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17 UNITED STATES OF AMERICA

18 UNITED STATES DISTRICT COURT

19 FOR THE CENTRAL DISTRICT OF CALIFORNIA

20 UNITED STATES OF AMERICA,

21 Plaintiff,

22 v.

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

No. CR 20-579 (A) -SVW

GOVERNMENT'S OBJECTIONS TO
DEFENDANT RICHARD AYVAZYAN'S
PROPOSED VERDICT FORM (ECF 547);
EXHIBIT A (GOVERNMENT'S AMENDED
PROPOSED VERDICT FORMS FOR
DEFENDANTS)

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

9 Plaintiff United States of America, by and through its counsel
10 of record, the Acting United States Attorney for the Central
11 District of California, Assistant United States Attorneys Scott
12 Paetty, Catherine Ahn, and Brian Faerstein, and Department of
13 Justice Trial Attorney Christopher Fenton, hereby files its
14 objections to defendant Richard Ayvazyan's proposed verdict form
15 (ECF 547).

16 These objections are based upon the attached memorandum of
17 points and authorities, the attached exhibit containing the
18 government's amended proposed verdict forms for defendants, the
19 files and records in this case, and such further evidence and
20 argument as the Court may permit.

21 Dated: June 21, 2021

Respectfully submitted,

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26 Chief, Criminal Division

27 /s/
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The government submits the following objections to defendant Richard Ayvazyan's ("defendant") proposed verdict form (ECF 547). The government previously submitted a proposed verdict form that included separate verdict forms for each defendant, with the objective of simplifying and focusing the jury's consideration of the charges against each defendant (ECF 452). Conversely, defendant's proposed verdict form injects unnecessary confusion and improper argument into what should be a straightforward form guiding the jury's consideration of the charges against each defendant.

The government respectfully requests that the Court submit to the jury the proposed amended verdict form attached hereto as Exhibit A, which conforms the government's prior submission to the four defendants that ultimately have proceeded to trial.¹

II. OBJECTIONS TO DEFENDANT'S PROPOSED VERDICT FORM

A. Objection #1: The Government Objects to Defendant's Proposal of a Single Verdict Form for All Defendants

The government's proposed individual verdict forms for each defendant facilitates the jury's separate and careful consideration of the charges against each defendant. (See ECF 452.) This approach is consistent with the Ninth Circuit's Model Criminal Jury Instruction Number 3.13 for "Separate Consideration of Multiple Counts - Multiple Defendants," which instructs jurors that they "must decide the case of each defendant on each crime charged

¹ Because not all eight defendants have proceeded to trial, the government has limited the caption on the cover page of each individual verdict form to the four defendants that are on trial in order to avoid potential juror confusion.

1 against that defendant separately." Ninth Circuit Manual of Model
2 Criminal Jury Instructions No. 3.13. The government has included
3 this model instruction in its proposed jury instructions previously
4 submitted to the Court. (See ECF 373, Government's Proposed
5 Instruction No. 9.)

6 Not only is the government's proposal consistent with the jury
7 instructions it anticipates the Court will provide in this case, but
8 also it provides a practical means for the jury to evaluate the
9 evidence against each defendant and to return verdicts consistent
10 with those deliberations. Should the jury reach an impasse with
11 respect to one or more defendants or counts, separate verdict forms
12 will better assist the jury in its objective of returning unanimous
13 verdicts where it can reach consensus. Such an approach squares
14 with Federal Rule of Criminal Procedure 31(b), which provides, "[i]f
15 there are multiple defendants, the jury may return a verdict at any
16 time during its deliberations as to any defendant about whom it has
17 agreed," and "[i]f the jury cannot agree on all counts as to any
18 defendant, the jury may return a verdict on those counts on which it
19 has agreed." Fed. R. Crim. P. 31(b)(1)-(2).

20 As courts also have recognized, separate verdict forms for each
21 defendant may head off juror confusion in multiple defendant cases
22 and forestall later challenges arising out of such potential
23 uncertainty, including on appeal. See, e.g., United States v.
24 Dhaliwal, 468 F. App'x 666, 669 (9th Cir. 2012) (rejecting
25 defendant's argument regarding potential juror confusion on drug
26 quantity finding as to defendant where "the jury was given
27 separate verdict forms for each defendant"); United States v.
28 Nobari, No. 103-CR-05453 OWW, 2006 WL 2535052, at *25 (E.D. Cal.

1 Aug. 31, 2006) (no juror confusion as to unanimity finding where
2 "[t]he verdict forms also contained the finding that a unanimous
3 verdict had to be reached in every finding as the separate verdict
4 forms as to each Defendant"), aff'd, 574 F.3d 1065 (9th Cir. 2009);
5 cf. Kansas v. Carr, 577 U.S. 108, 124 (2016) (in capital penalty
6 phase, approving fact that "court instructed the jury to consider
7 the 'individual' or 'particular defendant' by using four separate
8 verdict forms for each defendant, one for each [victim]").

9 In addition, the government's individual verdict forms provide
10 brief descriptions of the transactions charged in the substantive,
11 non-conspiracy counts in the superseding indictment. This approach
12 is intended to aid in the jury's informed and efficient
13 consideration of the charges against each defendant without
14 requiring jurors to resort to frequent and confusing cross-
15 references to the trial superseding indictment.

16 Defendant's proposed verdict form undermines all of these
17 objectives. (See ECF 547.) Defendant proposes a single verdict
18 form, combining counts for which all defendants are charged with
19 counts for which some but not all defendants are charged with counts
20 for which just a single defendant is charged. Instead of focusing
21 the jurors' attention on a careful, independent, and straightforward
22 evaluation of the charges against each defendant, defendant's
23 proposal is disjointed and will sow confusion as the jurors try to
24 figure out how to navigate the components of the form.

25 For example, for the wire fraud (counts 2-12) and bank fraud
26 (counts 13-20) scheme counts, defendant's form requires the jury
27 first to decide whether each defendant is "Not Guilty on All
28 Counts," "Guilty Beyond a Reasonable Doubt on All Counts," or

1 "Guilty on Some Counts." (Id. at 1, 2.) Since defendant Vahe
2 Dadyan is not charged with all wire fraud and bank fraud counts, the
3 form provides a placeholder in the middle category differentiating
4 him from the other defendants. The verdict form further confuses
5 matters by requiring the jury to write in the specific counts for
6 which it finds each defendant guilty, should the jury check off the
7 box that it finds a given defendant only "Guilty on Some Counts."
8 The government's proposed verdict forms, on the other hand, allow
9 the jurors to consider each of the wire and bank fraud counts for
10 which each defendant is charged separately and simply place an "X"
11 on the line for "Guilty" or "Not Guilty."

12 Defendant's proposed verdict form also does not provide context
13 or any substantive information for each charge. This will require
14 jurors to cross-reference the trial superseding indictment in order
15 to recall and understand the basis for each charge in defendant's
16 verdict form. While this might not be a significant lift in a run-
17 of-the-mill drug or firearms case, it will make the jurors' job more
18 difficult in a fraud case such as this. The First Superseding
19 Indictment is detailed and extensive, with numerous disparate
20 charges and 64 overt acts in the wire/bank fraud conspiracy count,
21 as well as a multitude of different company names, loan
22 applications, and financial transactions. The government's proposed
23 verdict forms for each defendant include information summarizing the
24 relevant information for each substantive count to aid in the jury's
25 deliberations. Defendant's three-and-a-half page form omits any
26
27
28

1 such guideposts and will make the jury's job harder and more complex
2 when it deliberates.²

3 **B. Objection #2: The Government Objects to Defendant's Use of**
4 **"Single or Unitary" to Describe the Charged Conspiracies**
5 **and Schemes and His Framing of the Conspiracy Counts**

6 In the question headings for the conspiracy and scheme counts
7 in defendant's proposed verdict form, defendant uses the modifier
8 "single or unitary" to describe "[c]onspiracy" and "scheme" for
9 Counts One (bank/wire fraud conspiracy), Two through Twelve (wire
10 fraud), Thirteen through Twenty (bank fraud), and Twenty-Six (money
11 laundering conspiracy). (ECF 547.) The government's objection to
12 this language is three-fold: (1) defendant's insertion of this
13 modifier improperly seeks to insert one of his apparent (and legally
14 incorrect) theories of defense into the verdict form, i.e., that
15 there were multiple conspiracies and not just a central bank/wire
16 fraud conspiracy and a central money laundering conspiracy; (2) this
17 proposed language and the structure of the conspiracy counts in his
18 verdict form fail to account for a specific unanimity finding that
19 is necessary in this case; and (3) the use of this language will
20 further confuse the jury based on the actual charges in this case.

21 First, defendant's inclusion of the modifier "single or
22 unitary" is based on a flawed assumption that the evidence in this
23 case supports a "multiple conspiracies" instruction and theory of
24 defense. Defendant has included "multiple conspiracies"
25 instructions in his proposed jury instructions in connection with

26
27 ² Defendant's proposed form injects additional confusion by
28 reordering the names of the four defendants at trial in the list of
defendants under each count, listing the names alphabetically
instead of in the order they appear in the case caption in the
superseding indictment.

1 both the bank/wire fraud conspiracy charged in Count One and the
2 money laundering conspiracy charged in Count Twenty-Six. (See ECF
3 372, Defense Proposed Instruction Nos. 2, 9.) He also has proposed
4 a "multiple schemes" instruction - though no such model instruction
5 exists under the Ninth Circuit Manual of Model Criminal Jury
6 Instructions - for the wire fraud and bank fraud charges in this
7 case. (Id., Defense Proposed Instruction No. 7.) As defendant made
8 clear during his opening statement, one of his theories of defense
9 will be that there are purportedly multiple "joint ventures" which
10 somehow absolves him of responsibility in this case.

11 Based on the evidence presented thus far, as well as the
12 additional evidence the government expects to admit, there is no
13 factual basis for the Court to instruct the jury on "multiple
14 conspiracies" - much less to include the "single or unitary"
15 language in the final verdict forms. A defendant is not entitled to
16 what amounts to a specific unanimity instruction based on a
17 "multiple conspiracies" defense theory unless there is a "genuine
18 possibility of confusion" about the existence of multiple
19 conspiracies. See United States v. Lapier, 796 F.3d 1090, 1096-97
20 (9th Cir. 2015) (specific unanimity instruction necessary where
21 "perfect storm" of potential "jury confusion," including where
22 "indictment was broadly worded and did not name the coconspirators,"
23 the "evidence adduced at trial credibly showed at least two separate
24 conspiracies," and "even the prosecutor admitted that the government
25 may have proved two separate conspiracies"). In evaluating whether
26 such a "genuine possibility" exists, the Ninth Circuit has
27 "considered a non-exhaustive list of factors including the text of
28 the indictment, the clarity and presentation of the government's

1 argument, the complexity of the evidence, and the clarity or
2 ambiguity of the jury instructions." Id. at 1097.

3 Here, the government has alleged and presented evidence
4 regarding a conspiracy to commit bank fraud and wire fraud in
5 connection with the Paycheck Protection Program ("PPP") and Economic
6 Injury Disaster Loan ("EIDL") program starting in or around March
7 2020. (ECF 154, 1.) The government has separately alleged and
8 presented evidence regarding a conspiracy to engage in money
9 laundering with respect to the fraudulently obtained proceeds of the
10 bank/wire fraud conspiracy during the same general time period.
11 (Id., Count 26.) In connection with both alleged conspiracies, the
12 government has specifically alleged the coconspirators, provided an
13 exemplary list of loan applications and bank transactions in the
14 overt acts showing how these specific conspiracies were carried out,
15 and presented evidence illustrating clearly the manner, means,
16 coconspirators, and fruits of both of the alleged conspiracies.

17 At the end of trial, the government does not expect the defense
18 to be in any better position to point to credible evidence of an
19 entirely separate conspiracy relating to fraudulent PPP/EIDL loan
20 applications that could lead to the "genuine possibility of
21 confusion" among the jurors about the bank/wire fraud and money
22 laundering conspiracies at issue here.³ The proposed "single or
23

24 ³ The government has moved in limine to preclude defense
25 evidence or argument regarding a separate indictment brought by the
26 State of California alleging a mortgage and green loan fraud scheme
27 that took place in the years before the PPP/EIDL programs under the
28 CARES Act. (See ECF 550.) But even if evidence of this separately
alleged scheme by the State, focused predominantly on the years
between 2014 and 2019, was admissible for some purpose, the
factually distinct allegations in that case do not provide a
credible basis for the "genuine possibility of confusion" about the
conspiracies alleged here.

unitary" language is thus unfounded and should be rejected. See United States v. Perry, 550 F.2d 574, 532-33 (9th Cir. 1977) (affirming trial court's refusal to give multiple conspiracies instruction, explaining "[t]he crucial point that defendants miss in this case is the fact that the jury could find that there were several different agreements involving the defendants, all of which would then connect the defendants to the general overall conspiracy as charged in the indictment"); United States v. Hussain, No. 16-cr-00462-CRB, 2018 WL 3619797, at *35 (N.D. Cal. July 30, 2018) ("[T]he standard is not whether it is possible that jurors might find multiple conspiracies, but whether there is a 'genuine possibility of confusion' among the jurors.") (emphasis in original) (quoting Lapier, 796 F.3d at 1096).

Second, defendant compounds his error in including this "single or unitary" language in his verdict form by not separately accounting for the two distinct objects of each of the bank/wire fraud conspiracy and the money laundering conspiracy. Specifically, Count One alleges that the defendants conspired to commit both wire fraud, in violation of 18 U.S.C. § 1343, and bank fraud, in violation of 18 U.S.C. § 1344(2). (ECF 154, Count 1.) Similarly, Count Twenty-Six alleges that the defendants conspired to commit both concealment money laundering, in violation of 18 U.S.C. § 1956(a)(1)(B)(i), and transactional money laundering, in violation of 18 U.S.C. § 1957. (Id., Count 26.) However, the jury does not need to find the defendants conspired to commit both objects in each alleged conspiracy to find them guilty. See Ninth Circuit Manual of Model Criminal Jury Instructions, No. 8.20 ("You must find that there was a plan to commit at least one of the crimes alleged in the

1 indictment as an object of the conspiracy with all of you agreeing
2 as to the particular crime which the conspirators agreed to
3 commit."). Thus, the government accounts for these two separate
4 objects in each charged conspiracy in its proposed verdict forms,
5 allowing the jury to determine whether each defendant conspired to
6 commit one or both of these alleged objects, requiring the jurors'
7 unanimity on each of these findings. (See generally ECF 452.)

8 Defendant's proposed verdict form glosses over this distinction
9 and improperly seeks to require the government to prove a "single or
10 unitary" conspiracy to achieve both alleged objects in the charged
11 conspiracy counts. To be clear, the government believes the
12 evidence supports a finding that defendants conspired to commit both
13 objects in each of the two alleged conspiracies. But it is not
14 required to prove as much, and defendant's attempt to confuse the
15 jury with the "single or unitary" modifier should be rejected.

16 Finally, the use of "single or unitary" to modify both
17 conspiracies in defendant's verdict form is especially confusing in
18 that the government has in fact charged two separate conspiracies in
19 this case. The alleged conspiracies cover different objects and,
20 when properly instructed, the jury should not be confused about its
21 independent evaluation of the distinct conspiracies with which
22 defendants are charged. The use of "single or unitary" in the
23 verdict form (as well as the factually unsupported "multiple
24 conspiracies" jury instruction) will only inject confusion where it
25 does not otherwise exist. The same reasoning applies for
26 defendant's proposed use of the "single or unitary" modifier in his
27 verdict form for the wire fraud scheme and the bank fraud scheme,
28 which charge distinct harms and are based clearly upon the

1 fraudulent PPP/EIDL loan applications at the heart of this case.⁴

2 **C. Objection #3: The Government Objects to Defendant's**
3 **Inclusion of the Venue Question as to the Alleged Wire**
4 **Fraud Counts Because He Has Waived a Challenge to Venue**

5 Defendant proposes a question regarding venue with respect to
6 the wire fraud scheme alleged in Counts Two through Twelve. (See
7 ECF 547 at 1.) The government objects to defendant's inclusion of
8 this question because defendant waived a challenge to venue by
9 failing to object to it before trial pursuant to Federal Rule of
10 Criminal Procedure 12(b)(3)(A)(i). A challenge to venue "must be
11 raised by pretrial motion if the basis for the motion is then
12 reasonably available and the motion can be determined without a
13 trial on the merits." Fed. R. Crim. P. 12(b)(3). The Ninth Circuit
14 has "held that a failure to timely raise a pretrial objection
15 required by Rule 12, 'absent a showing of good cause,' constitutes a
16 waiver - we will not review the objection, even for plain error."
17 United States v. Ghanem, 993 F.3d 1113, 1120 (9th Cir. 2021).
18 Defendant provides no good cause for his failure to challenge venue
19 before trial, and thus his request to include a venue question in
20 the proposed verdict form should be rejected.

21 In addition, even though defendant has waived his right to
22 challenge venue or submit it to the jury, the government notes that
23 the content, formulation, and placement of defendant's proposed
24 venue question with respect to the wire fraud scheme misstates the

25 ⁴ The government also objects to defendant's use of "or
26 artifice" in his proposed language for both the wire fraud and bank
27 fraud questions in his verdict form. (See, e.g., ECF 547, Counts 2-
28 12 ("... charging the transmission of wires for the purpose of
executing a single or unitary scheme or artifice to defraud . .
").) This language is superfluous and unnecessary, and will lead
to juror confusion.

1 law and injects additional unnecessary confusion.

2 First, defendant's limitation of the basis for venue as to
3 whether "the wire was sent to or from the Central District of
4 California" is legally incorrect. Because "[w]ire fraud is a
5 'continuing offense' . . . venue may lie in all of the places where
6 any part was accomplished." United States v. Pace, 314 F.3d 344,
7 350 (9th Cir. 2002) (citing 18 U.S.C. § 3237(a)) (emphasis added).
8 "Crimes that are not unitary but instead span space and time . . .
9 may be considered continuing offenses under 18 U.S.C. § 3237(a).
10 Continuing offenses may be prosecuted 'in any district in which such
11 offense was begun, continued, or completed.'" Id. (quoting United
12 States v. Corona, 34 F.3d 876, 879 (9th Cir. 1994)). With respect
13 to wire fraud in particular, under the continuing offense
14 construction, "venue is established in those locations where the
15 wire transmission at issue originated, passed through, or was
16 received, or from which it was 'orchestrated.'" Id. (quoting United
17 States v. Palomba, 31 F.3d 1456, 1461 (9th Cir. 1994)) (emphasis
18 added). See also United States v. Yagman, No. CR 06-227(A)-SVW,
19 2007 WL 9724388, at *17 (C.D. Cal. May 3, 2007) ("Consequently, as
20 long as one act furthering the execution of a single scheme to
21 defraud under Section 157 occurs within the Central District of
22 California (such as in a wire fraud case), venue is proper before
23 this Court.") (citing Pace, 314 F.3d at 350).

24 Here, the government expects that at a minimum, the proof at
25 trial demonstrates that defendants "orchestrated" the wire fraud
26 scheme from the Central District of California, including for the
27 time period encompassed by the wire transmissions charged in the
28 First Superseding Indictment. There is no requirement that "the

1 wire was sent to or from the Central District of California," and
2 thus defendant's legal construction of the standard is incorrect.

3 Second, the formulation of the venue question for this
4 continuing offense in defendant's proposed verdict form, with a
5 separate finding for each charged transmission, is unnecessary,
6 duplicative, and confusing. Because wire fraud is a continuing
7 offense, "venue may lie in all of the places where any part was
8 accomplished." Pace, 314 F.3d at 350. Listing out each wire
9 transmission separately is thus unnecessary, as the jury could make
10 a finding as to venue for the wire fraud counts based on evidence
11 the government presents with respect to the orchestration of the
12 scheme as a whole for the time period encompassed by the relevant
13 wire transmissions.

14 Finally, defendant's placement of the venue question for each
15 wire fraud count in between the foundational questions as to the
16 wire fraud counts for which defendants are guilty or not guilty is
17 confusing and disjointed. In addition to the structural issues the
18 government identified above with respect to the formulation of the
19 wire fraud questions (as explained in Objection Nos. 1 and 2
20 herein), the interjection of the venue question in the middle of the
21 wire fraud scheme section interrupts the natural flow of the jurors'
22 consideration of the issue of substantive guilt.

23 In sum, defendant's proposed venue question should be rejected
24 because defendant waived any challenge to venue by not raising it
25 before trial. Fed. R. Crim. P. 12(b)(3)(A)(i). If the Court
26 overlooks defendant's waiver, his proposed venue question should be
27 rejected as legally erroneous and confusing.

D. Objection #4: The Government Objects to the Omission of a Question Regarding Defendant Richard Ayvazyan's Commission of Money Laundering While on Pretrial Release

In its proposed verdict form as to defendant Richard Ayvazyan, the government includes a conditional follow-up question for each of the five concealment money laundering counts charged against defendant in Counts Twenty-Eight through Thirty-Two. The follow-up questions pertain to the charges against defendant for committing offenses while on pretrial release, in violation of 18 U.S.C. § 3147. Specifically, the follow-up questions ask the jury to make a finding (if they have found defendant guilty of the underlying money laundering offense) as to whether defendant committed the offense while on pretrial release. (See ECF 452 at ECF-stamped pages 18-22.) The government included these follow-up questions because the allegations against defendant in the First Superseding Indictment under 18 U.S.C. § 3147 have the potential to increase his sentencing exposure beyond the statutory maximum for the underlying offense, and thus must be proven to the jury beyond a reasonable doubt. See United States v. Rosas, 615 F.3d 1058, 1065 (9th Cir. 2010); see also Apprendi v. New Jersey, 530 U.S. 466, 490 (2000).⁵

Defendant's proposed verdict form fails to specify any follow-up questions with respect to the section 3147 allegations against him in Counts Twenty-Eight through Thirty-Two of the First Superseding Indictment. The government objects to defendant's failure to account for this issue in his proposed verdict form.

⁵ The government also has included a jury instruction to account for defendant's alleged commission of crimes while on pretrial release in its proposed jury instructions. (See ECF 373, Government's Proposed Instruction No. 27.)

E. Objection #5: The Government Objects to Defendant's Omission of the Specific Felony Predicate for the Aggravated Identity Theft Counts

In his proposed verdict form, for the aggravated identity theft counts charged against defendant and his coconspirators Marietta Terabelian and Artur Ayvazyan, defendant describes the relevant charge as "Aggravated Identity Theft in Relation to a Felony." (See ECF 547 at 3 (Counts 21, 22, 24).) The government objects to the omission of the underlying predicate felony alleged in the indictment with respect to each of these counts, proof of which is a required element of the offense under 18 U.S.C. § 1028A(a)(1).

Section 1028A(a)(1) prescribes the knowing transfer, possession, or use, without lawful authority, of a means of identification of another person "during and in relation to any felony violation enumerated in subsection (c)" of the statute. 18 U.S.C. § 1028A(a)(1). The statute provides an enumerated list of predicate felonies, which includes bank fraud and wire fraud. See 18 U.S.C. § 1028A(c)(5).

Defendant's formulation of the aggravated identity theft counts in his proposed verdict form implies that any felony can be a predicate offense, which is not the law. In its proposed verdict forms as to each defendant, the government identifies the charged predicate felony (bank or wire fraud, as specified in the First Superseding Indictment) for each aggravated identity theft count. This approach ensures the jury will make a finding as to the aggravated identity theft charges that is expressly based on a legally sufficient predicate offense.

1 **III. CONCLUSION**

2 For the foregoing reasons, the government respectfully requests
3 that this Court deny defendant Richard Ayvazyan's request that his
4 proposed verdict form be submitted to the jury and instead provide
5 the government's amended proposed verdict forms, attached hereto as
6 Exhibit A, to the jury.