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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD AYVAZIAN,
et al.,

Defendants.

Case No. 20-cr-579 (SVW)

**DEFENDANTS' OPPOSITION TO
GOVERNMENT'S MOTION IN
LIMINE #2 TO ADMIT EVIDENCE
INEXTRICABLY INTERTWINED
WITH THE CHARGED OFFENSES**

Judge: Hon. Stephen V. Wilson
Hearing Date: June 14, 2021
Time: 11:00 a.m.

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PRELIMINARY STATEMENT

After repeatedly telling the defendants that it did not intend to use at trial any evidence from the State of California’s mortgage fraud case charged against Defendants R. Ayvazyan, T. Dadyan and A. Ayvazyan, the government has done an about-face, claiming for the first time that evidence of the state case should be admitted as “other acts” evidence in the government’s case-in-chief. The Government’s motion is a transparent attempt to skirt Rule 404(b) and convince the jury to convict defendants based on evidence of other crimes, wrongs, or acts. By the government’s own definition, the proposed evidence was not used in and was unrelated to the conspiracy charged in the indictment, and its introduction would violate Rule 404(b). Even if the evidence were admissible under Rule 404(b), it should be excluded under Rule 403 because the probative value of the evidence is substantially outweighed by the undue prejudice to defendants if it is introduced. Looming over the inadmissibility of the proposed evidence is the fact that it was seized using tainted information and its use would therefore violate the Fifth Amendment and require reversal of any convictions.

I. STATEMENT OF FACTS

The superseding indictment alleges that defendants were members of a conspiracy to use “stolen, fake, and synthetic identities to fraudulently apply for COVID-19 relief funds.” Dkt. 307, Gov. Opp. to MTD.

Immediately after this case was set for a June 15, 2021 trial, authorities for the State of California arrested defendants R. Ayvazyan, T. Dadyan and A. Ayvazyan and others on charges of “allegedly operating a sophisticated mortgage fraud and green loan scheme” that took place between 2014 and 2020 (hereinafter, “State Case”). *See* State of California Department of Justice, Office of the Attorney General, Press Release, “Attorney General Bonta Announces Arrests and Arraignment in \$15 Million Mortgage Fraud and Green Loan Scheme in Southern California,” May 3, 2021 (“Press Release”) (available at <https://oag.ca.gov/news/press-releases/attorney-general-bonta-announces->

1 arrests-and-arraignment-15-million-mortgage). According to the government, “[t]he
2 state’s 133-count indictment names twelve defendants and is predicated on a six-year
3 fraud scheme that began more than half-a-decade before COVID-19 and the CARES
4 Act-related fraud at the heart of the federal case.” Dkt. No. 331-2, Gov.’s Sur-reply in
5 Response to Def. R. Ayvazyan’s Motion to Dismiss at 3. The government contends that
6 the state case addresses “violations of state law that are *wholly separate* from the
7 violations of federal law addressed in the indictment in this case.” *Id.* at 2 (emphasis
8 added). Moreover, in discussions regarding the discovery related to the State Case, the
9 government “assur[ed]” defendants that it “do[es] not intend to use any of these
10 materials during the government’s case-in-chief in this matter.” *Id.* at 3, Exhibit 1
11 (Letter to Counsel dated May 3, 2021 at 2).

12 Despite these assurances, on the eve of trial the government filed a motion *in*
13 *limine* to admit evidence related to the state case at trial. The government concedes that
14 it is seeking to introduce evidence that was not “directly used to fraudulently obtain and
15 use the loan proceeds described in the FSI.” Dkt. 384, Gov’t Br. at 2. Instead, under
16 the misleading title of “reserve identities,” the government intends to introduce
17 “*evidence relating to additional* stolen or synthetic identities and their supporting
18 instruments of fraud, to include fraudulent identification documents,
19 checks/checkbooks, credit and debit cards, purported official records or certifying
20 instruments, and related email and online accounts.” *Id.* (emphasis added). The purpose
21 of the government’s motion is to admit evidence *that was not used* in the fraud scheme
22 charged in the indictment. Dkt. 384, Gov’t Br. at 8, n.6. The “reserve identity”
23 evidence is only related to the State Case, and thus irrelevant to the present case given
24 that none of the “reserve identity” evidence was used to commit the fraud charged in
25 the indictment.

1 **II. LEGAL STANDARD**

2 Federal Rule of Evidence 404(b) excludes evidence of uncharged crimes,
3 wrongs, or acts to prove the character of a person in order to show that the person acted
4 in conformity with that character. Fed. R. Evid. 404(b). The rule prohibits evidence
5 from being admitted to prove propensity to commit a crime like fraud, but permits
6 evidence to be admitted solely for a limited purpose, such as proof of motive,
7 opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or
8 accident, provided that the government advances before trial its theory of admissibility
9 and carries its burden of satisfying the requirements for the admission of such evidence.
10 *Id.*

11 The Ninth Circuit has urged great caution in admitting evidence under Rule
12 404(b):

13 [E]xtrinsic acts evidence “is not looked upon with favor” and . . .
14 its use “must be narrowly circumscribed and limited.” [A] reluctance to
15 sanction the use of evidence of other crimes stems from the underlying
16 premise of our criminal justice system, that the defendant must be tried
17 for what he did, not for who he is. Under our system, an individual may
18 be convicted only for the offense of which he is charged and not for other
19 unrelated criminal acts which he may have committed. Therefore, the
guilt or innocence of the accused must be established by evidence
relevant to the particular offense being tried, not by showing that the
defendant has engaged in other acts of wrongdoing.

20 *United States v. Hodges*, 770 F.2d 1475, 1479 (9th Cir. 1985) (internal citation omitted)
21 (emphasis added). A criminal defendant “must be tried for what he did, not who he is.”
22 *United States v. Bradley*, 5 F.3d 1317, 1320 (9th Cir. 1993). The purpose of the rule is
23 to ensure that “evidence of prior bad acts or crimes may not be used to prove that a
24 defendant has a propensity to commit the crime charged.” *United States v. Bracy*, 67
25 F.3d 1421, 1432 (9th Cir. 1995). “The government may not invoke Rule 404(b) and
26 proceed to offer, carte blanche, any prior act of the defendant in the same category of
27 crime.” *United States v. Garcia*, 291 F.3d 127, 137 (2d Cir. 2002).

1 In order to admit evidence pursuant to Rule 404(b), it is the government's burden
2 to establish that the proffered evidence "(1) proves a material element of the offense for
3 which the defendant is now charged, (2) if admitted to prove intent, is similar to the
4 offense charged, (3) is based on sufficient evidence [to support a finding that the
5 defendant committed the other act], and (4) is not too remote in time." *United States v.*
6 *Ramirez-Robles*, 386 F.3d 1234, 1242 (9th Cir. 2004). The government is required to
7 "'articulate precisely the evidential hypothesis by which a fact of consequence may be
8 inferred from the other acts evidence.'" *United States v. Mayans*, 17 F.3d 1174, 1181
9 (9th Cir. 1994) (quoting *United States v. Mehrmanesh*, 689 F.2d 922, 830 (9th Cir.
10 1982). "If the evidence meets this test under Rule 404(b), the court must then decide
11 whether the probative value is substantially outweighed by the prejudicial impact under
12 Rule 403." *United States v. Bailey*, 696 F.3d 794, 799 (9th Cir. 2012) (internal
13 quotation marks omitted).

14 Rule 403 also requires exclusion where the probative value of the otherwise
15 admissible evidence is substantially outweighed by the danger of confusing issues at
16 trial, or misleading the jury, or by considerations of undue delay, waste of time, or
17 needless presentation of cumulative evidence. Fed. R. Evid. 403; *see also United States*
18 *v. Lignelli*, No. 2:11-CR-234, 2014 WL 2002294, at *3 (W.D. Pa. May 15, 2014)
19 (excluding evidence in a bank fraud trial of alleged misconduct involving three
20 uncharged properties because the evidence would double the scope of the trial, and "the
21 evidence (and the jury) must remain focused on the three appraisals for which [the
22 defendant] faces the criminal charges in the Indictment"); *Wilson v. Maricopa County*,
23 No. CV-04-2873 PHX-DGC, 2007 WL 686726, at *13 (D. Ariz. Mar. 2, 2007)
24 (excluding evidence under Rule 403 regardless of its admissibility under Rule 404(b)
25 where "[t]he case would devolve into a series of mini-trials concerning the relevancy
26 and outcome of these other cases, resulting in an unnecessarily lengthy trial for the
27 parties, the Court, and the jury").

1 **III. THE SUPPOSED “RESERVE IDENTITIES” EVIDENCE SHOULD BE**
2 **EXCLUDED UNDER RULE 404(b) BECAUSE, BY DEFINITION, THEY**
3 **WERE NOT PART OF THE CHARGED SCHEME**

4 The government defines “reserve identities” as “evidence *relating to* additional
5 stolen or synthetic identities and their supporting instruments of fraud, to include
6 fraudulent identification documents, checks/checkbooks, credit and debit cards,
7 purported official records or certifying instruments, and related email and online
8 accounts.” Dkt. 384, Gov’t Br. at 2. The crux of this definition is that the identities and
9 alleged supporting documents were never an intrinsic part of the charged scheme.
10 Rather, the government suspects that—had the scheme continued—it is possible that
11 the “reserve identities” could have become a part of the scheme at some time in the
12 future. Of course, no defendant can stand trial for a crime that the government believes
13 will be committed in the future. The “reserve identities” evidence should be excluded
14 because it is not “inextricably intertwined” with the charged scheme, and is thus subject
15 to Rule 404(b). Because the “reserve identities” evidence is subject to Rule 404(b), the
16 government can only admit that evidence if it proves that the “reserve identities”
17 “prove[] a material element of the offense for which the defendant is now charged.”
18 They do not, and admission of such unrelated and prejudicial evidence is not permitted
19 under Rule 404(b) or any other rule.

20 **A. The “Reserve Identities” Evidence Is Not “Inextricably Intertwined”**
21 **with the Charges in the Indictment and Is Therefore Subject to Rule**
22 **404(b)**

23 The government’s attempt to admit the so called “reserve identities” evidence
24 violates Rule 404(b). The government argues that the “reserve identities” evidence is
25 “inextricably intertwined” with the charged conspiracy, and is thus admissible without
26 violating Rule 404(b). That argument fails.
27
28

1 **1. To be “inextricably intertwined” with charged conduct, other**
2 **acts must be part of “a single criminal transaction”**

3 The government’s brief focuses on the “inextricably intertwined” language as the
4 only requirement for finding that conduct falls outside Rule 404(b). But the
5 government ignored that, when creating the “inextricably intertwined” standard, the
6 Ninth Circuit explained: “[t]he policies underlying rule 404(b) are inapplicable when
7 offenses committed *as part of a single criminal episode* become other acts simply
8 because the defendant is indicted for less than all of his actions.” *United States v.*
9 *Williams*, 989 F.2d 1061 (9th Cir. 1993). The focus in the Ninth Circuit is on whether
10 the acts were part of a *single criminal transaction or episode*. See, e.g., *United States v.*
11 *Montgomery*, 384 F.3d 1050, 1062 (9th Cir. 2004) (“We conclude that each action was
12 “inextricably intertwined” with the conspiracy, and therefore not subject to Rule
13 404(b), because each *occurred within the temporal scope of the conspiracy and*
14 *comprised the conspiracy.*”); *United States v. Vizcarra–Martinez*, 66 F.3d 1006, 1012
15 (9th Cir. 1995) (“Thus, when it is clear that particular acts of the defendant are part of,
16 and thus inextricably intertwined with, *a single criminal transaction*, we have generally
17 held that the admission of evidence regarding those acts does not violate Rule 404(b).”)
18 (emphasis added to each).

19 For example, in *Vizcarra–Martinez*, the government sought to admit evidence
20 that defendant possessed a small, personal-use amount of methamphetamine when he
21 was arrested for “possession of hydriodic acid with knowledge that it would be used to
22 manufacture methamphetamine.” *Id.* at 1012. The Ninth Circuit found that the District
23 Court had abused its discretion by admitting the evidence. The Ninth Circuit explained
24 that the “methamphetamine found in the defendant’s pocket had nothing to do with the
25 incidents leading to the search, nor did it have any bearing upon the commission of the
26 crime. Thus, we reject the government’s contention that the contested evidence was so
27 inextricably intertwined with the crime as to fall outside the scope of Rule 404(b).” *Id.*
28 at 1013. That analysis is equally applicable to the government’s attempt to introduce the

1 “reserve identities” evidence at trial here. The defendants have made no 404(b)
2 objection to introduction of evidence of identities that the indictment actually alleges
3 were used in the charged conspiracy. The “reserve identities” evidence, in contrast,
4 were never used in the charged conspiracy and therefore are not inextricably
5 intertwined merely because the government can envision a counterfactual scenario in
6 which they might possibly have been used.

7 The government relies on *United States v. Loftis*, 843 F.3d 1173 (9th Cir. 2016),
8 but *Loftis* does not support their position. In *Loftis*, the defendant was charged with
9 five counts of wire fraud based on a broad scheme to defraud multiple investors across
10 multiple states. The indictment included five wires and three investor victims, but the
11 government attempted to introduce evidence of additional wires and additional victims
12 at trial. The District Court partially excluded the evidence under rule 404(b), and the
13 government filed an interlocutory appeal. The Ninth Circuit found that Rule 404(b) did
14 not apply because the uncharged transactions were part of the crime charged. The
15 Court then went on to conduct a 404(b) analysis, stating that “even if the uncharged
16 transactions at issue were not part of the crime charged, they would not be subject to
17 exclusion under Rule 404(b) because they are ‘part of the same transaction’ as the
18 charged transactions.” *Id.* at 1178.

19 Here, the government’s attempt to liken the “reserve identities” evidence with the
20 additional wire transfers in *Loftis* is an apples to oranges comparison that should be
21 rejected. The government is not seeking to introduce additional PPP or EIDL loan
22 applications, or additional wire transfers related to the PPP loan fraud charged in the
23 indictment. It is possible the government could prove additional PPP or EIDL
24 applications were “part of the same transaction” charged in the indictment, and thus
25 “inextricably intertwined” and admissible without violating Rule 404(b). However, the
26 government is attempting to introduce evidence of “fraudulent identification
27 documents, checks/checkbooks, credit and debit cards, purported official records or
28

1 certifying instruments, and related email and online accounts” that have no ties to the
2 PPP loan fraud or the money laundering counts charged in the indictment. This is
3 especially true for the “notary stamps and seals” that the government alleges were
4 found at T. Dadyan and A. Ayvazyan’s residence. The indictment does not contain a
5 single allegation related to notary stamps, thus, possession of these items cannot be
6 “part of the same transaction” alleged in the indictment. The government characterizes
7 this evidence as part of an “assembly line for fraud,” but the indictment does not charge
8 any defendant with creating an assembly line for fraud. Accordingly, the alleged
9 possession of these items by two defendants does not make the evidence “inextricably
10 intertwined” with the conduct charged in the indictment.

11 **2. The “reserve identities” evidence relates to the State Case and**
12 **thus cannot be part of the “transaction” charged in this case.**

13 The government is well aware that the “reserve identities” evidence is *per se*
14 evidence of other crimes, wrongs or acts—it is evidence related to allegations of
15 mortgage fraud charged against multiple defendants by the State of California. For
16 example, as a summary of the type of evidence seized during the search of A.
17 Ayvazyan and T. Dadyan’s home, the government cites “[l]ists of email addresses and
18 user account information with associated passwords, including a page titled, ‘TAMMY
19 INFO FOR MLS ECT.’” Dkt. 384, Gov’t Br. at 5. That page clearly shows login
20 information related to T. Dadyan’s real estate business. MLS stands for Multiple
21 Listing Service, which “is a tool to help listing brokers find cooperative brokers
22 working with buyers to help sell their clients' homes.” [https://www.nar.realtor/nar-doj-](https://www.nar.realtor/nar-doj-settlement/multiple-listing-service-mls-what-is-it)
23 [settlement/multiple-listing-service-mls-what-is-it](https://www.nar.realtor/nar-doj-settlement/multiple-listing-service-mls-what-is-it). The first entry on the page the
24 government cites is an ID number for NRDS, which stands for the National
25 REALTOR® Database System, according to the National Associates of REALTORS.
26 See <https://www.nexusaor.com/help-top-left-menu/293-how-do-i-find-my-nrds-id.html>
27 (“Your National REALTOR® Database System ID, or NRDS, is a 9 digit number that
28 is given by the National Association of REALTORS®, through the local Primary

board, to each of its members.”). The federal indictment does not charge any defendant with mortgage fraud. Rather, it is the State Case that alleges a scheme to commit mortgage fraud using stolen identities and forged instruments, and it is in the State Case that this evidence would be relevant. *See, e.g.*, Ram Decl. Ex. A, 4/26/2021 Indictment filed in Superior Court of the State of California, Los Angeles County at 5-7. The government contends that the state case addresses “violations of state law that are ***wholly separate*** from the violations of federal law addressed in the indictment in this case” and that those violations were part of “a six-year fraud scheme that began more than half-a-decade before COVID-19 and the CARES Act-related fraud at the heart of the federal case.” Dkt. No. 331-2, Gov.’s Sur-reply in Response to Def. R. Ayvazyan’s Motion to Dismiss at 2-3 (emphasis added). Given the government’s position on the State Case, it is impossible to see how evidence related to the State Case could be “inextricably intertwined” with the charges in the superseding indictment related to PPP loan fraud. The only logical conclusion is that the government is attempting to admit the “reserve identities” evidence as propensity evidence.

Additionally, the evidence laid out by the government on pages 5-6 of their brief predates March 2020, the alleged beginning of the conspiracies charged in the indictment. The identities and documents cited on page 5 have been charged as part of the State Case, with allegations about the use of those identities dating back to 2017. For example, the government’s “reserve identities” evidence includes identity documents, such as driver’s licenses and/or social security cards, for Luidmyla K., Adeliya T., Tetiana V., Egia K., Osbaldo V., Mykhail D., Peter R., and Roza A. *See* Gov’t Br. at 5, *citing* Fenton Decl. (ECF 207) Exh. 8. Each of these identities is incorporated into charges in the State Case for acts that allegedly occurred in 2016 and 2017, *years* before the PPP loan fraud is alleged to have occurred. Ram Decl. Ex. A, 4/26/2021 Indictment filed in Superior Court of the State of California, Los Angeles County at 1 (Defendant’s a/k/a listed as Roza A.), 14 (Overt Act related to Peter R.), 15

1 (Overt Acts related to Egia K., Tetiana V., Luidmyla K.), 36 (Overt Act related to
2 Osbaldo V.) 72 (Overt Act related to Adeliya T.), 93 (Overt Acts related to Mykhail D).
3 The government has repeatedly alleged that the state case is “wholly separate from the
4 violations of federal law addressed in the [superseding] indictment.” Thus, the
5 instrumentalities used to commit acts alleged in the State Case cannot be part of “a
6 single criminal transaction” with the fraud and money laundering alleged in the
7 superseding indictment. The “reserve identities” evidence is subject to rule 404(b) and
8 should be excluded.

9 The \$450,000 in cash found at R. Ayvazyan and Terabelian’s house is also
10 subject to exclusion under Rule 404(b). The government argues that because the
11 “primary purpose” of financial fraud is obtaining money, the presence of cash at R.
12 Ayvazyan and Terabelian’s house “is part and parcel of the story of their criminal
13 conduct.” That is not the standard under Rule 404(b). The government cannot prove
14 that the cash was the proceeds of PPP loan fraud. Given that the government’s
15 discovery productions have not revealed \$450,000 in withdrawals by R. Ayvazyan or
16 Terabelian or transfers of cash from others to them—despite months of surveillance—it
17 would appear that the cash was received from completely legitimate sources, or, at
18 worst, sources related to the State Case, not the PPP loan fraud. Given that Armenians
19 are culturally distrustful of banks and prefer to keep their money in cash, the logical
20 explanation for the cash is that R. Ayvazyan and Terabelian obtained the cash from
21 legitimate sources, and chose to keep the cash in their home.

22 Finally, the government argues that the use of the “reserve identities” evidence in
23 the State Case does not preclude the Court from concluding that the identities were also
24 used in the federal case charged in the superseding indictment. That argument ignores
25 that the government plans to introduce evidence of “identities directly used in the PPP
26 or EIDL fraud and related transactions.” Dkt. 384, Gov’t Br. at 8, n.6. The whole
27 purpose of the government’s motion is to admit evidence *that was not used* in the PPP
28

1 or EIDL fraud or money laundering scheme charged in the indictment. Because the
2 “reserve identities” evidence is not part of the same transaction charged in the
3 indictment, it is not “inextricably intertwined” with charged conduct, and must be
4 excluded under 404(b).

5 **B. “Reserve Identities” Evidence Is Not Admissible Under Any of the**
6 **Limited Purposes Permitted by Rule 404(b) Because it Does Not Prove**
7 **A Material Element of any Offense Charged in the Indictment**

8 In order to admit evidence pursuant to Rule 404(b), it is the government’s burden
9 to establish that the proffered evidence “(1) proves a material element of the offense for
10 which the defendant is now charged, (2) if admitted to prove intent, is similar to the
11 offense charged, (3) is based on sufficient evidence [to support a finding that the
12 defendant committed the other act], and (4) is not too remote in time.” *United States v.*
13 *Ramirez-Robles*, 386 F.3d 1234, 1242 (9th Cir. 2004).¹ The government is required to
14 “‘articulate precisely the evidential hypothesis by which a fact of consequence may be
15 inferred from the other acts evidence.’” *United States v. Mayans*, 17 F.3d 1174, 1181
16 (9th Cir. 1994) (quoting *United States v. Mehrmanesh*, 689 F.2d 922, 830 (9th Cir.
17 1982)).

18 The government has not established that “reserve identities” evidence will prove
19 “a material element of the offense for which the defendant is now charged.” *Ramirez-*

20 ¹ The express language of Rule 404(b) also requires that the government provide “reasonable notice”
21 in advance of trial. Fed. R. Evid. 404(b)(2). “Reasonable notice is designed to reduce surprise and
22 promote early resolution of admissibility issues.” *United States v. Vega*, 188 F.3d 1150, 1153 (9th
23 Cir. 1999) (reversing conviction due to government’s failure to disclose other act evidence prior to
24 trial). “Because the notice requirement serves as condition precedent to admissibility of 404(b)
25 evidence, the offered evidence is inadmissible if the court decides that the notice requirement has not
26 been met.” *Id.* (quoting Fed. R. Evid. 404(b) 1991 amendment advisory committee note). The
27 government provided 404(b) notice to defendants about other evidence it seeks to introduce at trial,
28 demonstrating that the government understands that 404(b) notice is required to admit evidence of
other crimes, wrongs or acts. A throwaway argument at the end of a motion in limine is insufficient to
serve as notice under Rule 404(b), particularly when that information comes months after the close of
discovery and less than two weeks before trial.

1 *Robles*, 386 F.3d at 1242. By definition, the “reserve identities” evidence was not used
2 in the commission of the alleged PPP loan fraud or money laundering conspiracies
3 charged in the indictment. Dkt. 384, Gov’t Br. at 8, n.6. As discussed above, the
4 evidence the government categorized as “reserve identities” evidence relates to the
5 State Case, not this case. The “reserve identities” evidence predates March 2020, the
6 alleged beginning of the conspiracies charged in the indictment. The government has
7 not established that admission of the evidence will prove “a material element of the
8 offense for which defendant is now charged.” Accordingly, the “reserve identities”
9 evidence is not admissible under the limited purposes in Rule 404(b).

10 It is worth noting that the government’s motion to admit evidence of the “reserve
11 identities” is just one more attempt by the government to make this case about conduct
12 that has not been charged in the indictment, as opposed to focusing on the actual overt
13 acts and conduct included in the indictment. The government charged the defendants
14 with conspiring to submit “151 fraudulent PPP and EIDL loan applications,” but, on the
15 eve of trial, informed the defendants of its plan to redact the paragraph of the
16 indictment concerning that allegation. *See* Ram Decl., Ex. B, Email from C. Ahn.
17 Nonetheless, the majority of the government’s exhibit list relates to evidence of loan
18 applications and bank records for conduct not charged in the indictment. Now, through
19 a last-minute motion *in limine*, the government is attempting to admit additional types
20 of evidence that have nothing to do with the conduct charged in the indictment. These
21 tactics violate defendants’ fundamental right to due process, and the Court should
22 prevent the government from further violating defendants’ constitutional rights by
23 excluding the “reserve identities” evidence.

24 **IV. THE “RESERVE IDENTITIES” EVIDENCE SHOULD BE EXCLUDED**
25 **UNDER RULE 403**

26 The unduly prejudicial nature of the “reserve identities” evidence is obvious: any
27 juror who hears that defendants T. Dadyan and A. Ayvazyan possessed a “plethora” of
28 fake and synthetic identities, seals and notary stamps will assume that the defendants

1 have a propensity for creating such fake identities and did so here. Dkt. 384, Gov.’s Br.
2 at 7. At the very least, jurors will assume that the fake and synthetic identities unrelated
3 to the PPP fraud case mean that defendants must have committed other crimes with
4 those identities and deserve to be punished.

5 Even if the court finds that “reserve identities” evidence is admissible under Rule
6 404(b), the Court should exclude the “reserve identities” evidence under Rule 403,
7 because the probative value of the evidence “is substantially outweighed by the
8 prejudicial impact” of its admittance. Fed. R. Evid. 403; *United States v. Bailey*, 696
9 F.3d 794, 799 (9th Cir. 2012). With respect to other act evidence in particular, “the
10 determination must be made whether the danger of undue prejudice outweighs the
11 probative value of the evidence in view of the availability of other means of proof and
12 other factors appropriate for making decisions of this kind under Rule 403.” Fed. R.
13 Evid. 404(b) Advisory Committee’s Note. Rule 403 also requires exclusion where the
14 probative value of the otherwise admissible evidence is substantially outweighed by the
15 danger of confusing issues at trial, or misleading the jury, or by considerations of undue
16 delay, waste of time, or needless presentation of cumulative evidence. Fed. R. Evid.
17 403; *see also Wilson v. Maricopa County*, No. CV-04-2873 PHX-DGC, 2007 WL
18 686726, at *13 (D. Ariz. Mar. 2, 2007) (excluding evidence under Rule 403 regardless
19 of its admissibility under Rule 404(b) where “[t]he case would devolve into a series of
20 mini-trials concerning the relevancy and outcome of these other cases, resulting in an
21 unnecessarily lengthy trial for the parties, the Court, and the jury”).

22 Here, “reserve identities” evidence should be excluded under Rule 403 for two
23 reasons. First, “the danger of undue prejudice outweighs the probative value of the
24 evidence in view of the availability of other means of proof.” Fed. R. Evid. 404(b)
25 Advisory Committee’s Note. The Government intends to introduce what it describes as
26 “direct identities” evidence related to the scheme charged in the indictment. Piling on
27 “reserve identities” evidence—alleged instrumentalities of fraud that have nothing to do
28

1 with the charges in the federal case—is unduly prejudicial and cumulative. Given that
2 the government already intends to introduce evidence of “direct identities,” that undue
3 prejudice outweighs any probative value of “reserve identities” evidence.

4 Second, admitting “reserve identities” evidence would be an incredible waste of
5 both the court and jury’s time, requiring a mini-trial on each identity to determine
6 whether it was actually used in the federal case at issue, or whether it is evidence
7 unrelated to the federal case. *See Wilson v. Maricopa County*, No. CV-04-2873 PHX-
8 DGC, 2007 WL 686726, at *13 (D. Ariz. Mar. 2, 2007) (excluding evidence under Rule
9 403 regardless of its admissibility under Rule 404(b) where “[t]he case would devolve
10 into a series of mini-trials concerning the relevancy and outcome of these other cases,
11 resulting in an unnecessarily lengthy trial for the parties, the Court, and the jury”).
12 Given that the government can introduce the “direct identities” evidence, any probative
13 value to the “reserve identities” evidence is outweighed both by “considerations of
14 undue delay, waste of time, or needless presentation of cumulative evidence” and the
15 undue prejudice to defendants. Accordingly, the Court should exclude the “reserve
16 identities” evidence under Rule 403.

17 **V. “RESERVE IDENTITIES” EVIDENCE WOULD INTRODUCE FIFTH**
18 **AMENDMENT ERROR**

19 As noted in the *Kastigar* briefing, the defendants are entitled not just to
20 suppression of the fruits of the poisonous tree, but to prohibit derivative use of tainted
21 information in any way whatsoever. Although the Court held that the search warrants
22 did not require suppression as fruits of the poisonous tree, the search warrants and
23 seized property remain tainted by the use of tainted information both in the search
24 warrants themselves and in the execution thereof. Permitting the introduction of such
25 tainted evidence would violate the Fifth Amendment.

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SIGNATURE ATTESTATION

Pursuant to Local Rule 5-4.3.4(a)(i), the filer attests that all signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.