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13 IN THE UNITED STATES DISTRICT COURT  
14 DISTRICT OF ARIZONA

15 United States of America,  
16  
17 Plaintiff,  
18  
19 vs.  
20 Thomas Mario Costanzo,  
21  
22 Defendant.

No. CR-17-0585-PHX-GMS

**SUPPLEMENT TO  
DEFENSE COMBINED RESPONSE  
TO DKT. ## 125, & 127**

23 Thomas Mario Costanzo, by and through undersigned counsel, respectfully  
24 submits this supplement to his responses to government filings set forth in Dkt. ## 125  
25 (Notice of Expert Testimony), and 127 (Motion in Limine to Preclude an Entrapment  
26 Defense.

27 Specifically, Mr. Costanzo appends his response an objection to SA  
28 Ellsworth testifying on issues of law, as provided in the government's Notice of SA  
Ellsworth's proposed expert testimony on Bank Secrecy Act requirements.

The Ninth Circuit has long held that expert testimony is not proper for issues of  
law.<sup>1</sup> *See, e.g.:*

- *Elsayed Mukhtar v. California State University, Hayward*, 299 F.3d 1053, 1065 n. 10 (9th Cir. 2002) (“an expert witness cannot give an opinion as to her legal conclusion, i.e., an opinion on an ultimate issue of law.”)(overruled on other grounds by *Estate v. Barabin v. AstenJohnson, Inc.* 740 F.3d 457 (9th Cir. 2014));

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<sup>1</sup> For purposes of ease of reading, relevant caselaw is provided here in bullet form rather than as a string cite.

- 1 • *McHugh v. United Serv. Auto. Ass'n*, 164 F.3d 451, 454 (9th Cir.1999)(expert
- 2 testimony “cannot be used to provide legal meaning”);
- 3 • *United States v. Brodie*, 858 F.2d 492, 496-97 (9th Cir. 1998)(“[e]xperts ‘interpret
- 4 and analyze factual evidence. They do not testify about the law....’”(quoting *United*
- 5 *States v. Curtis*, 782 F.2d 593, 599 (6th Cir.1986)(overruled on other grounds by
- 6 *United States v. Morales*, 108 F.3d 1031, 1037 (9th Cir. 1997));
- 7 • *Crow Tribe of Indians v. Racicot*, 87 F.3d 1039, 1045 (9th Cir. 1996)(“[e]xpert
- 8 testimony is not proper for issues of law”);
- 9 • *Maffei v. Northern Ins. Co. of New York*, 12 F.3d 892, 898 (9th Cir. 1993)(exclusion
- 10 of declaration insurance expert’s unsupported legal conclusion was proper);
- 11 • *Aguilar v. Internat’l Longshoreman’s Union Local No. 10*, 966 F.2d 443, 447(9th
- 12 Cir. 1992)(stating that matters of law are “inappropriate subjects for expert
- 13 testimony), cert. denied, 434 U.S. 861 (1977).

14  
15 As such, it is improper for SA Ellsworth to provide expert testimony regarding  
16 the law (i.e., statutes and regulations) insofar as such testimony improperly attempts to  
17 instruct the jury on the law and/or reaches or suggests a legal conclusion to the jury.  
18 Expert testimony on the law, to include testimony regarding the Bank Secrecy Act and  
19 associated regulations, must be precluded by this Court per Ninth Circuit precedent.

20  
21 Respectfully submitted March 7, 2018

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1 Copy of the foregoing transmitted by ECF for filing March 7, 2018, to:

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16 THOMAS MARIO COSTANZO  
17 Defendant

18 s/YC

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