



## JURY INSTRUCTION NO. 1

Jurors: You now are the jury in this case, and I want to take a few minutes to tell you something about your duties as jurors and to give you some preliminary instructions. A copy of these instructions will be available in the jury room for you to consult.

At the end of the trial I will give you more detailed instructions that will control your deliberations. When you deliberate, it will be your duty to weigh and to evaluate all the evidence received in the case and, in that process, to decide the facts.

It is also your duty to apply the law as I give it to you to the facts as you find them, whether you agree with the law or not. You must decide the case solely on the evidence and the law before you. Perform these duties fairly and impartially. You must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. You will recall that you took an oath promising to do so at the beginning of the case.

You must follow all of these instructions and not single out some and ignore others; they are all important. Please do not take anything I may say or do during the trial as indicating what I think of the evidence or what your verdict should be—that is entirely up to you.

## JURY INSTRUCTION NO. 2

This is a criminal case brought by the United States government. The government charges the defendant with one count of conspiracy, four counts of violating the Clean Water Act, and one count of submitting a false statement under the Clean Water Act. The charges against the defendant are contained in the indictment.

The indictment simply describes the charges the government brings against the defendant. The indictment is not evidence and does not prove anything.

The defendant has pleaded not guilty to the charges and is presumed innocent unless and until the government proves the defendant is guilty of every element of the charges beyond a reasonable doubt. This burden of proof stays with the government throughout the case. In addition, the defendant has the right to remain silent and never has to prove innocence or to present any evidence.

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*See Ninth Circuit Model Jury Instruction – 1.2 (2010 Edition).*

### JURY INSTRUCTION NO. 3

Proof beyond a reasonable doubt is proof that leaves you firmly convinced the defendant is guilty. It is not required that the government prove guilt beyond all possible doubt. A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty.

*See Ninth Circuit Model Jury Instruction – 3.5 (2010 Edition); see also United States v. Velasquez, 980 F.2d 1275, 1278 (9th Cir.1992) (approving a reasonable doubt instruction that informs the jury that the jury must be “firmly convinced” of the defendant’s guilt).*

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**JURY INSTRUCTION NO. 4**

You are here only to determine whether the defendant is guilty or not guilty of the charges in the indictment. The defendant is not on trial for any conduct or offense not charged in the indictment.

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*See Ninth Circuit Model Jury Instruction – 3.10 (2010 Edition).*

## JURY INSTRUCTION NO. 5

The evidence you are to consider in deciding what the facts are consists of:

- (1) the sworn testimony of any witness; and
- (2) the exhibits which are received in evidence; and
- (3) any facts to which the parties agree.

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*See* Ninth Circuit Model Jury Instruction – 1.3 (2010 Edition).

## JURY INSTRUCTION NO. 6

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

- (1) the witness's opportunity and ability to see or hear or know the things testified to;
- (2) the witness's memory;
- (3) the witness's manner while testifying;
- (4) the witness's interest in the outcome of the case, if any;
- (5) the witness's bias or prejudice, if any;
- (6) whether other evidence contradicted the witness's testimony;
- (7) the reasonableness of the witness's testimony in light of all the evidence; and
- (8) any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify about it.

## JURY INSTRUCTION NO. 7

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which one can find another fact.

You are to consider both direct and circumstantial evidence. Either can be used to prove any fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

By way of example, if you wake up in the morning and see that the sidewalk is wet, you may find from that fact that it rained during the night. However, other evidence, such as a turned-on garden hose, may provide an explanation for the water on the sidewalk. Therefore, before you decide that a fact has been proved by circumstantial evidence, you must consider all the evidence in the light of reason, experience, and common sense.

## JURY INSTRUCTION NO. 8

The following things are not evidence, and you must not consider them as evidence in deciding the facts of this case:

- (1) statements and arguments of the attorneys;
- (2) questions and objections of the attorneys;
- (3) testimony that I instruct you to disregard; and
- (4) anything you may see or hear when the court is not in session even if what you see or hear is done or said by one of the parties or by one of the witnesses.

## JURY INSTRUCTION NO. 9

There are also rules of evidence that control what can be received in evidence.

When a lawyer asks a question or offers an exhibit in evidence and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. If I overrule the objection, the question may be answered or the exhibit received. If I sustain the objection, the question cannot be answered, or the exhibit cannot be received.

Whenever I sustain an objection to a question, you must ignore the question and must not guess what the answer would have been.

Sometimes I may order that evidence be stricken from the record and that you disregard or ignore the evidence. That means that when you are deciding the case, you must not consider the evidence that I told you to disregard.

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*See* Ninth Circuit Model Jury Instruction – 1.6 (2010 Edition).

## JURY INSTRUCTION NO. 10

From time to time during the trial, it may become necessary for me to take up legal matters with the attorneys privately, either by having a conference at the bench or, when necessary, by calling a recess.

We will do what we can to keep the number and length of these conferences to a minimum. I may not always grant an attorney's request for a conference.

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*See Ninth Circuit Model Jury Instruction – 2.2 (2010 Edition).*

## JURY INSTRUCTION NO. 11

I will now say a few words about your conduct as jurors.

First, keep an open mind throughout the trial, and do not decide what the verdict should be until you and your fellow jurors have completed your deliberations at the end of the case. Second, because you must decide this case based only on the evidence received in the case and on my instructions as to the law that applies, you must not be exposed to any other information about the case or to the issues it involves during the course of your jury duty. Thus, until the end of the case or unless I tell you otherwise:

Do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the merits of the case or anything to do with it. This includes discussing the case in person, in writing, by phone or electronic means, via email, text messaging, or any Internet chat room, blog, website or other feature. This applies to communicating with your fellow jurors until I give you the case for deliberation, and it applies to communicating with everyone else including your family members, your employer, the media or press, and the people involved in the trial, although you may notify your family and your employer that you have been seated as a juror in the case.

But, if you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and to report the contact to the court.

Because you will receive all the evidence and legal instruction you properly may consider to return a verdict: do not read, watch, or listen to any news or media accounts

or commentary about the case or anything to do with it; do not do any research, such as consulting dictionaries, searching the Internet or using other reference materials; and do not make any investigation or in any other way try to learn about the case on your own.

The law requires these restrictions to ensure the parties have a fair trial based on the same evidence that each party has had an opportunity to address. A juror who violates these restrictions jeopardizes the fairness of these proceedings, and a mistrial could result that would require the entire trial process to start over. If any juror is exposed to any outside information, please notify the court immediately.

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*See Ninth Circuit Model Jury Instruction – 1.8 (2010 Edition).*

**JURY INSTRUCTION NO. 12**

At the end of the trial you will have to make your decision based on what you recall of the evidence. You will not have a written transcript of the trial. I urge you to pay close attention to the testimony as it is given.

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*See* Ninth Circuit Model Jury Instruction – 1.9 (2010 Edition).

## JURY INSTRUCTION NO. 13

If you wish, you may take notes to help you remember the evidence. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. Do not let note-taking distract you from being attentive. When you leave court for recesses, your notes should be left in the courtroom. No one will read your notes. Whether or not you take notes, you should rely on your own memory of the evidence. Notes are only to assist your memory. You should not be overly influenced by your notes or those of your fellow jurors.

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*See* Ninth Circuit Model Jury Instruction – 1.10 (2010 Edition); *see also United States v. Baker*, 10 F.3d 1374, 1403 (9th Cir.1993) (stating that it is well settled in this circuit that the trial judge has discretion to allow jurors to take notes).

## JURY INSTRUCTION NO. 14

The defendant is charged in Count 1 of the indictment with conspiring to knowingly violate the Clean Water Act, in violation of Title 33 United States Code, Section 1251, *et. Seq.*; and to knowingly make a materially false, fictitious, and fraudulent statement and representation to the EPA and ADEC, and make and use a false writing or document, knowing the same to contain any materially false, fictitious, and fraudulent statement or entry, in violation of Title 18 United States Code, Section 1001 (a)(2) and (3). In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, beginning on or about July 3, 2010, and ending on or about March 23, 2013, there was an agreement between two or more persons to commit at least one crime as charged in the indictment;

Second, the defendant became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it; and

Third, that an overt act was committed by at least one conspirator in furtherance of the conspiracy.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty. If, on the other hand, you find from your consideration of all of the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you should find the defendant not guilty.

A conspiracy is a kind of criminal partnership—an agreement of two or more

persons to commit one or more crimes. The crime of conspiracy is the agreement to do something unlawful; it does not matter whether the crime agreed upon was committed.

For a conspiracy to have existed, it is not necessary that the conspirators made a formal agreement or that they agreed on every detail of the conspiracy. It is not enough, however, that they simply met, discussed matters of common interest, acted in similar ways, or perhaps helped one another. You must find that there was a plan to commit at least one of the crimes alleged in the indictment as an object of the conspiracy with all of you agreeing as to the particular crime which the conspirators agreed to commit.

One becomes a member of a conspiracy by *willfully* participating in the unlawful plan with the intent to advance or further some object or purpose of the conspiracy, even though the person does not have full knowledge of all the details of the conspiracy.

Furthermore, one who willfully joins an existing conspiracy is as responsible for it as the originators. On the other hand, one who has no knowledge of a conspiracy, but happens to act in a way which furthers some object or purpose of the conspiracy, does not thereby become a conspirator. Similarly, a person does not become a conspirator merely by associating with one or more persons who are conspirators, nor merely by knowing that a conspiracy exists.

*See* Ninth Circuit Model Jury Instruction – 8.20 (2010 Edition); *see also United States v. Montgomery*, 384 F.3d 1050, 1062 (9th Cir.2004) (citation and internal quotation marks omitted) (“To prove a conspiracy under 18 U.S.C. § 371, the government must establish: (1) an agreement to engage in criminal activity, (2) one or more overt acts taken to implement the agreement, and (3) the requisite intent to commit the substantive crime.”).

## JURY INSTRUCTION NO. 15

The defendant is charged in Count 2 with violating the Clean Water Act by knowingly discharging a pollutant, namely wastewater from a platinum mine, into a water of the United States, namely Squirrel Creek/Platinum river, without a Clean Water Act permit issued under Title 33, United States Code, Section 1342 in violation of 33 U.S.C. sections 1311(a) and 1319(c)(2)(A), and 18 U.S.C Section 2. To find the defendant guilty of those charges, the government must prove each of the following elements beyond a reasonable doubt:

1. On or about July 4, 2010, and continuing through July 15, 2010, Mr. Slade discharged a pollutant;
2. The pollutant was discharged into a jurisdictional “water of the United States” as defined by the Clean Water Act.
3. The pollutant was discharged in a manner that Mr. Slade knew was not lawful;
4. The pollutant was discharged into a water of the United States, namely Squirrel Creek/Platinum Creek; and
5. Mr. Slade’s employer, XS Platinum, did not have a Clean Water Act permit issued under Title 33, United States Code, Section 1342 from July 4, 2010 through July 15, 2010.

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*See U.S. v. Alghazouli*, 517 F.3d 1179,1192-94 (9<sup>th</sup> Cir. 2008)(The Clean Water Act’s criminal provisions might be general intent crimes, but they are not strict liability ones); *United States v. Speech*, 968 F.2d 795 (9<sup>th</sup> Cir. 1992)(defendant transported waste and

was not the permittee and therefore was not in the best position to know the facility's permit status); *United States v. Cooper*, 173 F.3d 1192(9<sup>th</sup> Cir. 1999)(the District Court held the government to the higher standard and instructed the jury that they must find that the defendant "must know his conduct violates the City's permit").

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## JURY INSTRUCTION NO. 16

The defendant is charged in Count 3 with violating the Clean Water Act by knowingly discharging a pollutant, namely wastewater from a platinum mine, into a water of the United States, namely the Salmon River, without a Clean Water Act permit issued under Title 33, United States Code, Section 1342 in violation of 33 U.S.C. Sections 1311(a) and 1319(c)(2)(A), and 18 U.S.C. Section 2. To find the defendant guilty of those charges, the government must prove each of the following elements beyond a reasonable doubt:

1. On or about July 3, 2010, and continuing through July 29, 2010, Mr. Slade discharged a pollutant;
2. The pollutant was discharged into a jurisdictional “water of the United States” as defined by the Clean Water Act.
3. The pollutant was discharged in a manner that Mr. Slade knew was not lawful;
4. The pollutant was discharged into a water of the United States, namely the Salmon River; and
5. Mr. Slade’s employer, XS Platinum, did not have a Clean Water Act permit issued under Title 33, United States Code, Section 1342 from July 4, 2010 through July 15, 2010.

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*See U.S. v. Alghazouli*, 517 F.3d 1179,1192-94 (9<sup>th</sup> Cir. 2008)(The Clean Water Act’s criminal provisions might be general intent crimes, but they are not strict liability ones); *United States v. Speech*, 968 F.2d 795 (9<sup>th</sup> Cir. 1992)(defendant transported waste and

was not the permittee and therefore was not in the best position to know the facility's permit status); *United States v. Cooper*, 173 F.3d 1192(9<sup>th</sup> Cir. 1999)(the District Court held the government to the higher standard and instructed the jury that they must find that the defendant "must know his conduct violates the City's permit").

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## JURY INSTRUCTION NO. 17

The defendant is charged in Count 4 with violating the Clean Water Act by knowingly violating a permit condition and limitation in a permit issued under Title 33, United States Code, Section 1342, from on or about July 30, 2010 to October 31, 2010 by: discharging a pollutant, namely effluent from a platinum mine, with turbidity more than five NTUs above natural conditions; failing to report the unauthorized discharge of a pollutant, namely effluent from a platinum mine, during periods when new water was allowed to enter the plant site and as a result of the intake of new water; failing to monitor the turbidity at the point of discharge at least three times per week; failing to monitor daily for settleable solids at a point prior to entering the receiving stream; and failing to monitor at least once per day each day a discharge occurred, effluent flow at the discharge prior to entering the receiving water all in violation of 33 U.S.C. Sections 1319(c)(2)(A) and 1342(a), and 18 U.S.C Section 2. To find the defendant guilty of those charges, the government must prove each of the following elements beyond a reasonable doubt:

1. On or about July 30, 2010, and continuing through October 31, 2010,
2. Mr. Slade violated a permit condition and limitation issued under 33 USC § 1342 by:
  - a. discharging a pollutant into a jurisdictional “water of the United States” as defined by the Clean Water Act;
  - b. failing to report the unauthorized discharge of a pollutant into a jurisdictional “water of the United States” as defined by the Clean

Water Act;

- c. discharging a pollutant into a jurisdictional “water of the United States” as defined by the Clean Water Act during periods when new water was allowed to enter the plant site and as a result of the intake of new water;
  - d. failing to monitor the turbidity at least three times per week at the point of discharge into a jurisdictional “water of the United States” as defined by the Clean Water Act;
  - e. failing to monitor daily for settleable solids at a point prior to entering the receiving jurisdictional “water of the United States” as defined by the Clean Water Act; and
  - f. failing to monitor effluent flow at least once per day each day a discharge occurred into a jurisdictional “water of the United States” as defined by the Clean Water Act;
3. Mr. Slade committed the violations with knowledge that they violated permit conditions and limitations.

*See U.S. v. Alghazouli*, 517 F.3d 1179,1192-94 (9<sup>th</sup> Cir. 2008)(The Clean Water Act’s criminal provisions might be general intent crimes, but they are not strict liability ones); *United States v. Speech*, 968 F.2d 795 (9<sup>th</sup> Cir. 1992)(defendant transported waste and was not the permittee and therefore was not in the best position to know the facility’s permit status); *United States v. Cooper*, 173 F.3d 1192(9<sup>th</sup> Cir. 1999)(the District Court held the government to the higher standard and instructed the jury that they must find that the defendant "must know his conduct violates the City’s permit”).

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## JURY INSTRUCTION NO. 18

The defendant is charged in Count 5 with violating the Clean Water Act by knowingly violating a permit condition and limitation in a permit issued under Title 33, United States Code, Section 1342, from on or about June 17, 2010 to October 19, 2011 by: discharging a pollutant, namely effluent from a platinum mine, with turbidity more than five NTUs above natural conditions; failing to report the unauthorized discharge of a pollutant, namely effluent from a platinum mine, with turbidity more than five NTUs above natural conditions; and discharging a pollutant, namely effluent from a platinum mine, during periods when new water was allowed to enter the plant site and as a result of the intake of new water all in violation of 33 U.S.C. Sections 1319(c)(2)(A) and 1342(a), and 18 U.S.C Section 2. To find the defendant guilty of those charges, the government must prove each of the following elements beyond a reasonable doubt:

1. On or about June 17, 2010, and continuing through October 19, 2010,
2. Mr. Slade violated a permit condition and limitation issued under 33 USC § 1342 by:
  - a. discharging a pollutant into a jurisdictional “water of the United States” as defined by the Clean Water Act;
  - b. failing to report the unauthorized discharge of a pollutant into a jurisdictional “water of the United States” as defined by the Clean Water Act; and
  - c. discharging a pollutant into a jurisdictional “water of the United

States” as defined by the Clean Water Act during periods when new water was allowed to enter the plant site and as a result of the intake of new water; and

3. Mr. Slade committed the violations with knowledge that they violated permit conditions and limitations.

*See U.S. v. Alghazouli*, 517 F.3d 1179,1192-94 (9<sup>th</sup> Cir. 2008)(The Clean Water Act’s criminal provisions might be general intent crimes, but they are not strict liability ones); *United States v. Speech*, 968 F.2d 795 (9<sup>th</sup> Cir. 1992)(defendant transported waste and was not the permittee and therefore was not in the best position to know the facility’s permit status); *United States v. Cooper*, 173 F.3d 1192(9<sup>th</sup> Cir. 1999)(the District Court held the government to the higher standard and instructed the jury that they must find that the defendant "must know his conduct violates the City’s permit”).

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## JURY INSTRUCTION NO. 19

The defendant is charged in Count 6 with knowingly making a false material statement, representation, or certification in a required report, to wit, by stating to the Alaska Department of Environmental Conservation in the 2010 Annual Report for placer mining at the Platinum Creek Mine that there was “no discharge” during 2010, a statement that defendant knew to be false all in violation of 33 U.S.C. Sections 1319(c)(4) and 1342(a) and 18 U.S.C. Section 2. To find the defendant guilty of those charges, the government must prove each of the following elements beyond a reasonable doubt:

1. Mr. Slade made a false material statement, representation, or certification in the 2010 Annual Report; and
2. Mr. Slade made the false material statement, representation or certification with knowledge that the statement was false.

## JURY INSTRUCTION NO. 20

When the word “knowingly” is used in these instructions, it means that a defendant realized what he was doing and was aware of the nature of his conduct, and did not act through ignorance, mistake, or accident. Knowledge may be proved by a defendant’s conduct, and by all the facts and circumstances surrounding the case. You may not conclude that a defendant had knowledge if he was merely negligent in not discovering the truth.

Here, the government must prove beyond a reasonable doubt that the defendant knowingly violated the law. For purposes of Counts 2 and 3 (discharges without a permit), that means that the government must prove that the defendant knew that the discharges required a permit and that XS Platinum did not have one that permitted those discharges. For purposes of Counts 4 and 5 (discharges in violation of a permit), it means that the government must prove beyond a reasonable doubt that the defendant knew that a material false statement, representation, or certification was required by a permit, and made a statement, representation, or certification that was materially false. For purposes of count 1 (conspiracy), it means that the government must prove beyond a reasonable doubt that the defendant knew that he was agreeing with others to commit the offenses alleged in Counts 2 through 6.

## JURY INSTRUCTION NO. 21

The defendant contends that he honestly, even if perhaps mistakenly, believed that he performed the acts charged in the superseding indictment in cooperation with the government. Government authorization of the defendant's acts legally excuses the crime charged. Because the government also has the burden of proving beyond a reasonable doubt that the defendant did not honestly so believe, and that he knowingly committed the charged crimes.

*Alternative proposed language should the Court determine that an instruction on the affirmative defense of public authority applies:*

The defendant contends that if he committed the acts charged in the indictment, he did so at the request of a government agent. Government authorization of the defendant's acts legally excuses the crime charged.

The defendant must prove by a preponderance of the evidence that he had a reasonable belief that he was acting with the government's authorization at the time of the offense charged in the indictment. A preponderance of the evidence means that you must be persuaded that the things the defendant seeks to prove are more probably true than not true. This is a lesser burden of proof than the government's burden to prove beyond a reasonable doubt each element of the offenses charged in the indictment.

If you find that the defendant has proved that he reasonably believed that he was acting with the government's authorization as provided in this instruction, you must find the defendant not guilty of the crimes charged in the indictment.

*See* Ninth Circuit Model Jury Instruction – 6.11 (2010 Edition)(modified). *See also* *United States v. Mason*, 902 F.2d 1434, 1440–41 (9th Cir. 1990).

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## **JURY INSTRUCTION NO. 22**

The next phase of the trial will now begin. First, each side may make an opening statement. An opening statement is not evidence. It is simply an outline to help you understand what that party expects the evidence will show. A party is not required to make an opening statement.

The government will then present evidence and counsel for the defendant may cross-examine. Then, if the defendant chooses to offer evidence, counsel for the government may cross-examine.

After the evidence has been presented, I will instruct you on the law that applies to the case and the attorneys will make closing arguments.

After that, you will go to the jury room to deliberate on your verdict.

*See Ninth Circuit Model Jury Instruction – 1.11 (2010 Edition).*

**JURY INSTRUCTION NO. 23**

The defendant has testified. You should treat this testimony just as you would the testimony of any other witness.

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*See* Ninth Circuit Model Jury Instruction – 3.4 (2010 Edition).

**JURY INSTRUCTION NO. 24**

A defendant in a criminal case has a constitutional right not to testify. You may not draw any inference of any kind from the fact that the defendant did not testify.

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*See Ninth Circuit Model Jury Instruction – 3.3 (2010 Edition)*

## **JURY INSTRUCTION NO. 25**

Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the law that applies to this case. A copy of these instructions will be available in the jury room for you to consult.

It is your duty to weigh and to evaluate all the evidence received in the case and, in that process, to decide the facts. It is also your duty to apply the law as I give it to you to the facts as you find them, whether you agree with the law or not. You must decide the case solely on the evidence and the law and must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. You will recall that you took an oath promising to do so at the beginning of the case. You must follow all these instructions and not single out some and ignore others; they are all important. Please do not read into these instructions or into anything I may have said or done any suggestion as to what verdict you should return—that is a matter entirely up to you.

## JURY INSTRUCTION NO. 26

You have heard testimony from persons who, because of education or experience, were permitted to state opinions and the reasons for their opinions. Such opinion testimony should be judged like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

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*See Ninth Circuit Model Jury Instruction – 4.14 (2010 Edition); see also United States v. Mendoza, 244 F.3d 1037, 1048 (9th Cir.2001) (instruction should be given when requested by the defendant).*

## **JURY INSTRUCTION NO. 27**

You must decide whether the conspiracy charged in the indictment existed, and, if it did, who at least some of its members were. If you find that the conspiracy charged did not exist, then you must return a not guilty verdict, even though you may find that some other conspiracy existed. Similarly, if you find that any defendant was not a member of the charged conspiracy, then you must find that defendant not guilty, even though that defendant may have been a member of some other conspiracy.

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*See Ninth Circuit Model Jury Instruction – 8.22 (2010 Edition).*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 14, 2015, a true and correct copy of the foregoing document was served electronically on the following counsel of record:

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