

1 TRACY L. WILKISON
Acting United States Attorney
2 SCOTT M. GARRINGER
Assistant United States Attorney
3 Chief, Criminal Division
SCOTT PAETTY (Cal. Bar No. 274719)
4 CATHERINE AHN (Cal. Bar No. 248286)
BRIAN FAERSTEIN (Cal. Bar No. 274850)
5 Assistant United States Attorneys
Major Frauds/Environmental and Community Safety Crimes Sections
6 1100/1300 United States Courthouse
312 North Spring Street
7 Los Angeles, California 90012
Telephone: (213) 894-6527/2424/3819
8 Facsimile: (213) 894-6269/0141
E-mail: Scott.Paetty@usdoj.gov
9 Catherine.S.Ahn@usdoj.gov
Brian.Faerstein@usdoj.gov

10 JOSEPH BEEMSTERBOER
Acting Chief, Fraud Section
11 Criminal Division, U.S. Department of Justice
CHRISTOPHER FENTON
12 Trial Attorney, Fraud Section
Criminal Division, U.S. Department of Justice
13 1400 New York Avenue NW, 3rd Floor
Washington, DC 20530
14 Telephone: (202) 320-0539
Facsimile: (202) 514-0152
15 E-mail: Christopher.Fenton@usdoj.gov

16 Attorneys for Plaintiff
17 UNITED STATES OF AMERICA

18 UNITED STATES DISTRICT COURT

19 FOR THE CENTRAL DISTRICT OF CALIFORNIA

20 RICHARD AYVAZIAN,
aka "Richard Avazian" and
21 "Iuliia Zhadko,"
MARIETTA TERABELIAN,
22 aka "Marietta Abelian" and
"Viktoria Kauichko,"
23 ARTUR AYVAZIAN,
aka "Arthur Ayvazyan," and
24 TAMARA DADYAN,
MANUK GRIGORYAN,
25 aka "Mike Grigoryan," and
"Anton Kudiumov,"
26 ARMAN HAYRAPETYAN,
EDVARD PARONYAN,
27 aka "Edvard Paronian" and
"Edward Paronyan," and
28 VAHE DADYAN,

No. CR 20-579(A)-SVW

GOVERNMENT'S OPPOSITION TO
DEFENDANT RICHARD AYVAZIAN'S
MOTION FOR NEW TRIAL AND/OR
JUDGMENT OF ACQUITTAL (ECF 683)

Defendants.

Plaintiff United States of America, by and through its counsel of record, the Acting United States Attorney for the Central District of California, Assistant United States Attorneys Scott Paetty, Catherine S. Ahn, and Brian Faerstein, and Department of Justice Trial Attorney Christopher Fenton, hereby files its opposition to defendant Richard Ayvazyan's motion for a new trial and/or judgment of acquittal, which defendants Marietta Terabelian and Artur Ayvazyan have joined (ECF 683, 688, 691).¹ This opposition is based upon the attached memorandum of points and authorities, the testimony and exhibits admitted at trial, the stipulations of fact entered into between the parties during trial, the files and records in this case, and such further evidence and argument as the Court may permit.

Dated: July 22, 2021

Respectfully submitted,

TRACY L. WILKISON
Acting United States Attorney

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

/s/

SCOTT PAETTY
CATHERINE AHN
BRIAN FAERSTEIN
Assistant United States Attorneys
CHRISTOPHER FENTON
Department of Justice Trial Attorney

Attorneys for Plaintiff
UNITED STATES OF AMERICA

¹ Defendant Artur Ayvazyan also filed his own motions for judgment of acquittal and new trial, (ECF 686, 687), to which the government will be responding separately.

TABLE OF CONTENTS

<u>DESCRIPTION</u>	<u>PAGE</u>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	iii
MEMORANDUM OF POINTS AND AUTHORITIES.....	1
I. INTRODUCTION.....	1
II. RELEVANT LEGAL STANDARDS.....	1
A. Federal Rule of Criminal Procedure 29.....	1
B. Federal Rule of Criminal Procedure 33.....	1
III. ARGUMENT.....	2
A. The Government Proved the Fraud Conspiracy and Schemes....	2
1. The Government's Evidence Was Overwhelming.....	2
2. The Court Correctly Denied Defendant's Requested Multiple-Conspiracies and Schemes Jury Instructions.....	3
B. The Court's Admission of "Reserve Identities" Evidence and Exclusion of the State Case Does Not Warrant a New Trial.....	6
C. Defendant is Not Entitled to a New Trial on the Aggravated Identity Theft Counts.....	8
1. The Evidence Does Not Preponderate Heavily Against the Aggravated Identity Theft Verdicts.....	8
a. Count 21 - Mark Zindroski.....	8
b. Count 22 - Nazar Terabelian.....	9
2. The Aggravated Identity Theft Instructions Were Correct.....	10
D. The Government Proved Venue of the Wire Fraud Counts by at Least a Preponderance of the Evidence.....	12
1. The Government's Evidence of Venue Was Sufficient...12	
2. The Court's Denial of Defendant's Proposed Special Verdict Form Does Not Warrant a New Trial...15	
E. Witness Anthony Farrer Did Not Perjure Himself.....	16

TABLE OF CONTENTS (CONTINUED)

<u>DESCRIPTION</u>	<u>PAGE</u>
F. The Court Correctly Denied Defendant's Motions to Exclude the Government's Summary Witnesses.....	19
G. The Court's Jury Instructions Regarding the Money Laundering Conspiracy Count Were Proper.....	19
H. The Government Adduced Sufficient Untainted Evidence on All Counts of Conviction.....	22
I. The Government Proved Forfeitability of the \$451,185 in U.S. Currency and Six Watches by at Least a Preponderance of the Evidence.....	22
J. Defendant Was Not Denied an Impartial Jury.....	24
K. There Was No Cumulative Error Warranting a New Trial.....	25
IV. CONCLUSION.....	25

TABLE OF AUTHORITIES

<u>DESCRIPTION</u>	<u>PAGE</u>
Cases	
<u>Jackson v. Virginia,</u>	
443 U.S. 307 (1979)	1, 14
<u>Killian v. Poole,</u>	
282 F.3d 1204 (9th Cir. 2002)	25
<u>Sprint/United Management Co. v. Mendelsohn,</u>	
552 U.S. 379 (2008)	7
<u>United States v. 1982 Yukon Delta Houseboat,</u>	
774 F.2d 1432 (9th Cir. 1985)	22
<u>United States v. Barragan,</u>	
871 F.3d 689 (9th Cir. 2017)	4
<u>United States v. Childs,</u>	
5 F.3d 1328 (9th Cir. 1993)	13
<u>United States v. de Cruz,</u>	
82 F.3d 856 (9th Cir. 1996)	25
<u>United States v. Fernandez,</u>	
388 F.3d 1199 (9th Cir. 2004)	3, 4, 5
<u>United States v. George,</u>	
420 F.3d 991 (9th Cir. 2005)	16
<u>United States v. Harmon,</u>	
537 F. App'x 719 (9th Cir. 2013)	2, 6
<u>United States v. Kartermann,</u>	
60 F.3d 576 (9th Cir. 1995)	25
<u>United States v. Kranovich,</u>	
401 F.3d 1107 (9th Cir. 2005)	1

TABLE OF AUTHORITIES (CONTINUED)

<u>DESCRIPTION</u>	<u>PAGE</u>
<u>United States v. Lapier,</u>	
796 F.3d 1090 (9th Cir. 2015)	5
<u>United States v. Lopez,</u>	
-- F.4th --, 2021 WL 2795426 (9th Cir. July 6, 2021)	16
<u>United States v. Lozoya,</u>	
982 F.3d 648 (9th Cir. 2020)	16
<u>United States v. Melrose East Subdivision,</u>	
357 F.3d 493 (5th Cir. 2004)	22
<u>United States v. Murray,</u>	
752 F. App'x 439 (9th Cir. 2018)	12
<u>United States v. Osuna-Alvarez,</u>	
788 F.3d 1183 (9th Cir. 2015)	12
<u>United States v. Pace,</u>	
314 F.3d 344 (9th Cir. 2002)	12, 13, 15, 16
<u>United States v. Payne,</u>	
944 F.2d 1458 (9th Cir. 1991)	25
<u>United States v. Pimentel,</u>	
654 F.2d 538 (9th Cir. 1981)	2
<u>United States v. Ruelas-Arreguin,</u>	
219 F.3d 1056 (9th Cir. 2000)	15
<u>United States v. Singh,</u>	
979 F.3d 697 (9th Cir. 2020)	7
<u>United States v. Torres,</u>	
794 F.3d 1053 (9th Cir. 2015)	2
<u>United States v. Von Stoll,</u>	
726 F.2d 584 (9th Cir. 1984)	21

TABLE OF AUTHORITIES (CONTINUED)

<u>DESCRIPTION</u>	<u>PAGE</u>
<u>United States v. Young,</u>	
17 F.3d 1201 (9th Cir. 1994)	18
Statutes	
18 U.S.C. § 2(b)	9, 15
18 U.S.C. § 1028A(a) (1)	12
18 U.S.C. § 1343	20
18 U.S.C. § 1344(2)	20, 21
18 U.S.C. § 1349	20
18 U.S.C. § 1956(c) (1)	20
Rules	
Federal Rule of Criminal Procedure 12(b) (3) (D)	7
Federal Rule of Criminal Procedure 29	1
Federal Rule of Criminal Procedure 33	1
Federal Rule of Evidence 403	7
Other Authorities	
Cassella, S., Asset Forfeiture Law in the United States § 25-2	22
Ninth Circuit Model Instruction No. 8.83	11
Ninth Circuit Model Instruction No. 8.147	19, 20

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant Richard Ayvazyan's motion largely recycles arguments the Court already rejected with no new facts or legal arguments that warrant reconsideration. Defendant's few new arguments distort the record and misstate the law. Nothing in defendant's motion suggests error and, even if it did, any such error would be harmless given the overwhelming evidence of guilt. The motion should be denied.

II. RELEVANT LEGAL STANDARDS¹

A. Federal Rule of Criminal Procedure 29

Courts may not set aside a jury's verdict and enter a judgment of acquittal unless no reasonable juror could have voted to convict. "[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319-20 (1979). Courts "must respect the exclusive province of the jury to determine the credibility of witnesses, resolve evidentiary conflicts, and draw reasonable inferences from proven facts, by assuming that the jury resolved all such matters in a manner which supports the verdict." United States v. Kranovich, 401 F.3d 1107, 1112-13 (9th Cir. 2005).

B. Federal Rule of Criminal Procedure 33

Although courts may order new trials "if the interest of justice so requires," Fed. R. Crim. P. 33(a), the remedy should be reserved for "exceptional cases in which the evidence preponderates heavily

¹ See also the discussion of the relevant legal standards in the government's concurrently-filed opposition to defendant Vahe Dadyan's post-trial motion (ECF 789), which is incorporated by reference.

1 against the verdict.” United States v. Pimentel, 654 F.2d 538, 545
2 (9th Cir. 1981). Courts should not grant new trials based on
3 harmless errors. See United States v. Harmon, 537 F. App’x 719, 720
4 (9th Cir. 2013); see also United States v. Torres, 794 F.3d 1053,
5 1063 (9th Cir. 2015) (error is harmless where it did not likely
6 affect the verdict).

7 **III. ARGUMENT**

8 **A. The Government Proved the Fraud Conspiracy and Schemes**

9 1. The Government’s Evidence Was Overwhelming

10 The Court already rejected defendant’s challenges to the
11 government’s evidence of a single overarching conspiracy, finding the
12 evidence was “overwhelming and un rebutted.” (ECF 664 at 12.) The
13 Court’s July 2, 2021 Order (the “Order”) includes an exhaustive
14 analysis of the evidence and arguments and concludes that “no
15 reasonable jury could reasonably find that Richard Ayvazyan was only
16 a member of separate and unrelated conspiracies.” (Id. at 11.) The
17 Court explained that, to the extent there were even subgroups within
18 the conspiracy, “the overwhelming evidence shows that (1) the two
19 alleged groups had the exact same objective (i.e., obtaining
20 fraudulent PPP and EIDL loans); (2) both alleged groups accomplished
21 that goal using the exact same methods (i.e., the same set of fake
22 and synthetic identities and entities); and (3) all of the defendants
23 – in particular Richard Ayvazyan and Marietta Terabelian – obtained
24 and concealed their benefits through their coconspirators’ use of
25 these methods.” (Id. at 14.)

26 Defendant now repeats his claim that the evidence of a single
27 overarching conspiracy was insufficient; however, he does not make
28 any factual or legal arguments that would warrant the Court’s

1 reconsideration of its prior ruling. Accordingly, the Court should
2 deny defendant's motion on the same grounds as before.

3 2. The Court Correctly Denied Defendant's Requested
4 Multiple-Conspiracies and Schemes Jury Instructions

5 In its Order, the Court explained why defendant's request for a
6 multiple-conspiracies instruction was "inconsistent with the law and
7 unsupported by the evidence at trial." (See ECF 664 at 9-17.)
8 Defendant does not offer any new evidence or law for the Court to
9 reconsider its prior careful analysis. Nonetheless, he continues to
10 press his misconception about the applicability of the multiple-
11 conspiracies instruction with several erroneous arguments.

12 First, defendant's reliance on United States v. Fernandez, 388
13 F.3d 1199 (9th Cir. 2004), is misplaced. (See ECF 683 ("Mot.") at
14 4.) Putting aside that there was overwhelming evidence of a single
15 conspiracy here, Fernandez actually undermines the applicability of
16 defendant's multiple-conspiracies theory. Specifically, Fernandez
17 noted that a multiple-conspiracies instruction is warranted "only in
18 the event that the evidence showed other conspiracies that were
19 unrelated to or separate from the conspiracy charged, because it is
20 well-established that 'a single conspiracy may involve several
21 subagreements or subgroups of conspirators.'" 388 F.3d at 1248 n.34.
22 In its Order, the Court analyzed the abundant Ninth Circuit authority
23 supporting this well-established principle, for which defendant has
24 no response. (ECF 664 at 10 (collecting cases).)²

25
26 ² Defendant also argues that a purported "multiple schemes" jury
27 instruction was required (ECF 683 at 4-5), as he did in his proposed
28 instructions at trial (see ECF 372 at 15). But neither the Ninth
Circuit model instructions nor the cases defendant cites support a
"multiple schemes" instruction. (See ECF 557 at 10-12.) Moreover,
(footnote cont'd on next page)

1 Second, defendant once again contends the “[Manuk] Grigoryan and
2 [Tamara] Dadyan groups” represented two “different conspiracies and
3 corresponding schemes embedded within the charged conspiracy and
4 scheme.” (Mot. at 5-6.) Defendant acknowledges both purported
5 groups were engaged in PPP loan fraud in 2020, but describes other
6 fraudulent activities in which the individuals in these “groups”
7 supposedly engaged (albeit with little or no citation to trial
8 evidence). (See id.) But as the Court already found, “even if the
9 evidence only established that the charged conspiracy was comprised
10 of a Grigoryan subgroup and a Dadyan subgroup, such proof by itself
11 would not allow a reasonable jury to find the defendants were only
12 involved in multiple conspiracies and not the larger conspiracy
13 charged in the indictment.” (ECF 664 at 10.)

14 Nor did the evidence at trial support “separate, unrelated
15 conspiracies led by Tamara Dadyan and Manuk Grigoryan” or lack in
16 “conspiratorial interconnectivity and interdependence” of a single
17 conspiracy. (Mot. at 5-6.) Rather, there was “overwhelming and
18 un rebutted” evidence of the overarching conspiracy, including the
19 common goals, means, fraudulent identities and documents, and
20 beneficiaries of the overall conspiracy. (See ECF 664 at 11-14.)

21 Third, defendant’s claim that “he was denied a jury instruction
22 on his theory of the defense,” (Mot. at 6), ignores that defense
23 instructions must be both “supported by the law” and have “some
24 foundation in the evidence.” United States v. Barragan, 871 F.3d
25 689, 710 (9th Cir. 2017). Defendant’s multiple-conspiracies or
26 schemes instructions were not supported by the law because, once

27 _____
28 the trial evidence did not support a “multiple schemes” instruction
for the same reason it did not support a multiple conspiracies
instruction. (ECF 664 at 11-14.)

1 again, a multiple-conspiracies instruction is warranted only where a
2 case involves multiple "unrelated" or "separate" conspiracies.
3 Fernandez, 388 F.3d at 1248 n.34. This case simply did not fit the
4 bill. Because this case involved, at most, "several subagreements or
5 subgroups of conspirators," id., defendant's proposed instructions
6 also lacked an adequate foundation in the evidence. As the Court
7 already concluded after careful analysis of "the evidence actually
8 presented at trial," "no reasonable juror could reasonably find two
9 separate and unrelated conspiracies" here. (ECF 664 at 14, 16.)

10 Finally, there is no merit to defendant's claim that "a specific
11 unanimity instruction was required because of the specter of multiple
12 conspiracies and schemes." (Mot. at 6-7.) Unlike in United States
13 v. Lapier, 796 F.3d 1090 (9th Cir. 2015), upon which defendant solely
14 relies, there was no "genuine possibility of jury confusion" about
15 the charged wire/bank fraud conspiracy here. See id. at 1096-97
16 (specific unanimity instruction necessary where "perfect storm" of
17 potential "jury confusion," including where "indictment was broadly
18 worded and did not name the coconspirators," the "evidence adduced at
19 trial credibly showed at least two separate conspiracies" with one
20 beginning after the other ended, and "even the prosecutor admitted
21 that the government may have proved two separate conspiracies").
22 Moreover, in addition to the general unanimity instruction (ECF 609
23 at 44), the Court instructed the jury that it "must find that there
24 was a plan to commit at least one of the crimes alleged in the
25 indictment as an object of the conspiracy with all of you agreeing as
26 to the particular crime which the conspirators agreed to commit."
27 (Id. at 23.)

1 In any event, the jury instructions taken as a whole allowed
2 defendant to argue, as he did in closing, that the government did not
3 prove his participation in the single charged conspiracy, and any
4 error in not providing the proposed multiple-conspiracies instruction
5 was therefore harmless. See Harmon, 537 F. App'x at 720. That the
6 jury rejected defendant's argument is not a basis for a new trial.

7 **B. The Court's Admission of "Reserve Identities" Evidence and**
8 **Exclusion of the State Case Does Not Warrant a New Trial**

9 Defendant contends a new trial is necessary because the Court
10 erred in admitting "reserve identities" evidence while also excluding
11 the testimony of LAPD Detective Lyle Barnes. According to defendant,
12 this prevented him from establishing that the "reserve identities"
13 evidence "was actually part of a separate mortgage fraud scheme
14 (unrelated to PPP or EIDL applications) operated by Tamara Dadyan,"
15 which purportedly supported his defense theory. (Mot. at 8-9.)

16 Defendant is wrong. The Court carefully analyzed the "reserve
17 identities" evidence to ensure that "each piece of proffered
18 evidence" was, at a minimum, inextricably intertwined with the
19 fraudulent PPP/EIDL scheme. (ECF 478 at 15.) The Court required the
20 government to submit supplemental briefing identifying "how each
21 piece of evidence was part of the 'overall scheme' to obtain
22 fraudulent PPP and EIDL loans." (Id.) In its submission, the
23 government described in detail the relationship of the "reserve
24 identities" evidence to the overall scheme, with supporting exhibits.
25 (See ECF 506, 580-583.) The Court "closely reviewed the proffered
26 evidence" and concluded the "reserve identities" evidence was "highly
27 probative of the methods and instruments Defendants used to execute
28 the conspiracy alleged in the indictment." (ECF 517 at 1.)

1 Separately, the Court carefully considered defendant's proffered
2 evidence with respect to Detective Barnes and the unrelated
3 California mortgage fraud prosecution. (ECF 664 at 1-3.) The Court
4 concluded the probative value of the testimony was substantially
5 outweighed by the danger of unfair prejudice, cumulative presentation
6 of evidence, confusion of the issues, misleading the jury, undue
7 delay, and wasting time. (Id. (analyzing each factor under FRE
8 403).) Defendant offers nothing to overcome the Court's Rule 403
9 analysis, for which the Court has broad discretion.³ See
10 Sprint/United Management Co. v. Mendelsohn, 552 U.S. 379, 384 (2008).

11 Defendant claims that the fact that the "reserve identities"
12 evidence could have been used for both the PPP/EIDL scheme and the
13 mortgage fraud scheme is "fatal to the single, unitary conspiracy and
14 scheme charged by the government in this case." (Mot. at 8.) This
15 is nonsensical. Evidence regarding the same synthetic identities and
16 businesses used to advance the fraudulent PPP/EIDL scheme, such as
17 Viktoria Kauichko, Anton Kudiumov, Medet Murat, EM Construction, and
18 Sabala Construction, was found at both the Canoga apartment (leased
19 by defendant Grigoryan) and the Weddington residence (defendant
20 Tamara Dadyan's home). (See, e.g., GEX 10, 13.b, 13.f, 24.e, 54.b,
21 54.e, 57.g.) As previously explained, there was "overwhelming and
22 un rebutted" evidence of a single, overarching conspiracy (ECF 664 at
23

24 ³ Defendant contends only that any unfair prejudice to
25 codefendant Artur Ayvazyan could have been remedied by severance.
26 The government is not aware of defendant moving to sever on this
27 basis, thus waiving any such argument. See Fed. R. Crim. P.
28 12(b) (3) (D) (severance must be sought pretrial); United States v.
Singh, 979 F.3d 697, 732 (9th Cir. 2020) (severance must be renewed
at the close of evidence). In any event, the Court found the
probative value of the proffered evidence was substantially
outweighed by the other Rule 403 factors, such that it would not have
been admissible even if defendant had been tried alone.

12), and evidence regarding the state mortgage fraud scheme had no probative value bearing on that analysis.

C. Defendant is Not Entitled to a New Trial on the Aggravated Identity Theft Counts

1. The Evidence Does Not Preponderate Heavily Against the Aggravated Identity Theft Verdicts

Defendant's claim that the aggravated identity theft evidence weighs heavily against the verdicts (Mot. at 9-11) is based on misstatements of law and fact, and should be rejected.

a. Count 21 - Mark Zindroski

The government presented overwhelming evidence that defendant transferred, used, and possessed Mark Zindroski's identity during and in relation to a PPP fraud scheme involving Mr. Zindroski's company, Top Quality Contracting ("TQC"). The evidence showed: (i) the fraudulently obtained PPP funds were wired to an account in the name of TQC for which Mark Zindroski and Iuliia Zhadko were co-signers (GEX 1.f at 1; GEX 2.e at 57); (ii) the government seized from defendant a physical credit card in the name of TQC/Iuliia Zhadko (GEX 76.b); (iii) the telephone number (ending 4170) listed on TQC's bank records and email correspondence was associated with defendant and used to exchange texts with defendant T. Dadyan (GEX 1.f at 1; GEX 6.p at 10; GEX 10); and (iv) defendant and T. Dadyan's texts discussed using TQC in furtherance of the fraud (GEX 10 at 8, 40).

Ignoring this overwhelming evidence, defendant points to a patchwork of purported evidence he claims shows that it was defendant Grigoryan, not defendant, who used Zindroski's identity. (Mot. at 9-10.) His argument misstates the record. For example, he claims the movement of money from TQC's bank account points to Grigoryan because that account wrote checks to Grigoryan's aunt, Anna Manukyan. (Mot.

1 at 10.) However, the evidence showed that defendant also used Anna
2 Manukyan's identity: he possessed digital photographs of her driver's
3 license and credit card. (GEX 19.b, 19.c.) Defendant also claims an
4 IP address used to submit a PPP application on behalf of TQC tied
5 back to the subscriber name Viktoria Kauichko at an apartment
6 Grigoryan rented on Canoga Avenue. However, the evidence showed that
7 defendant and his wife (defendant Terabelian) used the Kauichko
8 identity and shared the Canoga Avenue apartment with Grigoryan (and
9 even used a Viktoria Kauichko credit card, later found in defendant's
10 and his wife's possession, to pay the rent). (See, e.g., GEX 37.c at
11 1; GEX 42; GEX 76.a; GEX 76.b; GEX 88 at 28, 34, 39, 41.)⁴

12 Defendant also misstates the law. Even if some evidence did
13 show that Grigoryan also used Mark Zindroski's identity, the evidence
14 nevertheless supported the jury's guilty verdict because the first
15 superseding indictment also alleged a willful causation theory of
16 liability under 18 U.S.C. § 2(b) as part of this count.

17 *b. Count 22 - Nazar Terabelian*

18 The government also presented overwhelming evidence that
19 defendant used and possessed the identity of Nazar Terabelian during
20 and in relation to a scheme involving the submission of a fraudulent
21 PPP application on behalf of Mod Interiors Inc. The evidence showed
22 that: (i) defendant's phone (seized on November 5, 2020) contained
23

24
25 ⁴ Defendant also conducted a comparison of certain IP addresses
26 purportedly used by Manuk Grigoryan, Mark Zindroski, and TQC that is
27 confusing, unreliable, and without support in the record or the
28 facts. (ECF 683 at 10.) Unable to find a complete match of the
numbers used in the IP addresses, defendant instead settled for
drawing conclusions about who used the IP addresses based on a
partial match of some of the numbers (i.e., all the IP addresses
begin with "174.193"). (Id.) Defendant's incomplete analysis and
'junk science' approach should be rejected.

1 digital photographs of credit cards in the names of Mod Interiors and
2 Nazar Terabelian, handwritten notes relating to PPP applications for
3 Mod Interiors, and log-in information for email and bank accounts for
4 Nazar Terabelian (GEX 19.c); (ii) the fraudulently obtained PPP funds
5 were wired to an account in the name of Mod Interiors and used to
6 purchase 60 gold coins, diamonds, and luxury furniture using the name
7 Viktoria Kauichko (GEX 115); and (iii) 60 gold coins were later found
8 in defendant's residence (which he also purchased using stolen PPP
9 funds). (See GEX 34; GEX 38; GEX 39 at 17, 27; GEX 56.)

10 Defendant argues that a new trial is warranted because the
11 government purportedly interviewed the owner of the store from which
12 the 60 gold coins were purchased and "failed to adduce any evidence
13 whether the gold coins in [defendant's] home were the coins purchased
14 in Nazar Terabelian's name." (Mot. at 11.) Defendant is mistaken.
15 The owner declined to be interviewed. Defendant also fails to
16 explain why such evidence was necessary given that the owner provided
17 certified business records documenting the purchase of the 60 gold
18 coins found at defendant's home in the name of Viktoria Kauichko (an
19 alias used by defendant's wife) with money fraudulently obtained
20 using the identity of his wife's deceased father.⁵

21 2. The Aggravated Identity Theft Instructions Were
22 Correct

23 Defendant also challenges the inclusion of the Ninth Circuit's
24 model instruction for "possession," claiming that this instruction,

25 ⁵ Defendant also argues that the government relied on an account
26 statement from the wrong bank as proof that defendant used Nazar
27 Terabelian's identity. (ECF 683 at 10.) This too is incorrect. The
28 government presented the account statement at issue (GEX 90) to show
that defendant had previously used Mod Interiors to fraudulently
apply for a PPP loan and thus had an opportunity to later use Mod
Interiors to fraudulently apply for a second PPP loan.

1 "coupled with the aiding and abetting instruction, permitted the jury
2 to find that Ayvazyan aided and abetted or caused aggravated identity
3 theft simply by possessing another person's identification
4 information." (Mot. at 11.) This is incorrect. The Court's
5 instruction on aggravated identity theft, which followed the Ninth
6 Circuit model instruction and governing law, made clear that
7 defendant's possession of the specified means of identification must
8 have been "without legal authority" and "during and in relation to"
9 the specific bank or wire fraud count charged in the indictment.
10 (ECF 609 at 41-42; see also Ninth Circuit Model Instruction No.
11 8.83.) The jury could not have convicted defendant of aggravated
12 identity theft for possession alone, regardless of the appropriate
13 and correct inclusion of instructions regarding aiding and abetting
14 and the meaning of "possession."⁶

15 Moreover, defendant misstates the law in arguing that the
16 Court's instructions constituted an "incorrect application of the
17 law." (Mot. at 11.) Defendant claims that the jury was permitted to
18 convict him for "possession of Nazar Terabelian's driver's license,
19 without any evidence Ayvazyan used the license to commit the specific
20 wire fraud charged in Count 11, a required element of the crime."
21 (Id.) But the jury was not required to find that defendant "used"
22 Nazar Terabelian's driver's license (although there was overwhelming
23 evidence that he did); the aggravated identity theft statute
24 prohibits use or possession (or transfer), without lawful authority,
25

26 ⁶ Defendant challenges the instructions for possession and
27 aiding and abetting as applied to both Counts 21 and 22. But Count
28 21 did not allege aiding and abetting, and defendant's (erroneous)
arguments as to jury confusion regarding aggravated identity theft
have no possible application to that count. His argument for a new
trial as to Count 21 should be rejected for this reason as well.

1 during and in relation to a specified predicate offense. 18 U.S.C.
2 § 1028A(a)(1); see also United States v. Osuna-Alvarez, 788 F.3d
3 1183, 1185 (9th Cir. 2015). Defendant's citation to an unpublished
4 opinion (United States v. Murray, 752 F. App'x 439 (9th Cir. 2018))
5 in which the court appears to have addressed only the "use" prong is
6 misleading and inapposite. The Court properly instructed the jury,
7 and there is no basis for a new trial on Counts 21 and 22.

8 **D. The Government Proved Venue of the Wire Fraud Counts by at**
9 **Least a Preponderance of the Evidence**

10 1. The Government's Evidence of Venue Was Sufficient

11 The government adduced sufficient proof at trial for a rational
12 juror to find venue in this District for each of the wire fraud
13 counts by a preponderance of the evidence. The schemes were carried
14 out in this District by defendants who all lived in or around Los
15 Angeles within a relatively brief period of months during which
16 California state and local authorities had declared states of
17 emergency and Los Angeles residents were subject to stay-at-home
18 orders.⁷ Defendant's challenge to venue should be rejected.⁸

19 Defendant correctly recognizes that United States v. Pace, 314
20 F.3d 344 (9th Cir. 2002), controls the venue analysis for wire fraud.
21 But defendant misconstrues the government's evidence of venue and the
22 application of Pace here. As Pace requires, each of the eleven
23 charged wire transmissions here "originated, passed through, or was
24 received" in, or was "orchestrated" from, the Central District of
25

26 ⁷ Special Agent Geffrey Clark testified that his investigation
27 confirmed the defendants lived and were actually present in this
District from March through August 2020. (6/22/21 Tr. at 9:1-12:4.)

28 ⁸ In the text messages the government presented at trial,
defendant discussed "wires" over 40 times. (GEX 10.)

1 California. Id. at 349-50. The evidence demonstrates either a
2 "direct or causal connection" between each misuse of wires and this
3 District, which satisfies venue for wire fraud.⁹ Id.

4 Three of the charged wire transmissions (Counts 2, 9, and 12)
5 are supported by evidence of a direct connection to this District.
6 Bank records show the wire underlying Count 2 terminated at a JP
7 Morgan Chase location in Van Nuys, California (GEX 1.a at 22), and
8 the wire underlying Count 9 was initiated from a JP Morgan Chase
9 location in Laurel Canyon, California. (GEX 1.1 at 1084-86.) And IP
10 subscriber records show the wire underlying Count 12 was initiated
11 from Encino, California. (GEX 2.q at 5; GEX 73.c at 12.)

12 The other wire fraud counts are supported by evidence of a
13 causal connection to this District, which Pace describes as
14 "orchestration" of the wire transmission. Pace, 314 F.3d at 349-50.
15 For example, four of the charged wire transmissions (Counts 3, 7, 8,
16 and 10) were caused by defendants' submission of fraudulent PPP and
17 EIDL applications via the Internet from their residences in this
18 District. IP subscriber records show that the PPP applications that
19 caused the wires underlying Counts 3 and 7 were submitted via
20 Internet from Encino, California (GEX 2.f at 37; GEX 2.k at 47; GEX
21 73.c at 12); the EIDL application that caused the wire underlying
22 Count 8 was submitted via Internet from Sun Valley, California (GEX
23 2.h at 38; GEX 73.f at 2); and the EIDL application that caused the
24 wire underlying Count 10 was submitted via Internet from Woodland
25 Hills, California. (GEX 2.l at 5; GEX 73.c at 5.)

26
27
28 ⁹ Venue can be based on circumstantial evidence alone. See
United States v. Childs, 5 F.3d 1328, 1332 (9th Cir. 1993).

1 There is also substantial evidence showing that the remaining
2 four charged wire transmissions (Counts 4, 5, 6, and 11) were caused
3 by defendants from within this District. Bank records show that
4 defendant and his wife, defendant Terabelian, made retail purchases
5 and bank deposits in and around Los Angeles around the time they
6 caused the wires underlying Count 4 (GEX 1.f at 23; GEX 89 at 30; GEX
7 90 at 19) and Count 11 (GEX 1.p at 16; GEX 87 at 4; GEX 88 at 40; GEX
8 89 at 10).¹⁰ Similarly, defendant Edvard Paronyan made ATM
9 withdrawals within this District around the time he caused the wire
10 underlying Count 6 (GEX 1.l at 15). And mountains of evidence seized
11 from defendant T. Dadyan's residence on Weddington Street, IP address
12 records, and agent testimony show she submitted dozens of fraudulent
13 PPP and EIDL applications that caused wires to her bank accounts from
14 her home office, from which the government seized hard copy documents
15 related to dozens of PPP loans including the PPP loan and applicant
16 used for Count 5. (See, e.g., 6/17/21 P.M. Tr. at 65:19-66:13; GEX
17 57.e at 88-90; 57.g at 30.) The trial evidence relating to venue for
18 Counts 3 and 7 also confirms that, around the same time in May when
19 defendant T. Dadyan submitted the application that caused the wire
20 underlying Count 5 (i.e., May 8), she and her husband submitted other
21 fraudulent PPP applications from their residence. (See, e.g., Count
22 3 on May 1 and Count 7 on May 18.) Viewing all of that evidence in
23 the light most favorable to the government and drawing all reasonable
24 inferences in favor of the verdict, see Jackson, 443 U.S. at 319,
25 326, venue was adequately established.

26
27
28 ¹⁰ The Wells Fargo branch at which defendant opened the account
that received the wire is located in Woodland Hills. (GEX 1.f at 5.)

1 Although defendant proposes to limit the wire "orchestration"
2 theory of venue to cases where a defendant is charged with an 18
3 U.S.C. § 2(b) willful causation theory (Mot. at 13), nothing in Pace
4 supports that limitation. To the contrary, Pace, which makes no
5 mention of 18 U.S.C. § 2(b), broadly describes the "essential conduct
6 prohibited by § 1343 to be the misuse of wires as well as any acts
7 that cause such misuse." 314 F.3d at 349. Consistent with that
8 principle, defendant and his codefendants were charged with
9 "transmit[ting] and caus[ing] the transmission" of the alleged wire
10 transmissions in Counts 2 through 12. (ECF 154 at 29.) Defendants
11 also were alleged to have aided and abetted each other in causing the
12 wire transmissions, which necessarily included, as the jury was
13 instructed, having "aided, counseled, commanded, induced, or
14 procured" another person in connection with an element of the
15 offense. (Id.; ECF 609 at 33.) For the eight wires that did not
16 necessarily pass directly through this District, the jury was
17 entitled to consider whether defendants "orchestrated" or caused
18 those wires to be transmitted from this District.

19 Thus, the evidence sufficed for a rational juror to find venue
20 for each wire fraud count by a preponderance of the evidence,¹¹ and
21 the evidence did not preponderate heavily against the verdicts.

22 2. The Court's Denial of Defendant's Proposed Special
23 Verdict Form Does Not Warrant a New Trial

24 Defendant also argues his proposed special verdict form on wire
25 fraud venue should have been submitted to the jury. (Mot. at 15.)
26

27 ¹¹ If the evidence of venue was not sufficient as to any count,
28 the remedy is to dismiss that count without prejudice, not a judgment
of acquittal. See United States v. Ruelas-Arreguin, 219 F.3d 1056,
1060 n.1 (9th Cir. 2000).

1 However, defendant's proposed question materially misstated the law
2 and was appropriately rejected by the Court.

3 Specifically, defendant's proposed venue question stated, "As to
4 each [wire fraud] Count, do you find proof by a preponderance of the
5 evidence that the wire was sent to or from the Central District of
6 California?" (ECF 547.) As explained above, this is an incorrect
7 statement of law. The question omitted both the pass-through theory
8 and the orchestration theory, both of which are recognized in Pace.
9 314 F.3d at 349-50. "Jury verdict forms are generally considered a
10 type of jury instruction," United States v. Lopez, -- F.4th --, 2021
11 WL 2795426, at *18 (9th Cir. July 6, 2021), and defendant was "not
12 entitled to an instruction that misstates the law," United States v.
13 George, 420 F.3d 991, 1000 (9th Cir. 2005).

14 Any error in not providing a special verdict form or instruction
15 on wire fraud venue was also harmless. The evidence established that
16 venue was properly sited in this District, as explained above, and
17 nothing required venue elsewhere. Indeed, "[t]he Framers designed a
18 system that requires trial in the vicinity of the crime, to secure
19 the party accused from being dragged to a trial in some distant
20 state, away from his friends, witnesses, and neighborhood." United
21 States v. Lozoya, 982 F.3d 648, 651 (9th Cir. 2020) (en banc).
22 Defendants all reside in and orchestrated their crimes from this
23 District; venue here was appropriate.

24 **E. Witness Anthony Farrer Did Not Perjure Himself**

25 Anthony Farrer, a luxury watch retailer, testified that
26 defendant purchased luxury watches from him and paid for them using
27 wires from bank accounts associated with several names the government
28 separately established were also used by defendant in furtherance of

1 the fraud. (6/17/21 P.M. Tr. at 21:10-44:19; GEX 37.a, 37.b, 37.c,
2 37.e.) Defendant argues that Mr. Farrer committed perjury because,
3 on cross-examination, he denied having sold a watch to an individual
4 known as "Mike from Instagram." (Mot. at 15-16.) Defendant further
5 argues the government knowingly allowed Mr. Farrer to perjure
6 himself. Defendant's argument is frivolous and should be rejected.

7 Mr. Farrer's cross-examination was confusing and drew several
8 objections that the Court sustained. When asked whether he knew Mike
9 from Instagram's real name, Mr. Farrer said that he did not.
10 (6/17/21 P.M. Tr. at 46:1-46:22.) Defense counsel then effectively
11 told Mr. Farrer that Mike from Instagram was Manuk Grigoryan (a name
12 with which Mr. Farrer was not familiar), and proceeded to ask Mr.
13 Farrer a series of confusing compound questions that assumed facts
14 not in evidence. (Id. at 46:1-46:22, 49:12-49:25.) It appears that
15 Mr. Farrer believed he was testifying that he had never sold watches
16 to Manuk Grigoryan, which, based on Mr. Farrer's knowledge, was
17 accurate since he did not know any customers by that name. (Id. at
18 49:12-49:25.) Mr. Farrer's testimony was also accurate in that
19 defendant appears to have paid for and received the watches for which
20 Mike from Instagram was purportedly the buyer, such that Mr. Farrer
21 never sold a watch to Mike from Instagram - rather, he sold those
22 watches to defendant. (GEX 37.b.)

23 There is no evidence that Mr. Farrer presented false testimony,
24 let alone deliberately committed perjury. Mr. Farrer had no reason
25 to lie about whether he sold a watch to Manuk Grigoryan (or Mike from
26 Instagram) and the record shows that Mr. Farrer was trying to answer
27 a series of objectionable questions to the best of his ability. It
28 is also clear from the record that the government did not "allow" Mr.

1 Farrer to commit perjury but merely objected to defense questions
2 that were improperly formed and confusing to the witness. In
3 addition, it has never been the government's understanding that Manuk
4 Grigoryan is Mike from Instagram.

5 Even if the government unwittingly presented false evidence
6 (which it did not), a defendant is entitled to a new trial only "if
7 there is a reasonable probability that [without the evidence] the
8 result of the proceeding would have been different." United States
9 v. Young, 17 F.3d 1201, 1204 (9th Cir. 1994). Here, defendant fails
10 to show that the result would have been different had the government
11 not presented Mr. Farrer's purportedly false testimony. Defendant
12 incorrectly claims "the government used this false testimony to argue
13 that [defendant] was the only person using the phone registered to
14 the synthetic identity Iulia [sic] Zhadko." (Mot. at 16.) Defendant
15 misstates the record. The question of whether Mike from Instagram or
16 Manuk Grigoryan purchased a watch from Mr. Farrer is separate from,
17 and not relevant to, the question of whether defendant was the person
18 using the Iuliia Zhadko phone. Based on the trial evidence,
19 including texts and other records produced by Mr. Farrer, defendant
20 was in fact the person using the phone registered to Iuliia Zhadko,
21 not Mike from Instagram or Manuk Grigoryan. (GEX 37.b, 37.c, 37.e.)¹²

25
26 ¹² Defendant separately claims that evidence purportedly showing
27 that Grigoryan also bought watches from Mr. Farrer would tend to show
28 Grigoryan was "running his own schemes and operations independent of
[defendant]." (ECF 683 at 16-17.) Such an inference is neither
reasonable nor supported by the record. There is no reason to
believe Grigoryan could only have made money to buy a watch from Mr.
Farrer by committing crimes about which defendant had no knowledge.

F. The Court Correctly Denied Defendant's Motions to Exclude the Government's Summary Witnesses

Defendant's four-sentence challenge to the admission of the government's summary witnesses is conclusory and once again fails to provide any basis for the Court to reconsider its careful analysis of these fully-briefed and litigated issues during trial. (ECF 451, 504, 511, 520, 523.) Defendant claims Marylee Robinson's testimony "exceeded the scope of a percipient fact witness and was unduly prejudicial" and Special Agent Timothy Massino's testimony was "argument elicited through a case agent," without providing a single example or citation to the record. (Mot. at 17.) Defendant's challenge to these witnesses' testimony should be rejected.

G. The Court's Jury Instructions Regarding the Money Laundering Conspiracy Count Were Proper

Defendant incorrectly contends he is entitled to a new trial on the money laundering conspiracy charge (Count 26) because "the jury instructions constituted an impermissible constructive amendment." (Mot. at 17.) Defendant's claim is based solely on the fact that the words "as charged in the indictment" were not included in the concealment money laundering instruction. (Id. at 18 (citing ECF 609 at 36-37).) Defendant relies on a legally incorrect proposed jury instruction, misstates the instruction that was actually given, and misconstrues the law of constructive amendment.

First, the Court's instruction followed the Ninth Circuit model instructions for concealment money laundering virtually word-for-word. (Compare ECF 609 at 36-37 with Ninth Circuit Model Instruction No. 8.147.) Before trial, defendant sought to materially and erroneously change the second element of the instruction to require

1 the government prove his knowledge that illegal proceeds came from a
2 specified unlawful activity charged in the indictment. Specifically,
3 he proposed substituting the phrase "the proceeds of unlawful
4 activity that is charged in the indictment" for the phrase "proceeds
5 of some form of unlawful activity." (Compare ECF 372 at 17 (emphasis
6 added) with Ninth Circuit Model Instruction No. 8.147.) Defendant
7 again insists on this change here.

8 Defendant's proposed change, however, is contrary to the statute
9 and the Ninth Circuit's model instructions. Indeed, the statute
10 specifies that "the term 'knowing that the property involved in a
11 financial transaction represents the proceeds of some form of
12 unlawful activity' means that the person knew the property involved
13 in the transaction represented proceeds from some form, though not
14 necessarily which form, of activity that constitutes a felony
15 under State, Federal, or foreign law." 18 U.S.C. § 1956(c)(1).
16 Defendant provides no legal authority for his proposed drastic
17 alteration of the mens rea requirement for concealment money
18 laundering, and his attempt to do so should be rejected.

19 Second, defendant selectively and misleadingly quotes the first
20 element of the Court's given jury instruction, stating it "instructed
21 the jury that they need only find that the transaction involved
22 'property that represented the proceeds of conspiracy to commit bank
23 fraud and wire fraud.'" (Mot. at 18.) In fact, the instruction
24 required the jury to find the transaction involved the criminal
25 proceeds of "conspiracy to commit bank fraud and wire fraud, in
26 violation of Section 1349 of Title 18 of the United States Code; wire
27 fraud in violation of Section 1343 of Title 18 of the United States
28 Code; or bank fraud, in violation of Section 1344(2) of Title 18 of

1 the United States Code.” (ECF 609 at 36.) This is no small
2 omission. The Court’s instruction specified the crimes charged in
3 Counts 1, 2-12, and 13-20, respectively, of the First Superseding
4 Indictment, which detailed the allegations regarding the manner and
5 means and the overt acts of the PPP/EIDL fraud. (ECF 154.) The jury
6 was given a redacted copy of that indictment for its deliberations.
7 (See 6/23/21 P.M. Tr. At 74:10-75:6.) All of the government’s
8 evidence during trial focused on the PPP/EIDL fraudulent conduct.
9 Defendant’s argument that the jury somehow would not have been able
10 to “specifically tie the specified unlawful activity to the PPP and
11 EIDL fraud charged in the indictment” without the words “as charged
12 in the indictment” is far-fetched and frivolous.

13 Finally, defendant’s attempt to connect the omission of the
14 phrase “as charged in the indictment” to a constructive amendment is
15 similarly baseless. Not including largely duplicative language not
16 supported by law in the jury instruction did not effect a
17 constructive amendment of the indictment. The jury was not presented
18 with a “complex of facts distinctly different from those set forth in
19 the charging instrument” nor was “the crime charged [in the
20 indictment] . . . substantially altered at trial, so that it was
21 impossible to know whether the grand jury would have indicted for the
22 crime actually proved.”¹³ United States v. Von Stoll, 726 F.2d 584,
23 586 (9th Cir. 1984). Defendant’s challenge should be rejected.

27
28 ¹³ Nor was there any variance – fatal or otherwise – because the
evidence at trial did not “prove[] facts materially different from
those alleged in the indictment.” Von Stoll, 726 F.2d at 586.

H. The Government Adduced Sufficient Untainted Evidence on All Counts of Conviction

Defendant purports to renew his motion that the government has failed to adduce at trial sufficient untainted evidence, testimony, and argument. (Mot. at 19.) In compliance with the Court's June 28, 2021 order (ECF 605), the government filed a separate post-trial Kastigar submission (ECF 712) that addresses the arguments defendant makes here, which the government incorporates by reference.

I. The Government Proved Forfeitability of the \$451,185 in U.S. Currency and Six Watches by at Least a Preponderance of the Evidence

Defendant also moves the Court to set aside the jury's finding that \$451,185 in U.S. Currency (the "Forfeited Cash") and six luxury watches (the "Forfeited Watches") were subject to forfeiture.

The government may prove forfeitability through circumstantial evidence, and "there is no need to tie [forfeited property] to proceeds of a particular identifiable illicit drug transaction." United States v. 1982 Yukon Delta Houseboat, 774 F.2d 1432, 1435 n.4 (9th Cir. 1985).¹⁴ As explained in the leading forfeiture treatise:

In most forfeiture cases, the Government must rely on circumstantial evidence to establish by a preponderance of the evidence that the property constitutes proceeds traceable to the underlying offense. In determining whether the Government has met its burden, the court or the jury must look to the totality of the circumstances, including such factors as the timing of the wrongdoer's acquisition of the property in relation to his commission of the offense, his lack of other legitimate sources of income, and the peculiar ways in which the property may have been titled, packaged, concealed or disbursed.

Stefan Cassela, Asset Forfeiture Law in the United States, § 25-2.

¹⁴ This standard is not limited to narcotics transactions. See, e.g., United States v. Melrose East Subdivision, 357 F.3d 493, 506-07 (5th Cir. 2004) (government may rely on circumstantial evidence of "pervasive fraud" to prove forfeiture).

1 Here, the Forfeited Cash was found in the backyard of a property
2 (6/28/21 Tr. at 41:6-42:19) which itself was bought with fraud
3 proceeds (GEX 115 at 7), where other personal property bought with
4 fraud proceeds was discovered (6/28/21 Tr. at 42:20-43:18; GEX 401 at
5 8), including hundreds of thousands of dollars in gold and jewelry
6 (id.; GEX 401 at 8). Considering this evidence, a rational juror
7 could have found that the Forfeited Cash was criminal proceeds.

8 The core of defendant's argument is that the Forfeited Cash
9 could not have been traceable to his criminal conduct because there
10 simply was not enough cash traced out of the PPP/EIDL loan fraud
11 scheme. (See Mot. at 20-21.) Defendant ignores his conviction of a
12 broader conspiracy: the government's summary witness testified that
13 she traced only 27 fraudulent loans (6/28/21 Tr. at 14:19-21) and
14 identified at least \$181,302 in tainted cash withdrawals (GEX 401 at
15 5). But defendant repeatedly elicited that the number of loans
16 involved in the fraud scheme was far greater. (See e.g., 6/22/21
17 A.M. Tr. at 78:12-79:6.) A rational juror could have inferred that
18 the cash traced from the 27 loans was only a portion of the available
19 cash from the broader conspiracy.¹⁵

20 Finally, the jury saw evidence that "Viktoria Kauichko" - an
21 alias used by the conspirators to apply for false loans (GEX 115 at
22 2, 6) - transferred hundreds of thousands of dollars to the merchant
23 from whom defendant purchased the Forfeited Watches. (GEX 401 at 1,
24 10.) Having seen that the Forfeited Watches were purchased with
25

26
27 ¹⁵ Even assuming the jury should have credited defendant's
28 argument that only \$101,302 was traced out of the criminal scheme
(Mot. at 21), a rational juror could nonetheless find the remaining
Forfeited Cash forfeitable as concealment property involved in the
money laundering scheme. See Forfeiture Jury Instruction No. 15.

1 funds from one of the synthetic identities, a rational juror could
2 have concluded they were criminal proceeds.

3 **J. Defendant Was Not Denied an Impartial Jury**

4 Defendant also contends he is entitled to a new trial because
5 "the Court-led voir dire was inadequate to guarantee Ayvazyan the
6 right to an impartial jury and resulted in prejudice," claiming the
7 "standard used" was "tilted in favor of the government." (Mot. at
8 23.) The two examples defendant selects underscore the frivolousness
9 of this argument and his misrepresentation of the record.

10 Defendant first claims a "retired probation officer responded
11 with an equivocal 'I don't think so' when asked if their service as a
12 probation officer would prevent them from being fair and impartial."
13 (Id.) In truth, the very next lines of the transcript reflect the
14 prospective juror clarified, "Can I be impartial? . . . Oh, yes, of
15 course." (6/15/21 Tr. at 133:11-19.)¹⁶

16 Defendant's second example turns on his factually unsupported
17 contention that "the jury foreperson listened intently and made eye
18 contact with prosecutors [during closing], only to turn away during
19 the entirety of defense counsel's presentation." (Mot. at 23.)
20 Defendant asserts the foreperson's service in the military
21 (apparently ascertained by the defense post-trial) necessarily meant
22 she had a "pro-government slant" that should have been disclosed in
23 response to the basic question as to whether she could be "fair and
24 impartial to both sides." (Id.) Defendant's claims lack any support
25
26

27 ¹⁶ Defendant also omits that this questioning related to
28 alternate jurors (none of whom were needed for deliberations) and the
defense used less than half of their peremptories, such that there
could be no prejudice. (See id. at 109:14-110:6, 118:24-119:11.)

1 in the record and are offensive in that they assume military veterans
2 cannot be impartial. Defendant was not denied an impartial jury.

3 **K. There Was No Cumulative Error Warranting a New Trial**

4 As explained above, defendant's claims all fail and, even if he
5 could establish one or more errors, "the fact that errors have been
6 committed during a trial does not mean that reversal is required."
7 United States v. de Cruz, 82 F.3d 856, 868 (9th Cir. 1996). "[W]hile
8 a defendant is entitled to a fair trial, [he] is not entitled to a
9 perfect trial, for there are no perfect trials." United States v.
10 Payne, 944 F.2d 1458, 1477 (9th Cir. 1991) (quotations omitted).
11 Where as here, any potential error is marginal at best, "the
12 cumulative effect of such error cannot be deemed so prejudicial that
13 reversal is warranted." de Cruz, 82 F.3d at 868; see also United
14 States v. Karterman, 60 F.3d 576, 580 (9th Cir. 1995).

15 Defendant has not demonstrated any individual errors, much less
16 cumulative error, so prejudicial to warrant or require a new trial.¹⁷

17 **IV. CONCLUSION**

18 For the foregoing reasons, the government respectfully requests
19 that the Court deny defendant Richard Ayvazyan's motion for a new
20 trial and/or judgment of acquittal.

22 ¹⁷ Defendant cites only one case, Killian v. Poole, 282 F.3d 1204
23 (9th Cir. 2002), where the Ninth Circuit found cumulative error
24 warranting a new trial. Defendant describes that case as involving a
25 "government witness [that] perjured himself." (ECF 683 at 24.)
26 Defendant misunderstands Killian's import. Besides the fact that Mr.
27 Farrer did not perjure himself, Killian involved a cooperating
28 witness whose numerous lies went "to the very heart of whether and to
what extent [defendant] was involved" in the charged murder and whose
testimony "was virtually the whole case for the government," the
state's failure to disclose significant impeachment evidence
regarding the cooperator including its deal to recommend him
leniency, and the state's references "no less than eight separate
times" to the defendant's silence following her arrest. Killian, 282
F.3d 1208, 1209, 1211. In short, this case is not Killian.