



1 e. **Charges and Related Issues:** list of the charge(s), the elements for each charge, and  
2 any relevant case law that may be helpful to that particular charge. For example:

3 Conspiracy to Distribute Methamphetamine is a criminal offense under  
4 Sections 841(a) and 846 of Title 21, United States Code. The elements of this  
5 offense are as follows:

- 6 1. First, beginning on or about XXXX, and ending on or about XXXX,  
7 there was an agreement between two or more persons to distribute  
8 methamphetamine; and  
9 2. Second, the defendant joined in the agreement knowing of its purpose  
10 and intending to help accomplish that purpose.

11 Ninth Circuit Model Criminal Jury Instructions, Instruction 9.19.

12 "A conspiracy may be proven by circumstantial evidence that the  
13 defendants acted together with a common goal." *United States v.*  
14 *Williams*, 547 F.3d 1187, 1196 (9th Cir. 2008). *See also United States v.*  
15 *Corona-Verbera*, 509 F.3d 1105, 1117 (9th Cir. 2007) (same); *United*  
16 *States v. Ching Tang Lo*, 447 F.3d 1212, 1226 (9th Cir. 2006) (same).

17 "The agreement need not be explicit, but may be inferred from  
18 circumstantial evidence." *United States v. Kiriki*, 756 F.2d 1449, 1453  
19 (9th Cir. 1985). *See also United States v. Melchor-Lopez*, 627 F.2d 886,  
20 891 (9th Cir. 1980) (same).

21 "Once the existence of a conspiracy is established, evidence which  
22 establishes beyond a reasonable doubt that a defendant is even slightly  
23 connected with the conspiracy is sufficient to convict." *Corona-Verbera*,  
24 509 F.3d at 1117 (quotation marks omitted). "A defendant may be  
25 'slightly connected' even if he did not know all the conspirators, did not  
26 know all the details of the conspiracy, did not participate in the  
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conspiracy from the outset, and did not participate in all the enterprises of the conspiracy." *Id.*

Finally, it does not matter whether the criminal object of the conspiracy was ever attained, so long as the defendant—as a member of the conspiracy—intended to help attain it. *See, e.g., United States v. Bosch*, 914 F.2d 1239, 1241 (9th Cir. 1990) (upholding conviction for conspiracy to aid and abet the possession of cocaine with intent to distribute and to aid and abet the distribution of cocaine even though the undercover IRS agent never possessed or distributed cocaine and no crime of possession or distribution occurred).

f. **Anticipated Evidence:** list of witnesses and the offer of proof for each witness.

For example:

FBI Special Agent M. Terrell Lynch will testify to his surveillance of the deal, and will authenticate the photographs of the seized methamphetamine, the actual seized methamphetamine, the photographs of the handgun, and the actual handgun. Agent Lynch may also offer lay opinion testimony on the accuracy of the transcripts, based on his fluency in both the English and Gaelic languages.

g. **Evidentiary and Other Trial Issues:** discuss any evidentiary issues that may arise at trial, such as *prima facie* threshold for authentication, foundation for audio recordings, admission of audio recordings, voice identification foundation, playing of recordings for the jury, photographs foundation, admission of photographs, chain of custody, lay witness opinion, expert witness opinion, witness impeachment by prior bad acts, and co-conspirator hearsay statements.

For example:

Photographs. Copies of photographs may be introduced. Under Rule 901 of the Federal Rules of Evidence, a witness familiar with a scene or

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object may provide a sufficient foundation for admission of a photograph by testifying that the photograph fairly and accurately depicts the scene or the object at some relevant time. *See United States v. Brannon*, 616 F.2d 413,416 (9th Cir.), *cert, denied sub nom. Cox v. United States*, 447 U.S. 908 (1980).

Foundation for Audio Recordings. The Ninth Circuit has specifically disapproved of “rigid foundation requirements” for the authentication of audio recordings. *United States v. King*, 587 F.2d 956, 960 (9th Cir. 1978). An audio recording has proper foundation for admission when a law enforcement agent testifies that he was responsible for recording the conversation; that the all or nearly all of the conversation was recorded; that little of the recording is inaudible, and that as a whole it is an accurate and complete recording of the conversation. *See United States v. Mouton*, 617 F.2d 1379, 1383-84 (9th Cir. 1980) (citation omitted).

**h. Conclusion.**

- 2. **Witness List.** The Witness List shall include the full name of the witness, his/her title and place of employment (if testifying in that capacity), village of residency, and family name (if any). For example:

M. Terrell Lynch  
Special Agent, Federal Bureau of Investigation  
Yona  
Familian Hawks

- 3. **Exhibit List.** The Exhibit List shall be organized based on each witness, and it shall include the exhibit number and its description. For example:

Witness No. 1: M. Terrell Lynch  
Special Agent, Federal Bureau of Investigation

<b>Exhibit No.</b>	<b>Page No.</b>	<b>Description</b>
24	24-1 to 24-12	Application for a Search Warrant, Case No. MJ-XX-XXXXXX

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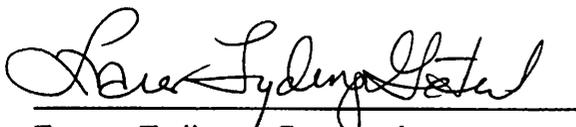
Witness No. 2: R. Kevin Sherman  
Special Agent, IRS-Criminal Investigations

Exhibit No.	Page No.	Description
25	25-1 to 25-12	Tax Returns of Defendant

In submitting the exhibit list, the prosecutor shall include a certification page, certifying that he or she has reviewed the exhibit list and that it is accurate to the best of his or her ability. ~~The certification page shall also include the signature of the U.S. Attorney, certifying the same.~~

4. **Trial Preparation.** Trial preparation is critical to ensuring fewer delays at trial. Accordingly, the court reminds all counsel—the prosecutor and defense—to be mindful of the importance of trial preparation, including but not limited to thorough review of the Federal Rules of Evidence.

SO ORDERED this 8<sup>th</sup> day of March, 2016.

  
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Frances Tydingco-Gatewood  
Chief Judge