**2.10 Other Crimes, Wrongs, or Acts of Defendant**

You [[are about to hear] [have heard] testimony] [[are about to see] [have seen] evidence] that the defendant [*summarize other act evidence*]. This evidence of other acts [was] [will be] admitted only for [a] limited purpose[s]. You may consider this evidence only for the purpose of deciding whether the defendant:

[had the state of mind, knowledge, or intent necessary to commit the crime charged in the indictment;]

*or*

[had a motive or the opportunity to commit the acts charged in the indictment;]

*or*

[was preparing or planning to commit the acts charged in the indictment;]

*or*

[acted with a method of operation as evidenced by a unique pattern [*describe pattern*];]

*or*

[did not commit the acts for which the defendant is on trial by accident or mistake;]

*or*

[is the person who committed the crime charged in the indictment. You may consider this evidence to help you decide [*describe how the evidence will be used to prove identity*];]

*or*

[*describe other purpose for which other act evidence was admitted*.]

Do not consider this evidence for any other purpose.

Of course, it is for you to determine whether you believe this evidence and, if you do believe it, whether you accept it for the purpose offered. You may give it such weight as you feel it deserves, but only for the limited purpose that I described to you.

The defendant is not on trial for committing these other acts. You may not consider the evidence of these other acts as a substitute for proof that the defendant committed the crime[s] charged. You may not consider this evidence as proof that the defendant has a bad character or any propensity to commit crimes. Specifically, you may not use this evidence to conclude that because the defendant may have committed the other act[s], [he] [she] must also have committed the act[s] charged in the indictment.

Remember that the defendant is on trial here only for [*state charges*], not for these other acts. Do not return a guilty verdict unless the government proves the crime[s] charged in the indictment beyond a reasonable doubt.

**Comment**

“Under Federal Rule of Evidence 404(b), evidence of other acts may be admissible to prove, among other things, motive, opportunity, intent, or knowledge. For other act evidence to be admissible, (1) the evidence must tend to prove a material issue in the case, (2) the acts must be similar to the offense charged, (3) proof of the other acts must be based upon sufficient evidence, and (4) the acts must not be too remote in time. *See United States v. Montgomery*, 150 F.3d 983, 1000 (9th Cir. 1998).” *United States v. Fuchs*, 218 F.3d 957, 965 (9th Cir. 2000).

A limiting instruction must be given if requested, Fed. R. Evid. 105, and it may be appropriate to give such an instruction sua sponte. Nonetheless, it is “well-settled that where no limiting instruction is requested concerning evidence of other criminal acts, the failure of the trial court to give such an instruction *sua* *sponte* is not reversible error.” *United States v. Multi-Management, Inc.*, 743 F.2d 1359, 1364 (9th Cir. 1984).

*Revised Mar. 2018*