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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD AYVAZYAN,
aka "Richard Avazian" and "Iuliia Zhadko,"
MARIETTA TERABELIAN,
aka "Marietta Abelian" and "Viktoria Kauichko,"
ARTUR AYVAZYAN,
aka "Arthur Ayvazyan," and
TAMARA DADYAN,
MANUK GRIGORYAN,
aka "Mike Grigoryan," and

No. CR 20-579(A)-SVW

GOVERNMENT'S MOTION *IN LIMINE* #4 TO ADMIT BUSINESS RECORDS UNDER THE SELF-AUTHENTICATION PROVISION OF FEDERAL RULE OF EVIDENCE 902(11); MEMORANDUM OF POINTS AND AUTHORITIES; ATTACHMENT; DECLARATION OF CHRISTOPHER FENTON; EXHIBITS

Hearing Date: June 14, 2021
Hearing Time: 11:00 a.m.
Trial Date: June 15, 2021
Location: Courtroom of the Hon. Stephen V. Wilson

"Anton Kudiumov,"
ARMAN HAYRAPETYAN,
EDVARD PARONYAN,
aka "Edvard Paronian" and
"Edward Paronyan," and
VAHE DADYAN,

Defendants.

Plaintiff United States of America, by and through its counsel of record, the Acting United States Attorney for the Central District of California, Assistant United States Attorneys Scott Paetty, Catherine Ahn, and Brian Faerstein, and Department of Justice Trial Attorney Christopher Fenton, hereby files this motion in limine to admit business records under the self-authentication provision of Federal Rule of Evidence 902(11).

This motion is based upon the attached memorandum of points and authorities and accompanying attachment, the attached declaration and accompanying exhibits, the files and records in this case, and such further evidence and argument as the Court may permit.

Dated: June 9, 2021

Respectfully submitted,

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Acting United States Attorney

SCOTT M. GARRINGER
Assistant United States Attorney
Chief, Criminal Division

/s/
CATHERINE AHN
SCOTT PAETTY
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CHRISTOPHER FENTON
Department of Justice Trial Attorney

Attorneys for Plaintiff
UNITED STATES OF AMERICA

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendants have been indicted in connection with their role in a Los Angeles-based ring that was using stolen, fake, and synthetic identities to fraudulently apply for COVID-19 disaster relief loans. (ECF 154.) The detailed indictment traces the flow of stolen money, which defendants used to fund a luxurious lifestyle. Defendants used some of the millions of dollars they stole to buy luxury homes, watches, diamonds, gold coins, and cryptocurrency, among other things.

The government seeks to introduce certain business records at trial under the self-authentication provision of Federal Rule of Evidence 902(11), including:

- loan files;
- bank records;
- telephone records;
- Internet Protocol address records;
- certificates of authenticity from the FDIC;
- escrow records;
- receipts and business records relating to the sale of goods and services;
- brokerage and cryptocurrency account records; and
- apartment leasing records and security video.

The government provided written notice to defendants of its intention to introduce such records in this manner on May 20, 2021 (letter), May 28, 2021 (letter), and June 3, 2021 (proposed stipulation). (Decl. of Christopher Fenton ("Fenton Decl.") ¶ 2.) The government has followed up with counsel for the defendants on several occasions with respect to the admission of self-authenticating business records in an effort to find agreement on factual matters that the government believes should not be in

genuine dispute. While counsel have not voiced specific objections, at least some counsel have been unwilling to enter into a formal stipulation as of the date of this filing. (Id.)

II. ARGUMENT

Rule 902(11) permits the admission of self-authenticating business records. Specifically, the Rule dictates that certified domestic records of a regularly conducted activity "are self-authenticating" and therefore "require no extrinsic evidence of authenticity in order to be admitted." Fed. R. Evid. 902(11). To qualify under this provision, the records in question must be "[t]he original or a copy of a domestic record that meets the requirements of Rule 803(6)(A)-(C), as shown by a certification of the custodian or another qualified person." Id. The Rule also requires that the proponent of such evidence provide an adverse party, prior to trial, with "reasonable written notice of the intent to offer the record -- and . . . make the record and certification available for inspection -- so that the party has a fair opportunity to challenge them." Id.

Under Rule 803(6)(A)-(C), a business record is admissible if: (A) "the record was made at or near the time by -- or from information transmitted by -- someone with knowledge"; (B) "the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit"; and (C) "making the record was a regular practice of the activity." Fed. R. Evid. 806(A)-(C). Moreover, admitting business records under Rule 902(11) without testimony from a custodian of records does not violate a defendant's rights to confront witnesses because business records are not testimonial in nature. See Bullcoming v. New Mexico, 564 U.S. 647, 659 n.6 (2011) ("Elaborating

on the purpose for which a 'testimonial report' is created, we observed in [Melendez-Diaz v. Massachusetts, 557 U.S. 305 (2009)] that business and public records 'are generally admissible absent confrontation . . . because -- having been created for the administration of an entity's affairs and not for the purpose of establishing or proving some fact at trial -- they are not testimonial.'" (quoting Melendez-Diaz, 557 U.S. at 324)).

Here, the government has produced business records from the custodians of records (or other qualified persons) of various financial institutions and businesses, as set forth in the chart attached hereto as Attachment 1. The government has also produced declarations from the respective custodians of records (or other qualified persons) from these financial institutions and businesses, which are attached as Exhibits A to G to the Declaration of Christopher Fenton. The government gave written notice to the defense of its intention to authenticate and admit these business records pursuant to Federal Rule of Evidence 902(11) on May 20, 2021, May 28, 2021, and June 3, 2021.

Certification under Rule 902(11) obviates the need for the government to authenticate business records at trial and permits the records to be admitted under Federal Rule of Evidence 803(6). See Fed. R. Evid. 902(11). Accordingly, in order to admit the above-referenced business records as exhibits at trial, the government should not need to call the custodians of records for these businesses to testify. Rather, these business records should be

admissible based on the certifications described above and in the attached Attachment 1.[1]

III. CONCLUSION

For the foregoing reasons, the government respectfully requests that the Court issue an order that the documents subject to this motion are self-authenticating, meaning that "they require no extrinsic evidence of authenticity in order to be admitted." Fed. R. Evid. 902. The government seeks an order that it has satisfied the authenticity and foundational requirements for admission of these documents without calling document custodians and that the documents will be admitted into evidence at trial subject only to objections under Federal Rules of Evidence 401 (relevance) and 403 (unfair prejudice).

[1] The government reserves the right to provide further notice of other entities from which it intends to introduce business records pursuant to Federal Rule of Evidence 902(11).