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UNITED STATES OF AMERICA
18

19 UNITED STATES DISTRICT COURT

20 FOR THE CENTRAL DISTRICT OF CALIFORNIA

21 UNITED STATES OF AMERICA,

22 Plaintiff,

23 v.

24 RICHARD AYVAZYAN,
aka "Richard Avazian" and
"Iuliia Zhadko,"
25 MARIETTA TERABELIAN,
aka "Marietta Abelian" and
26 "Viktoria Kauichko,"
ARTUR AYVAZYAN,
27 aka "Arthur Ayvazyan," and
TAMARA DADYAN,
28 MANUK GRIGORYAN,

No. CR 20-579(A)-SVW

GOVERNMENT'S TRIAL MEMORANDUM

Trial Date: June 15, 2021
Location: Courtroom of the
Hon. Stephen V.
Wilson

1 aka "Mike Grigoryan," and
2 "Anton Kudiumov,"
3 ARMAN HAYRAPETYAN,
4 EDVARD PARONYAN,
5 aka "Edvard Paronian" and
6 "Edward Paronyan," and
7 VAHE DADYAN,
8
9 Defendants.

10 Plaintiff the United States of America, by and through its
11 counsel of record, the Acting United States Attorney for the Central
12 District of California, Assistant United States Attorneys Scott
13 Paetty, Catherine S. Ahn, and Brian Faerstein, and Department of
14 Justice Trial Attorney Christopher Fenton, hereby files its trial
15 memorandum.

16 The government respectfully requests leave of the Court to
17 supplement or modify this memorandum as may be appropriate.

18 Dated: June 9, 2021

19 Respectfully submitted,

20 TRACY L. WILKISON
21 Acting United States Attorney

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

25 _____
26 /s/
27 CATHERINE S. AHN
28 SCOTT PAETTY
29 BRIAN FAERSTEIN
30 Assistant United States Attorneys

31 CHRISTOPHER FENTON
32 Trial Attorney, Department of
33 Justice

34 Attorneys for Plaintiff
35 UNITED STATES OF AMERICA

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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATUS OF THE CASE

The criminal trial of defendants RICHARD AYVAZYAN, a.k.a. "Richard Avazian," a.k.a. "Iulia Zhadko" ("R. AYVAZYAN"), MARIETTA TERABELIAN, a.k.a. "Marietta Abelian," a.k.a. "Viktoria Kauichko" ("TERABELIAN"), ARTUR AYVAZYAN, a.k.a. "Arthur Ayvazyan" ("A. AYVAZYAN"), TAMARA DADYAN ("T. DADYAN"), ARMAN HAYRAPETYAN ("HAYRAPETYAN"), and VAHE DADYAN ("V. DADYAN") (collectively, "defendants") is scheduled for June 15, 2021 at 8:30 a.m., before the Honorable Stephen V. Wilson, United States District Judge.¹ The government anticipates that its case-in-chief will require eight to ten days. Jury trial has not been waived. Defendants are on bond.

II. STATEMENT OF FACTS

The government has described the facts and details underlying the charges in this case in its recently-filed motions in limine, including its motion in limine #2 (ECF 384), as well as in its responses to defendants' numerous motions brought throughout the course of this case. The government provides here a summary of the facts and evidence it intends to adduce at trial.

As the trial evidence will show, defendants R. AVAYZYAN, TERABELIAN, A. AYVAZYAN, T. DADYAN, GRIGORYAN, HAYRAPETYAN, PARONYAN, and V. DADYAN conspired to submit or cause to be submitted fraudulent loan applications through both the Paycheck Protection Program

¹ On June 7, 2021, defendant MANUK GRIGORYAN ("GRIGORYAN") entered guilty pleas to two counts in the superseding indictment, which pleas were accepted by the Court. (ECF 454.) His sentencing hearing is scheduled for September 13, 2021. On June 9, 2021, defendant EDVARD PARONYAN ("PARONYAN") and the government filed a plea agreement with the Court. Defendant PARONYAN's change of plea hearing currently is scheduled for June 11, 2021, at 10:00 a.m. (ECF 472.)

1 ("PPP") and the Economic Injury Disaster Loan program ("EIDL"), and
2 then launder the fraudulent proceeds of these loans. Congress
3 authorized the PPP and EIDL programs through the Coronavirus Aid,
4 Relief, and Economic Security Act of 2020 ("CARES Act") to make
5 emergency economic funds available to, among other things, small
6 businesses to keep their businesses operating and employees on
7 payroll as a result of the onset of the COVID-19 pandemic. A witness
8 from the United States Small Business Administration ("SBA") will
9 testify about the background and operation of these programs,
10 including the process for applying and eligibility for obtaining
11 COVID-19 disaster relief loans.

12 The trial evidence will show that defendants used, or caused to
13 be used, stolen or fictitious individual and business information in
14 submitting materially false and misleading information to the SBA,
15 banks, and lenders regarding the business' eligibility for these PPP
16 and EIDL loans. The evidence will demonstrate that defendants lied
17 or caused other defendants to lie, among other things, about the
18 applying business' monthly payroll expenses, number of employees,
19 and, in many cases, the names, status, and contact information for
20 the businesses and their purported representatives. As reflected in
21 many of the loan applications that will be offered into evidence,²
22 defendants submitted or caused other defendants to submit fraudulent
23 information and documentation in support of the loans, including fake
24

25
26 ² The government filed its MIL #4 seeking to admit these and
27 other business records under the self-authentication provision of
28 Federal Rule of Evidence 902(11). In addition, to expedite the
presentation of evidence, the government plans on presenting
information through summary chart exhibits and summary witnesses
based on admissible records certified in accordance with Fed. R. of
Evid. 902(11) and 803.

1 identification cards, false or fictitious payroll reports purportedly
2 prepared by the payroll servicing company "Gusto," false or
3 fictitious federal employer tax identification numbers ("EINs"), and
4 fraudulent IRS tax forms. In some cases, defendants submitted
5 fictitious payroll reports and IRS tax forms virtually identical in
6 substance, reflecting their common use of fraudulent forms across
7 multiple loan applications. The government will present evidence
8 through the IRS, California Employment Development Department,
9 California Department of Motor Vehicles, Department of Homeland
10 Security, and Gusto, of the falsity of the information in and
11 documentation supporting these PPP and EIDL loan applications.

12 In many cases, defendants also used the stolen names and
13 identifying information of real victims in support of the fraudulent
14 loan applications, as trial testimony from several of those victims
15 will reflect. In some cases, defendants submitted or caused to be
16 submitted applications in the names of those individuals or their
17 actual businesses without lawful authority; in others, defendants
18 fraudulently listed actual tax preparers as having prepared
19 fraudulent IRS tax forms or other fictitious supporting documentation
20 submitted in support of loan applications.

21 The trial evidence will further show that, following receipt of
22 the fraudulent loan proceeds, defendants shared and transferred the
23 proceeds between them, specifically through bank accounts that they
24 controlled either in their own names or stolen or synthetic³

26
27 ³ The government will present testimony at trial explaining that
28 a "synthetic" identity is an identity created by combining both
stolen and fictitious personally identifiable information, such as
names, dates of birth, and social security, to create new synthetic
identities that could be used to perpetrate the fraud.

1 individual and business names. Bank records offered at trial will
2 reflect defendants' control and use of these bank accounts to send
3 and receive fraudulent loan proceeds between each other and to use
4 those proceeds for expenses prohibited by the PPP and EIDL loan
5 programs. These expenses included the purchase of at least three
6 residential properties in Tarzana, Glendale, and Palm Desert, as well
7 as expenditures on luxury items such as jewelry and high-end
8 furnishings, as will be reflected in escrow account records and other
9 records obtained from a number of retailers.

10 The trial evidence will further show that, in furtherance of the
11 bank fraud, wire fraud, and money laundering conspiracies summarized
12 above, defendants used and shared numerous synthetic and false
13 identities to carry out their fraudulent activities. The government
14 will offer evidence of defendants' possession of significant amounts
15 of synthetic and false identifying information, including information
16 that was used in submitting the fraudulent loan applications charged
17 in this case. This evidence will include, among other things,
18 documents and information obtained pursuant to the execution of
19 residential search warrants at several locations on November 5, 2020,
20 including the residence of defendants R. AYVAZYAN and TERABELIAN on
21 Topeka Drive in Tarzana, the residence of defendants A. AYVAZYAN and
22 T. DADYAN on Weddington Street in Encino, and an apartment under the
23 control of defendant GRIGORYAN on Canoga Avenue in Woodland Hills.
24 During the searches, the government found significant amounts of
25 fraudulent identification documents including drivers licenses and
26 Social Security cards, as well as fraudulently obtained credit cards.

27 The government further intends to present text messages
28 extracted from a phone (the "T. DADYAN phone") seized from the

1 Weddington Street residence in Encino, pursuant to a federal search
2 warrant. The T. DADYAN phone contains text messages between T.
3 DADYAN and R. AVAZYAN, who are identified in the T. DADYAN phone as
4 "tammy" and "Rich New," respectively. The "Rich New" contact is
5 associated with a phone number that, according to certified business
6 records, is subscribed to "Iulia Zhadko." The text messages will
7 establish that defendants R. AYVAZYAN and T. DADYAN agreed to work
8 together to knowingly prepare and submit PPP and EIDL loan
9 applications with false and materially misleading representations,
10 including purported numbers of employees, payroll records, and the
11 identities of the business applicant and its purported owner. The
12 text messages will further show how T. DADYAN and R. AYVAZYAN
13 provided false documentation, exchanged personal identification cards
14 and information for purported business owners, attempted to convince
15 PPP lenders and banks to release fraudulent PPP and EIDL proceeds,
16 and transferred funds to co-conspirators as payment for their role in
17 the conspiracy.

18 The government further intends to present images and evidence of
19 web history searches conducted by defendants who owned or were
20 identified as the users of four iPhones - the T. DADYAN phone
21 referenced above, a phone associated with A. AYVAZYAN, a phone
22 associated with R. AYVAZYAN, and a phone associated with TERABELIAN.
23 The presence of the same identification cards across multiple
24 devices, images of checks, and account information associated with
25 transfers to launder fraudulent proceeds, will further establish
26 knowledge and participation in the charged conspiracies.

1 **III. STATEMENT OF CHARGES**

2 Defendants are charged with one count of conspiracy to commit
3 bank fraud and wire fraud, in violation of 18 U.S.C. § 1349 (Count
4 1); eleven counts of wire fraud, in violation of 18 U.S.C. § 1343
5 (Counts 2-12⁴); eight counts of bank fraud, in violation of 18 U.S.C.
6 § 1344(2) (Counts 13-20⁵); and one count of conspiracy to engage in
7 money laundering, in violation of 18 U.S.C. § 1956(h) (Count 26). In
8 addition, defendant R. AYVAZYAN is charged with two counts of
9 aggravated identity theft, in violation of 18 U.S.C. § 1028A(a)(1)
10 (Counts 21-22), and defendants TERABELIAN (Count 22), A. AYVAZYAN
11 (Count 24), T. DADYAN (Count 24), GRIGORYAN (Count 23), and
12 HAYRAPETYAN (Count 25) are each charged with one count of aggravated
13 identity theft. Defendant V. DADYAN also is charged with money
14 laundering, in violation of 18 U.S.C. § 1956(a)(1)(B)(i) (Count 27).
15 Finally, two defendants -- defendant R. AYVAZYAN and defendant T.
16 DADYAN -- are charged with crimes allegedly committed while they were
17 on pretrial release in this case: Defendant R. AYVAZYAN is charged
18 with money laundering while on pretrial release, in violation of 18
19 U.S.C. §§ 1956(a)(1)(B)(i) and 3147 (Counts 28-32), and defendant T.
20 DADYAN is charged with attempted bank fraud while on pretrial
21 release, in violation of 18 U.S.C. §§ 1344(2) and 3147 (Count 33).
22 (See First Superseding Indictment ("FSI") (ECF 154).)

23
24
25
26 ⁴ Defendant V. DADYAN is charged only in Counts 7 through 12,
27 whereas the other defendants are charged in all eleven wire fraud
counts.

28 ⁵ Defendant V. DADYAN is charged only in Counts 18 through 20,
whereas the other defendants are charged in all eight bank fraud
counts.

1 **A. Conspiracy**

2 1. Conspiracy to Commit Bank Fraud and/or Wire Fraud

3 In order for a defendant to be found guilty of the charge of
4 conspiracy to commit bank fraud and/or wire fraud as charged in Count
5 1 of the FSI, the government must prove each of the following
6 elements beyond a reasonable doubt:

7 First, beginning no later than in or around March 2020, and
8 continuing until at least in or around August 2020, there was an
9 agreement between two or more persons to commit at least one of the
10 following crimes: (1) bank fraud, in violation of 18 U.S.C.
11 § 1344(2); and (2) wire fraud, in violation of 18 U.S.C. § 1343 --
12 with all jurors agreeing as to the particular crime which the
13 coconspirators agreed to commit; and

14 Second, the defendant became a member of the conspiracy knowing
15 of at least one of its objects and intending to help accomplish it.

16 2. Conspiracy to Engage in Money Laundering

17 In order for a defendant to be found guilty of the charge of
18 conspiracy to engage in money laundering as charged in Count 26 of
19 the FSI, the government must prove each of the following elements
20 beyond a reasonable doubt:

21 First, beginning no later than in or around March 2020 and
22 continuing until at least in or around October 2020, there was an
23 agreement between two or more persons to commit at least one of the
24 following crimes: (1) money laundering, in violation of 18 U.S.C.
25 § 1956(a)(1)(B)(i); and (2) engaging in monetary transactions in
26 property derived from specified unlawful activity, in violation of 18
27 U.S.C. § 1957 -- with all jurors agreeing as to the particular crime
28 which the conspirators agreed to commit; and

1 Second, the defendant became a member of the conspiracy knowing
2 of at least one of its objects and intending to help accomplish it.

3 **B. Wire Fraud**

4 In order for a defendant to be found guilty of wire fraud as
5 charged in Counts 2-12 of the FSI, the government must prove each of
6 the following elements beyond a reasonable doubt:

7 First, the defendant knowingly participated in or devised a
8 scheme or plan to defraud, or a scheme or plan for obtaining money or
9 property by means of false or fraudulent pretenses, representations,
10 or promises. Deceitful statements of half-truths may constitute
11 false or fraudulent representations;

12 Second, the statements made or facts omitted as part of the
13 scheme were material; that is, they had a natural tendency to
14 influence, or were capable of influencing, a person to part with
15 money or property;

16 Third, the defendant acted with the intent to defraud, that is,
17 the intent to deceive and cheat; and

18 Fourth, the defendant used, or caused to be used, an interstate
19 wire communication to carry out or attempt to carry out an essential
20 part of the scheme.

21 **C. Bank Fraud**

22 1. Bank Fraud

23 In order for a defendant to be found guilty of bank fraud as
24 charged in Counts 13-20 of the FSI, the government must prove each of
25 the following elements beyond a reasonable doubt:

26 First, for each Count, the defendant knowingly carried out a
27 scheme or plan to obtain money or property from the financial
28

1 institution specified in the Count by making false statements or
2 promises;

3 Second, the defendant knew that the statements or promises were
4 false;

5 Third, the statements or promises were material; that is, they
6 had a natural tendency to influence, or were capable of influencing,
7 a financial institution to part with money or property;

8 Fourth, the defendant acted with the intent to defraud; and

9 Fifth, the specified financial institution was federally
10 insured.

11 2. Attempted Bank Fraud

12 In order for defendant T. DADYAN to be found guilty of attempted
13 bank fraud as charged in Count 33 of the FSI, the government must
14 prove each of the following elements beyond a reasonable doubt:

15 First, the defendant knowingly attempted to execute a scheme to
16 obtain money or property from Capital One, N.A. by false promises or
17 statements;

18 Second, the promises or statements were material; that is, they
19 had a natural tendency to influence, or were capable of influencing,
20 a financial institution to part with money or property;

21 Third, the defendant acted with the intent to defraud;

22 Fourth, the defendant did something that was a substantial step
23 toward carrying out the plan or scheme and that strongly corroborated
24 the defendant's intent to commit that crime; and

25 Fifth, Capital One, N.A. was federally insured.

26 Defendant T. DADYAN is charged with committing the offense
27 charged in Count 33 while released pursuant to the Bail Reform Act.

28 If the jury finds beyond a reasonable doubt that defendant T. DADYAN

1 committed the charged attempted bank fraud offense, the jury must
2 also determine whether the government has proven beyond a reasonable
3 doubt that she committed the offense while on release.

4 **D. Aggravated Identity Theft**

5 In order for a defendant to be found guilty of aggravated
6 identity theft as charged in Counts 21-25 of the FSI, the government
7 must prove each of the following elements beyond a reasonable doubt:

8 First, the defendant knowingly transferred, possessed, or used
9 without legal authority a means of identification of another person,
10 as specified in each Count;

11 Second, the defendant knew that the means of identification
12 belonged to a real person; and

13 Third, the defendant did so during and in relation to a specific
14 bank fraud or wire fraud offense charged in the indictment, as
15 specified in each Count.

16 To act "without legal authority" means to act in a way that is
17 contrary to law. Thus, the government need not establish that the
18 means of identification of another person was stolen or used without
19 that person's consent or permission.

20 **E. Money Laundering**

21 In order for a defendant to be found guilty of laundering money
22 as charged in Counts 27-32 of the FSI, the government must prove each
23 of the following elements beyond a reasonable doubt:

24 First, the defendant conducted a financial transaction involving
25 property that represented the proceeds of conspiracy to commit bank
26 fraud and wire fraud, in violation of 18 U.S.C. § 1349; wire fraud,
27 in violation of 18 U.S.C. § 1343; or bank fraud, in violation of 18
28 U.S.C. § 1344(2);

1 Second, the defendant knew that the property represented the
2 proceeds of some form of unlawful activity; and

3 Third, the defendant knew that the transaction was designed in
4 whole or in part to conceal or disguise the nature, location, source,
5 ownership, and/or control of such proceeds.

6 Defendant R. AYVAZYAN is charged with committing the offenses
7 charged in Counts 28-32 while released pursuant to the Bail Reform
8 Act. If the jury finds beyond a reasonable doubt that defendant R.
9 AYVAZYAN committed any of the charged money laundering offenses, the
10 jury must also determine whether the government has proven beyond a
11 reasonable doubt that he committed the offense while on release.

12 **IV. TRIAL STATUS / PRETRIAL MOTIONS / PRETRIAL FILINGS**

13 **A. Trial Status**

14 As described above, the trial is set to commence June 15, 2021.
15 Defendants R. AYVAZYAN and TERABELIAN have requested a three-week
16 continuance of trial in connection with their most recently filed
17 motion to dismiss, requesting the Court reconsider its ruling that a
18 Kastigar hearing be held after, not before, trial. (ECF 381.) The
19 government opposes defendants' motion and request for a trial
20 continuance. (ECF 416.)

21 **B. Pretrial Motions**

22 1. Motions to Suppress

23 Defendants have filed numerous motions to suppress evidence, all
24 of which the government has opposed, and most of which the Court has
25 ruled upon. We briefly note the relief sought in each motion and the
26 Court's ruling, where applicable:

27 Defendant R. AYVAZYAN filed two motions to suppress physical and
28 digital evidence, statements, and the fruits thereof relating to a

1 border stop in Miami on October 19-20, 2020. (ECF 130, 135.)
2 Defendant TERABELIAN similarly moved to suppress digital evidence and
3 statements relating to the same border stop. (ECF 136.) The Court
4 granted their motions in part with respect to suppressing certain
5 digital evidence as the fruit of a Fifth Amendment violation, but
6 denied the other grounds for relief in their motions. (ECF 296.)
7 Defendant TERABELIAN also filed a motion to suppress recorded
8 telephone calls she made from Broward County Jail after her arrest at
9 the Miami Airport. (ECF 393, 442.) The government opposed the
10 motion (ECF 418), which remains pending.

11 Defendants R. AYVAZYAN and TERABELIAN moved to suppress physical
12 and digital evidence seized during the execution of a federal search
13 warrant at their residence. (ECF 146.) The Court denied their
14 motion but ordered the return of certain items. (ECF 296.)

15 Defendants A. AYVAZYAN and T. DADYAN moved to suppress physical
16 and digital evidence seized during the execution of a federal search
17 warrant at their residence. (ECF 149.) The Court denied their
18 motion but ordered the return of one item. (ECF 297.)

19 Defendants R. AYVAZYAN, TERABELIAN, A. AYVAZYAN, and T. DADYAN
20 moved to suppress digital evidence seized during the execution of
21 federal search warrants at their residences. (ECF 363.) The
22 government filed an opposition (ECF 391), and the motion remains
23 pending.

24 2. Motions to Dismiss

25 Defendant R. AYVAZYAN, and in some cases other defendants, have
26 filed numerous motions to dismiss the indictments in this case in
27 multiple forms, all of which the government has opposed, and most of
28

1 which the Court has ruled upon. We briefly note the alleged basis
2 for each motion and the Court's ruling, where applicable:

3 Defendant R. AYVAZYAN moved to "enforce the Court's December 22,
4 2020 Discovery Order," seeking an order of dismissal or in the
5 alternative excluding certain discovery. (ECF 248.) The Court
6 denied defendant's motion. (ECF 343.)

7 Defendant R. AYVAZYAN moved to dismiss on the alleged basis of
8 prosecutorial misconduct. (ECF 289.) The Court denied defendant's
9 motion. (ECF 343.)

10 Defendants R. AYVAZYAN and TERABELIAN moved for a Kastigar
11 hearing, seeking an order disqualifying the prosecution team and
12 dismissing the case. (ECF 338.) Defendants A. AYVAZYAN, T. DADYAN,
13 GRIGORYAN, PARONYAN, and V. DADYAN joined in the motion. (ECF 346-
14 48, 350.) The Court ultimately ordered that a Kastigar hearing would
15 be scheduled for a date to be determined after trial but limited that
16 hearing to defendants R. AYVAZYAN and TERABELIAN, denying the other
17 defendant's joinder requests. (ECF 356.)

18 Defendants R. AYVAZYAN and TERABELIAN moved once again to
19 dismiss the case based on Kastigar, seeking in the alternative a
20 continuance of trial and a pretrial Kastigar hearing. (ECF 381.)
21 The government filed an opposition (ECF 416), and the motion remains
22 pending.

23 **C. Motions in Limine**

24 The government has filed four motions in limine. The first
25 motion ("MIL #1") seeks to exclude as a defense any evidence and
26 arguments concerning alleged victim negligence as well as any
27 reference to loan guarantees that specific victims in this case,
28 specifically lenders and loan processors for the PPP, may have been

1 provided by the United States Small Business Administration ("SBA").
2 (ECF 358.) MIL #2 seeks a ruling from the Court that evidence of
3 defendants' possession and creation of stolen or synthetic
4 identities, which were colocated with stolen or synthetic identities
5 directly used to obtain fraudulent COVID-19 disaster relief loans,
6 are inextricably intertwined with the charged offenses. (ECF 384.)
7 The third motion ("MIL #3") seeks to exclude evidence and argument
8 that the border search in Miami or subsequent residence searches in
9 this case were unlawful or violated defendants' constitutional
10 rights. (ECF 390.) One or more defendants have filed oppositions to
11 each of the government's first three motions in limine, and each
12 remains pending as of the date of this filing. In addition, on June
13 9, 2021, the government filed a fourth motion in limine ("MIL #4")
14 seeking to admit certain business records pursuant to the self-
15 authentication provision of Federal Rule of Evidence 902(11), which
16 also remains pending.

17 Defendants R. AYVAZYAN and TERABELIAN filed a motion in limine
18 seeking to preclude the government's use of their prior federal bank
19 fraud conspiracy convictions under Federal Rule of Evidence 404(b)
20 and to limit the information the government can reveal about these
21 convictions under Federal Rule of Evidence 609 on cross-examination
22 of defendants, should they testify. (ECF 340.) The government has
23 filed an opposition to this motion, and it remains pending as of the
24 date of this filing.

25 Defendants R. AYVAZYAN, TERABELIAN, A. AYVAZYAN, T. DADYAN, and
26 V. DADYAN filed a motion in limine seeking to preclude testimony from
27 a non-expert summary witness who will describe the flow of PPP and
28 EIDL funds between and amongst defendants and how those funds were

1 used. (ECF 451.) The government intends to file an opposition to
2 this motion.

3 **D. Stipulations**

4 To streamline the trial, the government has proposed
5 stipulations to defendants regarding a number of factual issues the
6 government believes not to be genuinely in dispute. These issues
7 include the fact of interstate wire transfers, the federally-insured
8 status of relevant financial institutions, the authenticity of
9 business and public records pursuant to certifications obtained from
10 relevant entities, the authenticity of jail call recordings, and the
11 authenticity of the forensic data from iPhones seized from certain
12 defendants. To date, certain of the defendants have not yet agreed
13 to stipulate to any of these issues, but the government will continue
14 to seek to meet and confer with defendants on stipulations to any or
15 all of these or other issues.

16 **E. Trial Indictment**

17 The government has filed a motion to redact the superseding
18 indictment for use at trial. (ECF 422.) In an effort to streamline
19 its case for presentation at trial, the government proposes to
20 proceed at trial on a redacted version of the superseding indictment
21 that removes one paragraph specifying the total number of loans (151)
22 that were part of the charged conspiracies and streamlining the
23 attempted bank fraud count against defendant T. DADYAN. Defendant R.
24 AYVAZYAN has opposed the government's motion and filed a cross-motion
25 to strike certain allegations regarding the PPP and EIDL programs
26 from the indictment. (ECF 426.) The government filed a reply in
27 support of its motion to redact (ECF 450), and the motion remains
28 pending.

F. Other Pretrial Filings

On May 23, 2021, the government provided defendants with a draft of proposed jury instructions in an effort to meet and confer on a set of joint proposed jury instructions, with respective objections noted pursuant to the Court's Standing Order. Defendants provided the government with a draft of their proposed jury instructions on May 26, 2021, and proposed that the parties file separate proposed jury instructions with the Court. On May 27, 2021, the government filed its proposed jury and forfeiture instructions. (ECF 373.) The same day, six of the eight defendants (defendants R. AYVAZYAN, TERABELIAN, A. AYVAZYAN, T. DADYAN, GRIGORYAN, and V. DADYAN) filed a joint set of proposed jury instructions on behalf of those defendants. (ECF 372.) The Court has not yet ruled on the parties' competing requested instructions.

On June 6, 2021, the government provided defendants with a draft of a proposed verdict form for each defendant in an effort to meet and confer on joint proposed verdict forms to file with the Court. Counsel for defendant R. AYVAZYAN stated they intended to file a separate proposed verdict form on behalf of defendant R. AYVAZYAN. The government received comments from defendants TERABELIAN, V. DADYAN, and HAYRAPETYAN, and implemented some requests but were not able to agree on another, as described in the preface to the government's proposed verdict forms filed on June 8, 2021.

The government submitted its exhibits list and witness list to defendants, in accordance with this Court's order, on June 1, 2021, and filed the exhibits and witness lists with the Court on June 9, 2021, per the Court's Order. (ECF 449.)

1 The government has also filed its proposed voir dire. (ECF
2 453.)

3 **V. TRIAL EVIDENCE**

4 The evidence at trial will include the following types of
5 evidence:

6 Business Records: The government will offer a significant
7 amount of business records, including through Rule 902(11)
8 certifications as self-authenticating business records as described
9 further herein, as part of its case-in-chief. These business records
10 were obtained from banks, lenders, real estate and escrow companies,
11 brokerage and cryptocurrency trading firms, jewelry stores and other
12 retailers (such as high-end furnishings and timepiece distributors),
13 telecommunications companies, and other business entities. These
14 records include, among other things, bank records (including records
15 for the accounts opened and used by defendants to receive and launder
16 the fraudulent loan proceeds), loan applications and supporting
17 materials, loan files, telephone records, Internet Protocol address
18 records, certificates of authenticity from the FDIC, escrow records,
19 receipts and business records relating to the sale of goods and
20 services, brokerage and cryptocurrency account records, and apartment
21 leasing records and security video.

22 Public Records (and the absence thereof): The government also
23 will offer evidence obtained from governmental and public entities
24 regarding certain individual and/or business identifying information
25 relevant to the charged conspiracies and schemes as well as
26 documentation submitted in connection with fraudulent loan
27 applications. As discussed further herein, that evidence will
28 include certifications from these public entities of the absence of

1 records regarding identifying information or documentation (i.e., the
2 information was fictitious or otherwise does not exist) that was
3 submitted with loan applications or associated with bank accounts
4 relevant to the charges.

5 Materiality Witnesses: The government intends to call a witness
6 from the Small Business Administration who will provide brief facts
7 about the PPP and EIDL programs, the application, and the importance
8 of certain information in the application. The witness is also an
9 SBA custodian of record. The government further intends to call a
10 witness from a PPP lender, who can testify as to the importance of
11 certain information and representations in the PPP application.

12 Physical Evidence Seized Pursuant to Searches: The government
13 will offer physical evidence, documentation, and photographs
14 pertaining to information seized as part of searches conducted in
15 this case pursuant to search warrants as well as other physical
16 evidence seized during the course of the investigation, including
17 through trash pulls and physical credit cards seized from defendants
18 R. AYVAZYAN and TERABELIAN in Miami. Among other things, these
19 materials relate to the significant amount of stolen or synthetic
20 identifying information and other underlying fraudulent documentation
21 and instrumentalities used in furtherance of the charged conspiracies
22 and schemes.

23 Data extracted from Seized Digital Devices: The government
24 intends to call two FBI forensic examiners, one of whom extracted the
25 data from three of the iPhones whose content the government intends
26 to admit into evidence, and a second examiner that extracted data
27 from a fourth iPhone. The primary purpose of these witnesses is to
28 establish authenticity for the basis of the government's trial

1 exhibits. The examiners are expected to testify that they received
2 the devices, extracted data from the devices in a manner consistent
3 with forensic methodology, and then provided the data in a readable
4 report for review (a "Cellebrite report"), that became the basis for
5 the government's trial exhibits. A testifying agent is then expected
6 to testify that the trial exhibits contain a true and accurate
7 representation of the extracted data in the Cellebrite report, and
8 introduce into evidence the data extracted from the four iPhones.
9 The testifying agent is further expected to identify PPP and EIDL
10 applications, wire transfers, identification cards, and other
11 evidence referenced in text messages or images found on the iPhones.

12 Call Recordings: The government seeks to admit two recordings
13 of jail calls defendant TERABELIAN made after her arrest in Miami
14 while in custody at the Broward County Jail. The government also
15 seeks to admit recorded phone calls defendant T. DADYAN made to
16 Capital One Bank in connection with the attempted bank fraud charge
17 against her.

18 **VI. WITNESSES**

19 The government anticipates calling around 25 witnesses in its
20 case-in-chief, including:

- 21 • a witness from the SBA and one SBA-approved PPP lender to
22 testify about the program and materiality of the false and
23 misleading statements;
- 24 • individual victims whose identities or business names were
25 stolen and used as part of the fraud;
- 26 • witnesses from state and federal agencies and Gusto (a
27 payroll processor) to establish the falsity of the
28

information included in the PPP and EIDL applications submitted as part of the fraud;

- percipient witnesses who witnessed defendant R. Ayvazyan using synthetic identities;
- a summary witness to describe the flow of PPP and EIDL loan funds between defendants and use of the funds;
- forensic examiners to testify about the authenticity of digital evidence seized from certain defendants' iPhones;
- foundation witnesses, including case agents, to testify about evidence seized from certain defendants' residences and the agents' investigation of the crimes charged in the indictment; and
- law enforcement officers to authenticate physical evidence seized at Miami International Airport and jail calls, and an Armenian-language translator to translate those calls.

In the event that defendants do not agree to stipulate to certain facts such as the interstate nature of the wires underlying the wire fraud counts or the FDIC-insured status of banks underlying the bank fraud counts, and/or if defendants are not willing to stipulate to the authenticity of certain documents (and the Court does not rule on the government's motion in limine before trial), the government may also call witnesses to testify to these facts.

The government reserves the right to call additional witnesses as necessary and rebuttal witnesses should defendants present a case.

VII. LEGAL AND EVIDENTIARY ISSUES

A. Text Messages, Emails, and Call Recordings

The government intends to introduce at trial text messages that defendants exchanged with each other and others in the course of the

1 charged conspiracies and schemes, and emails that defendants sent to
2 third-parties to whom they sent fraudulently-obtained PPP and EIDL
3 loan funds. The government also intends to introduce at trial
4 recordings of telephone calls that certain defendants made during the
5 course of the charged conspiracies and schemes. These text messages,
6 emails, and call recordings fall into three main categories:

7 (1) admissions by an opposing party; (2) co-conspirator statements;
8 and (3) business records. The first and second categories consist
9 mostly of: text message conversations between co-conspirators during
10 and in furtherance of the conspiracy, along with files and images
11 sent to each other as part of the text message conversation, as well
12 as recorded telephone calls T. DADYAN made to Capital One Bank and
13 TERABELIAN made while detained at the Broward County Jail. The third
14 category consists primarily of text messages between R. AYVAZYAN
15 (using a telephone number associated with synthetic identity, Iuliia
16 Zhadko) and a vendor of luxury watches and text messages between R.
17 AYVAZYAN and a real estate broker to arrange the purchase of a house
18 for synthetic identity, Anton Kudiumov.

19 1. Opposing Party Admissions

20 Many of the texts, emails, and call recordings discussed above
21 are admissible as party admissions. Statements by a defendant, when
22 offered by the government, are admissions by a party-opponent and are
23 therefore not hearsay under Federal Rule of Evidence 801(d)(2).
24 United States v. Ortega, 203 F.3d 675, 682 (9th Cir. 2000). For
25 example, this would include a text message exchanged between co-
26 conspirators R. AYVAZYAN and T. DADYAN in which they explicitly
27 discuss changing EIN numbers by one digit in PPP or EIDL
28 applications. This would also include text messages exchanged

1 between R. AYVAZYAN and the luxury watch salesman discussing the
2 purchase of an expensive watch for Viktoria Kauichko, and between R.
3 AYVAZYAN and the real estate broker discussing the purchase of a
4 house for Anton Kudiumov.

5 Courts routinely admit electronic evidence, like text messages
6 and emails, as party admissions in criminal cases. See, e.g., United
7 States v. Safavian, 435 F. Supp. 2d 36, 43 (D.D.C. 2006) ("The
8 statements attributed directly to [defendant] come in as admissions
9 by a party opponent under Rule 801(d)(2)(A)"); United States v.
10 Siddiqui, 235 F.3d 1318, 1323 (11th Cir. 2000) ("Those [emails] sent
11 by [defendant] constitute admissions of a party").

12 As discussed in a separate section below, however, the rule does
13 not go both ways. A defendant's statements offered by him or her are
14 inadmissible hearsay. United States v. Ortega, 203 F.3d 675, 682
15 (9th Cir. 2000); see also United States v. Fernandez, 839 F.2d 639,
16 640 (9th Cir. 1988).

17 2. Co-Conspirator Statements

18 The government will also seek to introduce texts and emails from
19 R. AYVAZYAN, T. DADYAN, and other co-conspirators in its case-in-
20 chief as co-conspirator statements. Texts and emails that R.
21 AYVAZYAN, T. DADYAN, and others sent during the course of and in
22 furtherance of the charged conspiracies and schemes are co-
23 conspirator statements admissible as non-hearsay under Fed. R. Evid.
24 801(d)(2)(E).

25 Statements of one co-conspirator during the course of and in
26 furtherance of the conspiracy may be used against another conspirator
27 because such statements are not hearsay. See Fed. R. Evid.
28 801(d)(2)(E). Further, the Supreme Court has held in Crawford v.

1 Washington, 541 U.S. 36, 56 (2004), that statements made in
2 furtherance of a conspiracy are "not testimonial" such that their
3 admission does not violate the Confrontation Clause. As such, the
4 introduction of co-conspirator statements pursuant to Fed. R. Evid.
5 801(d)(2)(E) requires only a foundation that: (1) the declaration was
6 made during the course of the conspiracy; (2) it was made in
7 furtherance of the conspiracy; and (3) there is, including the co-
8 conspirator's statement itself, sufficient proof of the existence of
9 the conspiracy and of the defendant's connection to it. Bourjaily v.
10 United States, 483 U.S. 171, 173, 181 (1987); United States v.
11 Larson, 460 F.3d 1200, 1211 (9th Cir. 2006).

12 The government must prove by a preponderance of the evidence
13 that a statement is a co-conspirator statement in order for the
14 statement to be admissible under Rule 801(d)(2)(E). Bourjaily, 483
15 U.S. at 176; United States v. Crespo de Llano, 838 F.2d 1006,
16 1017(9th Cir. 1987). Whether the government has met its burden is to
17 be determined by the trial judge, not the jury. United States v.
18 Zavala-Serra, 853 F.2d 1512, 1514 (9th Cir. 1988). The Court may
19 rely on inadmissible evidence, such as a co-conspirator's plea
20 agreement, in determining whether the 801(d)(2)(E) exception applies.
21 Cf. United States v. Gil, 58 F.3d 1414, 1420 (9th Cir. 1995) (the
22 preliminary determination of whether Fed. R. Evid. 801(d)(2)(E)
23 applies is to be made "by the court, not the jury, pursuant to Fed.
24 R. Evid. 104(a)); Fed. R. Evid. 104(a) ("the court must decide any
25 preliminary question about whether . . . evidence is admissible. In
26 so deciding, the court is not bound by evidence rules, except those
27 on privilege").

B. Business Records and Absence of Public Records

1. Business Records

As described more fully in its MIL #4, the government will seek to admit documents and records that were obtained from banks, lenders, real estate and escrow companies, brokerage and cryptocurrency trading firms, jewelry stores and other retailers (such as high-end furnishings and timepiece distributors), telecommunications companies, and other business entities. These records include, among others, the records described in Section V (Trial Evidence) above.

Challenges to the accuracy or completeness of business records ordinarily go to the weight of the evidence and not its admissibility. See United States v. Scholl, 166 F.3d 964 (9th Cir. 1999), as amended on denial of reh'g (Mar. 17, 1999); La Porte v. United States, 300 F.2d 878, 880–82 (9th Cir. 1962). Because Rule 803(6) represents a firmly rooted hearsay exception, if non-testimonial evidence meets the requirements for admission under the Rule, no further showing of reliability is necessary for admission under the Confrontation Clause. See Ohio v. Roberts, 448 U.S. 56, 66 n.8 (1980), overruled on other grounds by Crawford v. Washington, 541 U.S. 36 (2004); Ray, 930 F.2d at 1371; United States v. Norton, 867 F.2d 1354, 1363 (11th Cir. 1989); United States v. Baker, 855 F.2d 1353, 1360 (8th Cir. 1988).

Moreover, computer printouts that are compilations of data regularly maintained by a business, such as printouts from a bank's internal accounting systems or other systems that business entities maintain in the ordinary course of its business, are admissible as records of regularly conducted activity pursuant to Fed. R. Evid.

1 803(6). See United States v. Catabran, 836 F.2d 453, 458 (9th Cir.
2 1988) ("Any question as to the accuracy of the printouts, whether
3 resulting from incorrect data entry or the operation of the computer
4 program, as with inaccuracies in any other type of business records,
5 would have affected only the weight of the printouts, not their
6 admissibility."); United States v. Bonallo, 858 F.2d 1427, 1436 (9th
7 Cir. 1988) ("The fact that it is possible to alter data contained in
8 a computer is plainly insufficient to establish untrustworthiness.
9 The mere possibility that the logs may have been altered goes only to
10 the weight of the evidence not its admissibility."); U-Haul Int'l v.
11 Lumbermans Mutual Casualty Co., 576 F.3d 1040, 1043-44 (9th Cir.
12 2009) (computer records kept in the regular course of business
13 activity properly admitted under Rule 803(6)).

14 Certified records of regularly conducted activity or records
15 generated by an electronic process or system (such as subscriber
16 records and IP address information from a telecommunications company
17 or internet service provider) as well as certified data copied from
18 an electronic device, storage medium, or file (such as data obtained
19 from a bank's internal systems), are self-authenticating when
20 accompanied by a written certification satisfying the requirements of
21 Fed. R. Evid. 902(11), 902(13), or 902(14). The government has
22 obtained and produced 902(11) certifications for numerous banks'
23 business records (including bank account information and loan files).
24 The government has produced all of the underlying documents and the
25 certifications in discovery and given advance notice regarding its
26 intent to seek to admit these types of documents under the relevant
27 rules, and, through its forthcoming motion in limine, will be seeking
28

1 to admit a number of exhibits as self-authenticating records under
2 these rules.

3 2. Absence of Public Records

4 Similarly, the government will seek to admit as self-
5 authenticating documents under Federal Rule of Evidence 902(4)
6 certifications obtained from several federal and state governmental
7 or public entities reflecting the absence of certain public records
8 directly relevant to the charges in this case. The information
9 obtained from these public entities, including the IRS, California
10 Employment Development Department ("CA EDD"), California Department
11 of Motor Vehicles ("CA DMV"), and United States Department of
12 Homeland Security ("DHS"), reflect that individual and business
13 identifying information or fictitious documentation submitted in
14 connection with the fraudulent loan applications did not in fact
15 exist. A certification of (or testimony from a custodian regarding)
16 the absence of public records from these entities is admissible under
17 Federal Rule of Evidence 803(10).

18 Rule 803(10) provides, in relevant part, that "[t]estimony – or
19 a certification under Rule 902 – that a diligent search failed to
20 disclose a public record or statement" constitute exceptions to the
21 rule against hearsay "if the testimony or certification is admitted
22 to prove that the record or statement does not exist; or a matter did
23 not occur or exist, if a public office regularly kept a record or
24 statement for a matter of that kind." Fed. R. Evid. 803(10)(A). The
25 Rule further provides that, "in a criminal case, a prosecutor who
26 intends to offer a certification provides written notice of that
27 intent at least 14 days before trial, and the defendant does not
28 object in writing within 7 days of receiving the notice – unless the

1 court sets a different time for the notice or the objection." Fed.
2 R. Evid. 803(10)(B); see also Fed. R. Evid. 803, Committee Notes on
3 Rules - 2013 Amendment (explaining that "notice-and-demand" procedure
4 satisfies Confrontation Clause following Melendez-Diaz v.
5 Massachusetts, 557. U.S. 305 (2009)).

6 In compliance with Rule 803(10)(B), the government provided
7 notice to defense counsel on May 18, 2021, of the government's intent
8 to introduce certain evidence of the absence of public records
9 through testimony and/or pursuant to certifications under Rule 902.
10 The notice explained that the government would be producing
11 certifications with respect to the non-existence of public records
12 pertaining to information from the IRS, CA EDD, CA DMV, and DHS that
13 had previously been produced in discovery. The government did not
14 receive an objection from any defendant. The government thereafter
15 produced the certifications of the absence of public records, which
16 it obtained pursuant to trial subpoenas, in discovery. The
17 government intends to move these certifications into evidence at
18 trial under Federal Rules of Evidence 803(10) and 902.⁶

21 ⁶ The government also may offer testimony about the absence of
22 public records through a witness "familiar with both the process of
23 searching the records and the government's recordkeeping practices
24 with regard to the database." United States v. Diaz-Lopez, 625 F.3d
25 1198, 1200 (9th Cir. 2010). The Ninth Circuit has recognized that,
26 "[u]nlike Rule 803(6), which governs the admissibility of business
27 records, Rule 803(10) does not specify 'the testimony of the
28 custodian or another qualified witness.'" United States v. Parker,
761 F.3d 986, 992 (9th Cir. 2014) (quoting Fed. R. Evid. 803(6)(D)).
"Rather, Rule 803(10) simply requires 'testimony' that a diligent
search did not turn up a public record." Id. However, because it
has satisfied the notice-and-demand procedure of Rule 803(10)(B), and
in the interest of streamlining its trial presentation, the
government may also seek to offer the evidence of absence of public
records through the self-authenticating certifications produced in
discovery.

1 **C. Defendants May Not Introduce Their Own Statements, Texts,**
2 **Email Messages, or Call Recordings**

3 Defendants engaged in numerous text message conversations with
4 each other. The government does not intend to introduce all of these
5 communications, but will instead introduce selected portions in its
6 case-in-chief. The portions that the government intends to introduce
7 are relevant to guilt or innocence, and exclude irrelevant
8 communications that might be misleading or confusing to the jury or
9 otherwise excludable under Fed. R. Evid. 403 (such as references to
10 watching political events associated with a particular candidate that
11 might otherwise be probative as to defendants' monitoring of the
12 availability of COVID-19 relief funds and COVID-19 relief programs).
13 As discussed above, because statements by a party are not hearsay
14 when offered by the opposing party, see Fed. R. Evid. 801(d)(2), the
15 prosecution can properly admit defendants' texts, emails, and calls
16 into evidence as party admissions.

17 1. Defendants may not introduce their own statements
18 unless a hearsay exception applies

19 Defendants, however, cannot admit their own statements, texts,
20 email messages, or call recordings unless a hearsay exception
21 applies. See Fed. R. Evid. 802; United States v. Harry, 816 F.3d
22 1268, 1279 (10th Cir. 2016). The Court should be wary of any attempt
23 that defendants may make to introduce their own statements using
24 narrowly-tailored hearsay exceptions that do not apply. For example,
25 any attempt by defendant to introduce their own statements under the
26 "state of mind" exception to the hearsay rule, Fed. R. Evid. 803(3),
27 should be viewed with skepticism. Rule 803(3) "narrowly limit[s]
28 those admissible statements to declarations of condition-'I'm
scared'-and not belief-'I'm scared because [someone] threatened me.'"

1 United States v. Emmert, 829 F.2d 805, 810 (9th Cir. 1987) (citing
2 United States v. Cohen, 631 F.2d 1223, 1225 (5th Cir. 1987)).

3 Similarly, the "effect on a listener" exception does not allow
4 defendants to admit all of their statements under the theory that the
5 statements are not offered for the truth, but merely to show what she
6 did in response or why she did what she did. Any attempt to admit
7 defendants' statements on this basis would be an improper end run
8 around the hearsay rule. United States v. Torres, 794 F.3d 1053,
9 1061 (9th Cir. 2015) (upholding exclusion of statements that
10 defendant sought to admit under "effect on the listener" exception as
11 defendant "offered the statements for the truth of the defense
12 asserted" and for the "implied assertions" in the statements that
13 another person sent defendant unwittingly on a drug importation
14 mission).

15 2. The "rule of completeness" does not allow defendants
16 to introduce inadmissible statements

17 Moreover, any "rule of completeness" argument based on Federal
18 Fed. R. Evid. 106 ("Rule 106") is applicable only when one party
19 seeks to introduce a misleadingly tailored excerpt of a statement.
20 Fed. R. Evid. 106. Rule 106 "does not, however, require the
21 introduction of any unedited writing or statement merely because an
22 adverse party has introduced an edited version." United States v.
23 Vallejos, 742 F.3d 902, 905 (9th Cir. 2014). It is proper to admit
24 segments of a conversation without including the entire conversation,
25 and adverse parties are not entitled to offer additional statements
26 just because they exist and the proponent has not offered them. See
27 United States v. Collicott, 92 F.3d 973, 983 (9th Cir. 1996). If the
28 statements offered by the defendant do not clarify a misleading

1 impression, the district court should exclude them. Vallejos, 742
2 F.3d at 905; see also United States v. Crosgrove, 637 F.3d 646, 661
3 (6th Cir. 2011) (finding that defendant could not introduce text
4 messages under Rule 106 because messages were too far removed in time
5 to correct any misleading impression). Finally, Rule 106 does not
6 make otherwise inadmissible evidence admissible. Collicott, 92 F.3d
7 at 983; United States v. Cisneros, No. 217CR00229ACAS1, 2018 WL
8 3702497, at *11 (C.D. Cal. 2018) (“[D]efendant’s exculpatory
9 statements to law enforcement are inadmissible hearsay and thus
10 cannot be introduced pursuant to Rule 106.”).

11 **D. Cross-Examination of Defendants and Defense Witnesses**

12 1. Cross-Examination of Defendants

13 The government does not know whether any of the defendants
14 intend to testify at trial or call any witnesses as part of a defense
15 case. If one or more of the defendants do testify, the government
16 should be permitted fully to cross-examine them because a defendant
17 who testifies at trial waives their right against self-incrimination
18 and subjects themselves to cross-examination concerning all matters
19 reasonably related to the subject matter of their testimony. See
20 Ohler v. United States, 529 U.S. 753, 759 (2000) (“It has long been
21 held that a defendant who takes the stand in his own behalf cannot
22 then claim the privilege against cross-examination on matters
23 reasonably related to the subject matter of his direct examination.”)
24 (quoting McGautha v. California, 402 U.S. 183, 215 (1971), vacated in
25 part on other grounds by Crampton v. Ohio, 408 U.S. 941 (1972)).

26 A defendant has no right to avoid cross-examination on matters
27 that call into question his or her credibility or any claim of
28 innocence. United States v. Miranda-Uriarte, 649 F.2d 1345, 1353-54

1 (9th Cir. 1981). The scope of a defendant's waiver is co-extensive
2 with the scope of relevant cross-examination. United States v.
3 Cuozzo, 962 F.2d 945, 948 (9th Cir. 1992); United States v. Black,
4 767 F.2d 1334, 1341 (9th Cir. 1985) ("What the defendant actually
5 discusses on direct does not determine the extent of permissible
6 cross-examination or his waiver. Rather, the inquiry is whether 'the
7 government's questions are reasonably related' to the subjects
8 covered by the defendant's testimony.").

9 As previously noted, defendants R. AYVAZYAN and TERABELIAN have
10 filed a motion in limine to preclude the use of their prior federal
11 bank fraud conspiracy convictions under Federal Rule of Evidence
12 404(b) and to limit the information the government can reveal about
13 these convictions under Federal Rule of Evidence 609. (ECF 340.)
14 The government has opposed this motion (ECF 357), and, pending the
15 Court's ruling, intends to introduce evidence as to the name and
16 nature of the offense for which defendants R. AYVAZYAN and TERABELIAN
17 were convicted -- not just the date and fact of the felony conviction
18 -- on cross-examination of these defendants.⁷ (See ECF 357 at 15-
19 17.)

20 2. Cross-Examination of Defense Witnesses

21 Similarly, if any defendant calls a character witness, the
22 government should be allowed to cross examine that witness with
23 information pertaining to how the witness's opinion of defendant's
24

25 ⁷ As set forth in its opposition to defendants R. AYVAZYAN's and
26 TERABELIAN's motion in limine regarding their prior convictions, the
27 government separately seeks to admit evidence of their prior bank
28 fraud conspiracy conviction under Federal Rule of Evidence 404(b)(2)
as highly probative, among other things, of their knowledge and
intent with respect to the bank fraud conspiracy and substantive
counts charged in this case. (See ECF 357 at 6-15.)

1 character would change if the witness were confronted with a specific
2 instance of defendant's conduct that rebuts that opinion. A
3 character witness who offers an opinion on or discusses defendant's
4 reputation for good character on direct examination can be cross
5 examined with relevant specific instances of conduct. Under Fed. R.
6 Evid. 404(a)(2)(A), character evidence is admissible when offered by
7 the prosecution to rebut "evidence of a pertinent trait" of character
8 offered by a defendant. See also Fed. R. Crim. P. 405(a). "[W]hen
9 the defendant 'opens the door' to testimony about an issue by raising
10 it for the first time himself, he cannot complain about subsequent
11 government inquiry into that issue." United States v. Mendoza-Prado,
12 314 F.3d 1099, 1105 (9th Cir. 2002) (quoting United States v.
13 Hegwood, 977 F.2d 492, 496 (9th Cir. 1992)). Such cross examination
14 can be properly phrased in the form of "have you heard" or "did you
15 know" questions regarding defendant's criminal conduct. See United
16 States v. Scholl, 166 F.3d 964, 974 (9th Cir. 1999).

17 **E. Summary Exhibits**

18 This case involves a large number of documents, including
19 voluminous bank and financial records and loan files. To assist the
20 jury's understanding of the case, the government intends to present
21 charts and summaries that will aid the jury in understanding the
22 evidence, including summary exhibits that summarize: (a) information
23 related to the many PPP and EIDL loans submitted by defendants,
24 including in the names of their aliases; (b) the bank accounts that
25 defendants owned and controlled and used to receive and transfer PPP
26 and EIDL loan funds; and (c) defendants' use of the PPP and EIDL loan
27 proceeds.

28 Federal Rule of Evidence 1006 provides:

1 The proponent may use a summary, chart, or calculation to
2 prove the content of voluminous writings, recordings, or
3 photographs that cannot be conveniently examined in court.
4 The proponent must make the originals or duplicates
5 available for examination or copying, or both, by other
6 parties at a reasonable time and place. And the court may
7 order the proponent to produce them in court.

8 Fed. R. Evid. 1006.

9 The Advisory Committee Notes to Rule 1006 add that "[t]he
10 admission of summaries of voluminous books, records, or documents
11 offers the only practicable means of making their contents available
12 to judge and jury. The rule recognizes this practice, with
13 appropriate safeguards." Fed. R. Evid. 1006, 1972 Advisory Committee
14 Notes; see also United States v. Johnson, 594 F.2d 1253, 1255 (9th
15 Cir. 1979) ("The purpose of Rule 1006 is to allow the use of
16 summaries when the volume of documents being summarized is so large
17 as to make their use impractical or impossible; summaries may also
18 prove more meaningful to the judge and jury.").

19 A summary chart may be admitted as substantive evidence when the
20 proponent establishes that the underlying documents upon which the
21 summary is based are voluminous, admissible, and available for
22 inspection. Johnson, 594 F.2d at 125-26; see also United States v.
23 Rizk, 660 F.3d 1125, 1130 (9th Cir. 2011); United States v. Aubrey,
24 800 F.3d 1115, 1130 (9th Cir. 2015). Although the materials
25 underlying the summary must be admissible, they need not themselves
26 be admitted into evidence. Rizk, 660 F.3d at 1130-31. In addition,
27 the summary chart must be accurate, authentic, and properly
28 introduced. United States v. Scales, 594 F.2d 558, 563 (6th Cir.
1979) (affirming introduction of summary charts presenting an
organization of undisputed objective evidence in terms of relevant
counts of the indictment). Any contention that the chart may contain

1 inaccuracies or omissions goes to the weight of the evidence, not its
2 admissibility. Rizk, 660 F.3d at 1131 at n.2.

3 Rule 1006 does not require that a jury's examination of the
4 underlying records be literally impossible before a summary or a
5 chart may be utilized. "All that is required for the rule to apply
6 is that the underlying writings be 'voluminous' and that in court
7 examination not be convenient." Scales, 594 F.2d at 562. Nor does
8 the large size of, or other complexity to, a summary chart render it
9 inadmissible when it contains otherwise unobjectionable evidence.
10 Id. at 563. Where a chart does not contain complicated calculations
11 that would require an expert for accuracy, authentication of the
12 chart requires only that the witness (1) have properly catalogued the
13 exhibits and records upon which the chart is based; and (2) have
14 knowledge of the analysis of the records referred to in the chart.
15 Id.; see Goldberg v. United States, 789 F.2d 1341, 1343 (9th Cir.
16 1986) (upholding district court's determination that the testimony of
17 a revenue agent as to summaries of voluminous tax records did not
18 include any expert opinions or conclusions); United States v. Free,
19 408 F.3d 855, 869 (7th Cir. 2005) ("When a summary witness simply
20 testifies as to what the government's evidence shows, he does not
21 testify as an expert witness."). The use of other persons in the
22 preparation of summary evidence goes to the weight of the evidence,
23 not its admissibility. See United States v. Soulard, 730 F.2d 1292,
24 1299 (9th Cir. 1984).

25 Finally, summary charts need not contain the defendant's version
26 of events. See United States v. Lemire, 720 F.2d 1327, 1349 (D.C.
27 Cir. 1983); Barsky v. United States, 339 F.2d 180, 181 (9th Cir.
28 1964) (rejecting defendant's argument that summary should be excluded

1 because it did not contain his version of the case; accepting that
2 argument "would be to hold that if a defendant had an alibi, no
3 matter how improbable, then no expert could prepare a summary of the
4 evidence tending to prove guilt").

5 Defendant R. AYVAZYAN has filed a motion in limine seeking to
6 exclude the government's introduction of summary charts (ECF 451), to
7 which the government will be filing an opposition.

8 **F. Summary Witnesses**

9 The government will seek to introduce some of the above summary
10 charts through Marylee Robinson, a Managing Director at Stout Risius
11 Ross, LLC. A summary witness may properly testify about, and use a
12 chart to summarize, evidence that is voluminous and complex. The
13 court and jury are entitled to have a witness "organize and evaluate
14 evidence which is factually complex and fragmentally revealed."
15 United States v. Shirley, 884 F.2d 1130, 1133-34 (9th Cir. 1989)
16 (agent's testimony regarding her review of various telephone records,
17 rental receipts, and other previously offered testimony held to be
18 proper summary evidence, as it helped jury organize and evaluate
19 evidence; summary charts properly admitted); accord United States v.
20 Lemire, 720 F.2d 1327, 1348 (D.C. Cir. 1983). Further, a summary
21 witness may be assisted by others in the preparation of summary
22 evidence; the assistance provided by other people in the preparation
23 of summary evidence goes to its weight, not its admissibility. See
24 United States v. Soulard, 730 F.2d 1292, 1299 (9th Cir. 1984);
25 Diamond Shamrock Corp. v. Lumbermens Mut. Cas. Co., 466 F.2d 722, 727
26 (7th Cir. 1972) ("It is not necessary . . . that every person who
27 assisted in the preparation of the original records or the summaries
28 be brought to the witness stand.").

1 Defendant R. AYVAZYAN has filed a motion in limine seeking to
2 exclude the government's summary witness (ECF 451), to which the
3 government will be filing an opposition.

4 **G. Affirmative Defenses**

5 None of the defendants have given notice of any affirmative
6 defenses or an intent to rely on any affirmative defense, including
7 mental incapacity, entrapment, or duress, or an alibi defense, in
8 response to the government's requests for such notice. Therefore, to
9 the extent defendant may attempt to rely on such a defense, the
10 government reserves the right to object and to move to preclude the
11 defendant from asserting such a defense.

12 In addition, as previously noted, the government filed MIL #1
13 seeking to exclude as a defense any evidence and arguments concerning
14 alleged victim negligence as well as any reference to loan guarantees
15 that specific victims in this case, specifically lenders and loan
16 processors for the PPP, may have been provided by the SBA. (ECF
17 358.) Defendant GRIGORYAN, joined by defendant R. AYVAZYAN, oppose
18 MIL #1, seeking to inquire into and/or introduce evidence regarding
19 these issues at trial. (ECF 383, 386.) For the reasons set forth
20 more fully in its MIL #1, which remains pending, the government
21 submits that "a victim's negligence is not a defense to . . . fraud,"
22 and "[e]vidence of lender negligence is thus not admissible as a
23 defense . . ." United States v. Lindsey, 850 F.3d 1009, 1014 (9th
24 Cir. 2017). For similar reasons, as explained in MIL #1, evidence or
25 argument regarding the SBA's guarantees to PPP lenders is irrelevant
26 to the charges in this case and would be a waste of time and tend to
27 confuse and mislead the jury as to the issues of guilt. Fed. R.
28 Evid. 401-403.

1 **H. Reciprocal Discovery**

2 To date, none of the defendants have produced any discovery to
3 the government despite the government's requests for reciprocal
4 discovery pursuant to Federal Rule of Criminal Procedure 16(b). The
5 reciprocal discovery requirements of Federal Rule of Criminal
6 Procedure 16(b) require the defendant to produce (A) information
7 pertaining to "books, papers, documents, data, photographs, [or]
8 tangible objects . . . [if] the defendant intends to use the item in
9 the defendant's case-in-chief at trial;" (B) Reports of Examinations
10 and Tests; and (C) "a written summary of any testimony that the
11 defendant intends to use under Rules 702, 703, or 705 of the Federal
12 Rules of Evidence" pertaining to expert witnesses. Fed. R. Crim. P.
13 16(b). To the extent any defendant attempts to introduce or use any
14 documents (including texts, emails, or other electronic evidence) at
15 trial that has not been produced and to which the government is
16 entitled under Federal Rules of Criminal Procedure 12.1, 12.2, 16(b),
17 or 26.2, or seeks to rely on an undisclosed affirmative defense, the
18 government reserves the right to object and to request that the Court
19 exclude the documents or the affirmative defense.

20 **VIII. CONCLUSION**

21 The government respectfully requests leave to file such
22 supplemental memoranda as may become necessary during trial.
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