formally adopted an exclusive negotiation
2 agreement with VARELA and GILMARTIN's joint venture.

3 89. On June 10, 2016, GILMARTIN emailed a business contact about his relationship with
4 NURU, writing "we currently do not have any contracts with DPW. We are negotiating with DPW for
5 supply contracts for the new asphalt plant. I have a very close relationship with Mohammad Nuru. I can
6 call him or visit his office on any given moment or day."

7 90. Text messages and credit card statements show the group again met for dinner at
8 RESTAURANT 1 on August 11, 2016. The charge to GILMARTIN was \$367.33.

9 91. On November 22, 2016, texts and credit card statements show GILMARTIN and
10 HERNANDEZ met for dinner in "the back private room" at RESTAURANT 1. Based on the pattern
11 described above, I believe NURU was with them. The charge to GILMARTIN's credit card for this
12 meal was \$519.78.

13 92. Text messages between HERNANDEZ and GILMARTIN and credit card receipts
14 indicate expensive dinners with NURU at RESTAURANT 1 continued as negotiations on the asphalt
15 plant among DPW, the Port, and GILMARTIN and VARELA's joint venture stretched on for years
16 without resolution.⁹ HERNANDEZ also continued to provide labor and materials for NURU's ranch.

17 93. On February 21, 2017, HERNANDEZ texted NURU:

18 "I am at Home Depot working on your windows

19 And doors

20 Lots of work"

21 Then, on February 28, 2017, HERNANDEZ again texted with NURU:

22 HERNANDEZ: The guys are working up there now Keep working on the wood.

23 NURU: Thank you

24 HERNANDEZ: I will need a favor from you this week

25 NURU: For sure

26 HERNANDEZ: Maybe we can meet today after work

27
28 ⁹ Additional investigation revealed that, following NURU's January 2020 arrest and resignation, DPW and the Port scrapped their plans for the asphalt plant.

1 94. Copies of checks and time sheets from AzulWorks show crews were on-site at NURU's
2 Lodoga property for almost the entire month of March 2017.

3 95. In 2017, the meals from GILMARTIN also appear to have gotten much more expensive.
4 On April 14, 2017, during a trip to China, NURU texted HERNANDEZ a photo. NURU wrote "Getting
5 ready to start heading home. How are you? Picture is me getting watered down with blessings of good
6 luck in the new year. Greetings to everyone. Thanks." HERNANDEZ replied, "Bring me some
7 blessings. I need some jobs."

8 96. Ten days later, on April 24, 2017, HERNANDEZ texted GILMARTIN: "Our friend is
9 back from his trip. Let me know when you are available to meet." GILMARTIN responded, "Set it up
10 next week."

11 97. On May 16, 2017, GILMARTIN texted HERNANDEZ: "Any luck for dinner?" in the
12 ensuing exchange of messages the two agreed to meet Thursday at 7:30. HERNANDEZ texted NURU
13 the same day: "Dinner Thursday at 7:30." Credit card records for GILMARTIN show a charge from
14 RESTAURANT 1 dated Thursday, May 18, 2017, for \$1,075.27.

15 98. Another exchange of text messages showed a July 20, 2017 meeting between
16 HERNANDEZ and GILMARTIN at RESTAURANT 1, which I believe – based on the pattern over
17 several years described above and other facts identified during this investigation – also included NURU.
18 After arranging the meeting by text message on July 10, 2020, a message from GILMARTIN to
19 HERNANDEZ stated "Confirming tonight?" "Chipino [sic], lamb chops, sea base or baby back ribs?"
20 Credit card records show a July 20, 2017 charge from RESTAURANT 1 to GILMARTIN's credit card
21 in the amount of \$1,033.85.

22 99. On July 26, 2017, HERNANDEZ texted NURU:

23 HERNANDEZ: Can you check on the reading last night

24 NURU: Working on it now

25 HERNANDEZ: No news?

26 NURU: Continued to September and we will be trying to work on getting
27 language to protect the developers interest. what the board is
wanting is is a public process to appeal.

28 HERNANDEZ: Thanks

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

100. As noted above, negotiations between DPW, the Port, and the joint venture regarding the supply contract and other issues remained ongoing and unresolved through early 2020.

101. On August 5, 2017, HERNANDEZ texted GILMARTIN:

HERNANDEZ: Our friend's window and door order is ready to process. Let me know if you would like to process directly. It has a job number only

GILMARTIN: Best way let's meet up Monday

HERNANDEZ: I won't be in town until next Sunday
But let's meet the following Monday
Thanks

GILMARTIN: Okay
Wednesday that week I'm out Monday Tuesday

HENANDEZ: Ok let's meet at our spot for 7:30
Thanks

GILMARTIN: Got it

102. Business records show that on August 25, 2017, HERNANDEZ spent \$47,020.45 on patio doors and Andersen windows at Home Depot. This expenditure appears to have followed another expensive dinner with NURU and GILMARTIN at RESTAURANT 1.

103. On August 16, 2017, GILMARTIN texted HERNANDEZ to let him know that he could not make the meeting. The two then decided to change it to the following Monday, with HERNANDEZ writing "Our friend prefers Monday." The same day, HERNANDEZ texted with NURU: "[GILMARTIN] needs to reschedule to next week Monday Tuesday or Wednesday" and then later "We are set for Monday." The following Monday was August 21, 2017.

104. On August 21, 2017, GILMARTIN texted HERNANDEZ to confirm the 7:30 dinner. He then wrote: "Baltimore specially [sic] How do they guarantee the payment of the deficiency fee if they do not take the 100,000 tons per year? How is that payment guaranteed? Does the BOS have to approve that expenditure every year, or can the long term lease/supply agreement bind them to that commitment? When will we be able to enter into the supply agreement to confirm all of this in writing?" Based on the other facts described in this affidavit, and the timing and context of this communication, I believe

1 GILMARTIN was alerting HERNANDEZ to the issues he wanted to raise with NURU at dinner so
2 NURU could help them finalize the supply contract for the asphalt plant on favorable terms.

3 105. GILMARTIN's credit card statement shows a charge from RESTAURANT 1 dated
4 August 23, 2017 in the amount of \$1,696.29. I believe this charge was for the dinner on August 21,
5 2017 described above.

6 106. On November 16, 2016, NURU emailed HERNANDEZ a bill from Home Depot
7 regarding replacement doors. The amount was approximately \$1,400. NURU wrote: "I think this was
8 meant for you, as we discussed yesterday on the phone. Okay, thanks."

9 107. On November 28, 2017, HERNANDEZ texted GILMARTIN and asked: "Do we need to
10 meet with our friend?..." GILMARTIN responded: "Yes, let's schedule next week..."

11 108. On November 30, 2017, HERNANDEZ texted NURU: "We are in the back room."
12 Credit card records for GILMARTIN show a charge of \$1,543.76 at RESTAURANT 1 on the same day.

13 109. The materials I have reviewed, including text messages, emails, intercepted phone calls
14 and credit card records, indicate the pattern of dinners with HERNANDEZ, GILMARTIN and NURU at
15 RESTAURANT 1 continued through at least early 2019 and likely later, all while negotiations on the
16 asphalt plant continued without full resolution. The cost of the dinners at RESTAURANT 1 during the
17 relevant period, which I believe NURU attended, totals approximately \$20,000.

18 **E. VARELA Delivers the John Deere Tractor**

19 110. As noted above, GILMARTIN's business partner, VARELA, was involved in early email
20 communications and had knowledge of the internal City drafts of the RFP for the asphalt plant that
21 HERNANDEZ was sharing in 2013. In the fall of 2018, VARELA also traveled to South America with
22 NURU and Walter WONG. WONG is providing information to the government in this investigation
23 pursuant to a plea agreement related to his bribes of NURU and others and is seeking a benefit in his
24 eventual sentence.

25 111. VARELA's communications with WONG in the Fall of 2018 make clear VARELA was
26 concerned about being seen in public with NURU. On September 18, 2018, VARELA and WONG
27 emailed about setting up a dinner with NURU. According to the email from WONG, NURU had
28 suggested RESTAURANT 1. WONG wanted to know if VARELA had any other suggestions.

1 VARELA responded: “Hi Walter, [RESTAURANT 1] in San Mateo might be better considering that
 2 this way we will not be meeting with Mohammed in SF.” Based on my training and experience, and the
 3 context of this communication within the larger bribery scheme described above, I believe this email
 4 shows VARELA was concerned about being seen in San Francisco with NURU because it might give
 5 rise to suspicions about the group’s corrupt activities.

6 112. My conclusion is further supported by VARELA’s role in purchasing and delivering a
 7 tractor and attachments to NURU at his ranch on or about February 18, 2019, after the trip to South
 8 America. Based on my review of business records and publicly available data, I believe the tractor and
 9 attachments delivered to NURU are worth in excess of \$40,000. In addition, based on my review of
 10 business records, the tractor was financed through one of VARELA’s and GILMARTIN’s companies.
 11 VARELA also was the individual who signed the relevant documents to purchase the tractor and was the
 12 one who dealt with the company that sold the tractor.

13 113. According to statements provided by HERNANDEZ to investigators, during their dinners
 14 at RESTAURANT 1, NURU indicated to GILMARTIN and HERNANDEZ several times that he
 15 wanted a tractor for his ranch.¹⁰ Ultimately, HERNANDEZ coordinated the delivery of the tractor to
 16 NURU with VARELA.

17 114. The arrangement described by HERNANDEZ is corroborated through text messages and
 18 other intercepted communications.

19 115. For example, on May 9, 2018, HERNANDEZ texted GILMARTIN: “Our friend is
 20 reminding me of the piece of equipment that was promised Can you check.” GILMARTIN replied “I
 21 thought you were going to send a model number i will take care of it.”

22 116. On July 9, 2018, HERNANDEZ again texted GILMARTIN:

23 HERNANDEZ: Dinner on Wednesday or Thursday

24 He is also asking about the equipment

25 GILMARTIN: Either day

26 HERNANDEZ: You pick a day and let’s meet

27
 28 ¹⁰ HERNANDEZ provided this information to investigators as part of a proffer session. He is cooperating with the investigation as part of ongoing plea negotiations.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

GILMARTIN: Ok
Wednesday

HERNANDEZ: Ok good
Same place at 7:30

117. I have reviewed communications showing VARELA was emailing with a sales representative about purchasing the tractor for NURU in November 2018. On November 15, 2018, VARELA identified the tractor model and attachments he wanted to purchase and emailed the sales representative the following day that it would need to be delivered to “Colusa,” but he still needed to get the exact address.¹¹ Employees at the company who sold the tractor to VARELA recall he was in a rush to get it delivered. The company offices that sold and delivered the tractor are located in Napa and Sonoma counties.

118. Business and email records indicate the invoice for the tractor was dated December 5, 2018, and a version signed by VARELA was emailed back to the sales representative on December 13, 2018.

119. Business records also show VARELA executed documents supporting the loan to purchase the tractor on or about December 31, 2018, and January 9, 2019. The tractor was not delivered to NURU, however, until February 2019.

120. On January 18, 2019, HERNANDEZ texted VARELA the address for NURU’s ranch and asked VARELA in Spanish if they could talk.

121. On February 6, 2019, HERNANDEZ texted GILMARTIN:

HERNANDEZ: Dinner next week?

GILMARTIN: Yes Tuesday or Wednesday I’m heading out Thursday but important to meet

HERNANDEZ: Tuesday at 7:00 pm same place
Anything on the tractor?

¹¹ The same email communications show VARELA was purchasing a slightly cheaper model of the same tractor at the same time and having it delivered to his personal residence in Napa.

1 GILMARTIN: Ready for delivery

2 HERNANDEZ: We will see you Tuesday

3 GILMARTIN: Great

4 122. The following day, on February 7, 2019, at approximately 4:32 PM, NURU called
5 HERNANDEZ. HERNANDEZ told NURU that he “spoke with Alan [VARELA] and the John Deere is
6 ready. You need to give me two days, available days, on weekdays in the next two weeks, he uh, John
7 Deere have to deliver and teach you how to operate it, so you need to give me two days and they'll pick
8 one of those days to make it work for you.”

9 123. On February 11, 2019, NURU and HERNANDEZ had the following text message
10 exchange about arranging dinner with GILMARTIN and coordinating the tractor delivery:

11 HERNANDEZ: Bill [GILMARTIN] can not change his appointment on

12 Wednesday as he has a client flying in for Europe

13 Either tomorrow or next week

14 Please let me know

15 NURU: Next week is better if tomorrow doesn't work.

16 Can't do Tuesday, next week is better

17 Next Wednesday, February 20th is good

18 HERNANDEZ: Ok let me check

19 NURU: Will bet [sic] ranch 18 & 19

20 HERNANDEZ: Ok

21 You can coordinate directly with Alan [VARELA] if you wish

22 NURU: Best you handle this unless you advise otherwise.

23 HERNANDEZ: Ok I will

24 Confirmed dinner for next Wednesday

25 124. Following this last text, at approximately 11:28 AM, NURU called HERNANDEZ.
26 HERNANDEZ confirmed the arrangements described above. NURU would be at his vacation home on
27 the following Tuesday and Wednesday so he could receive delivery of the John Deere tractor. During
28 the exchange, NURU also said he thought it was better if HERNANDEZ dealt directly with who I

1 believe to be VARELA and GILMARTIN:

2 NURU: Okay. That's good, I got that down. And then, let them know I
3 picked those two days, so I'll be up there. I took Tuesday off, so I'll
be up there, so.

4 HERNANDEZ: Okay, yeah, I'm trying to confirm that, it's just, this guy's hard to
pin down man, so.

5 NURU: I know, I know. That's why, better you deal with them because I -
6 yeah, so, yeah, um, yeah so I'll be there. you know, I'll go Saturday
7 night and I'll stay there until Tuesday.

8 HERNANDEZ: Okay.

9 125. On February 13, 2019, NURU and HERNANDEZ spoke by phone about the delivery of
10 the tractor at noon on February 18, 2019. HERNANDEZ made clear to NURU that they were using
11 someone else's name for the delivery:

12 HERNANDEZ: The the equipment is scheduled for the 18th at noontime, ok, at 12

13 NURU: oh 12

14 HERNANDEZ: They're gonna ask for Sandra, we give a Sandra's name, ok?¹²

15 NURU: Ok, no problem, no problem

16 HERNANDEZ: Ok, if anything changes, let me know, ok?

17 NURU: Ok ok, that's good, that's good, I'll be up there, so I'll be there for
18 sure, yeah

19 126. On February 14, 2019, HERNANDEZ texted VARELA "Gracias"

20 127. On February 18, 2019, NURU texted HERNANDEZ a photo of a John Deere tractor
21 being unloaded from a truck and wrote "Works begins at the ranch."

22 128. On the same day NURU also texted VARELA "Thank You." He also called VARELA at
23 approximately 11:56 AM:

24 NURU: Mr. Alan.

25 VARELA: Hey how are you?

26 NURU: Man did you see that brother? very nice very very nice

27 VARELA: Ok good

28 ¹² "Sandra" is the first name of NURU's girlfriend at the time.

1 NURU: Yeah beautiful machine

2 After discussing how beautiful NURU's new tractor was, VARELA said "I am going to make another
3 trip um probably next week to bring the attachments....so I got one more attachment that is a bore
4 attachment, another attachment that is a grading attachment for spreading rock and leveling things, ok,
5 I'm glad they made it over there." NURU responded "Nice, nice. I just finished my training course
6 (laughs)" and VARELA replied "Good. That is the only reason I wanted to coordinate. Otherwise, I
7 wouldn't have told them to deliver it, but uh, there are a few things that need to be, go over, and how
8 things connect and that stuff."

9 129. The two then ended their conversation with VARELA indicating they would talk again
10 soon (as described below, it appears the group met at RESTAURANT 1 two days later):

11 NURU: Ok nice nice nice Ok ok just wanted to say thank you so much. I'll send
12 you a picture. It's got a a nice house in my ranch where I am going to keep
13 it. I will send you the picture right now. You see it in the garage haha

14 VARELA: Awesome that is good. It's got air conditioning right?

15 NURU: Oh yeah its beautiful air condition and heater. Oh yeah man its good.
16 Work now. No excuse now but to work. We can work now haha

17 VARELA: Good alright Mohammed. Have a great day. Enjoy your day. Glad that
18 thing showed up and uh

19 NURU: Thank you

20 VARELA: We will talk shortly

21 130. NURU had a similar conversation with HERNANDEZ the following day, February 19,
22 2019, at approximately 7:46 AM. The two of them discussed NURU's new tractor and HERNANDEZ
23 asked if NURU was happy with it. NURU responded "Yeah, yeah, very nice. It's a nice tractor. Very
24 nice, you know, it's a modern tractor for sure."

25 131. The following day, February 20, 2019, HERNANDEZ texted NURU: "Are we on for
26 dinner tonight?" NURU responded "Yes." They also spoke by phone after NURU returned
27 HERNANDEZ's call:
28

1 NURU: Hey, so tonight what time?
2 BH: Uhh 7, 7:30, what time do you want?
3 NURU: 7:30 okay, okay, I got it.
4 BH: Yeah Bill [GILMARTIN] wants to confirm that's all
5 NURU: Okay, okay, alright, alright.
6 BH: Alright, we'll see you there

7 132. Consistent with the pattern established above, credit card records show a charge to
8 GILMARTIN's credit card at RESTAURANT 1 for \$716.80 on the same day.

9 133. Two days later, NURU called HERNANDEZ and referenced what I believe to be the
10 dinner meeting and asphalt plant negotiations:

11 BH: I'll be around this weekend ya know, Sunday uh, we can get together for a little
12 bit if you have time I mean you're not tired. Get together for drinks or something?

13 NURU: Okay. Alright that sounds (talking over each other)

14 BH: I'll be around.

15 NURU: Okay, alright, yeah. I'm good.

16 BH: Let me know. (UI) that was a good meeting this week, I think we had a good
17 meeting, so. (talking over each other) (UI) pick up those meetings and continue
18 moving.

19 NURU: Let me, I'm working to find out from [] why is it taking so long, ya know?

20 BH: Yeah.

21 NURU: You know they keep on saying when Bill [GILMARTIN] changes the site or (UI),
22 but I'll find out what's going on.

23 BH: Okay.

24 NURU: Yep, we're good. We're good. Yeah.

25 Based on the timing and the context of this call, and the pattern described above, I believe NURU had
26 dinner with HERNANDEZ and GILMARTIN on February 20, 2019, shortly after delivery of the tractor,
27 to again discuss the asphalt plant and how NURU could help them resolve the still ongoing negotiations
28 with the Port and DPW, which had at this point been dragging on for several years.

1 134. On February 26, 2019, HERNANDEZ texted GILMARTIN: “Working on it, message
2 passed We will get feedback and instructions.”

3 **V. CONCLUSION**

4 135. Based on the foregoing facts and my training and experience, I respectfully submit there
5 is probable cause to believe, after establishing a continuing course of conduct in which thousands of
6 dollars were spent on lavish meals for NURU, and hundreds of thousands of dollars in labor and
7 material were provided to NURU in exchange for his official acts as the Director of DPW,
8 GILMARTIN and VARELA bribed NURU with a tractor worth approximately \$40,000, in violation of
9 Title 18, United States Code, Sections 666(a)(1)(B) and 2, intending to influence and reward NURU in
10 connection with a transaction and series of transactions of the City and County of San Francisco
11 involving \$5,000 or more.

12
13 _____
14 /s/ via telephone
15 JAMES A. FOLGER
16 Special Agent, Federal Bureau of Investigation

16 Sworn to before me over the telephone and signed
17 by me pursuant to Fed.R.Crim.P 4.1 and 4(d)
18 this 16th day of September, 2020.

19 
20 _____
21 HON. THOMAS S. HIXSON
22 United States Magistrate Judge