**8.122 SCHEME TO DEFRAUD—VICARIOUS LIABILITY  
(18 U.S.C. §§ 1341, 1343, 1344, 1346)**

If you decide that the defendant was a member of a scheme to defraud and that the defendant had the intent to defraud, the defendant may be responsible for other co-schemers’ actions during the course of and in furtherance of the scheme, even if the defendant did not know what they said or did.

For the defendant to be guilty of an offense committed by a co-schemer in furtherance of the scheme, the offense must be one that the defendant could reasonably foresee as a necessary and natural consequence of the scheme to defraud.

**Comment**

This instruction is based on the co-schemer liability instruction approved by *United States v. Stapleton*, 293 F.3d 1111, 1115-18 (9th Cir. 2002) (no error of law in court’s instruction on elements of co-schemer vicarious liability, when court also correctly instructed on scheme to defraud), and the Ninth Circuit’s guidance on vicarious liability in *United States v. Green*, 592 F.3d 1057, 1070-71 (9th Cir. 2010).

When this instruction is appropriate, it should be given in addition to Instructions 8.121 (Mail Fraud—Scheme to Defraud or to Obtain Money or Property by False Promises), 8.123 (Mail Fraud—Scheme to Defraud—Deprivation of Intangible Right of Honest Services, 8.124 (Wire Fraud) or 8.127 (Bank Fraud—Scheme to Defraud by False Promises). *See* *Stapleton*, 293 F.3d at 1118-20.

On co-schemer liability generally, *see* *United States v. Blitz*, 151 F.3d 1002, 1006 (9th Cir. 1998) (stating that knowing participant in scheme to defraud is liable for fraudulent acts of

co-schemers); *United States v. Lothian*, 976 F.2d 1257, 1262-63 (9th Cir. 1992) (discussing similarity of co-conspirator and co-schemer liability); and *United States v. Dadanian*, 818 F.2d 1443, 1446 (9th Cir. 1987), *modified*, 856 F.2d 1391 (1988) ( “[K]nowing participants in the scheme are legally liable for their co-schemer’s use of mails or wires”).

*Approved 6/2021*