**5.5 Entrapment Defense—Whether Person Acted as Government Agent**

The defendant contends [he] [she] was entrapped by a government agent. Whether or not [*name of witness*] was acting as a government agent in connection with the crimes charged in this case, and if so, when that person began acting as a government agent, are questions for you to decide. In deciding those questions, you should consider that, for purposes of entrapment, someone is a government agent when the government authorizes, directs, and supervises that person's activities and is aware of those activities. To be a government agent, it is not enough that someone has previously acted or been paid as an informant by other state or federal agencies, or that someone expects compensation for providing information.

In determining whether and when someone was acting as a government agent, you must look at all the circumstances existing at the time of that person's activities in connection with the crimes charged in this case, including but not limited to: the nature of that person's relationship with the government, the purposes for which it was understood that person might act on behalf of the government, the instructions given to that person about the nature and extent of permissible activities, and what the government knew about those activities and permitted or used.

**Comment**

The Ninth Circuit has explicitly approved the factors articulated in the second paragraph of this instruction. *See United States v. Jones*, 231 F.3d 508, 517 (9th Cir. 2000).

When the propriety of a putative government agent’s conduct is an issue, *see* Instruction 3.10 (Government’s Use of Undercover Agents and Informants).

*Compare United States v. Tallmadge*, 829 F.2d 767, 774 (9th Cir. 1987) (licensed firearms dealer held to be government agent; “we believe that a buyer has the right to rely on the representations of a licensed firearms dealer, who has been made aware of all the relevant historical facts, that a person may receive and possess a weapon if his felony conviction has been reduced to a misdemeanor”)*, with United States v. Rodman*, 776 F.3d 638, 643 (9th Cir. 2015) (licensed firearms dealer could not rely on entrapment by estoppel defense even if told by another licensed firearms dealer that removing serial numbers from machine guns and then placing numbers on other guns for sale was legal because other licensed firearms dealer was in no better position than defendant to determine legality of scheme).

*Revised Mar. 2015*