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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

RICHARD AYVAZYAN, aka "Richard Avazian" and "Iuliia Zhadko," MARIETTA TERABELIAN, aka "Marietta Abelian" and "Viktoria Kauichko," ARTUR AYVAZYAN, aka "Arthur Ayvazyan," and TAMARA DADYAN, MANUK GRIGORYAN, aka "Mike Grigoryan," and "Anton Kudiumov," ARMAN HAYRAPETYAN, EDVARD PARONYAN, aka "Edvard Paronian" and "Edward Paronyan," and VAHE DADYAN,	No. CR 20-579(A)-SVW <u>GOVERNMENT'S OPPOSITION TO DEFENDANT ARTUR AYVAZYAN'S MOTIONS PURSUANT TO FEDERAL RULES OF CRIMINAL PROCEDURE 29 AND 33 (ECF 686, 687)</u>

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 Artur Ayvazyan's Rule 29 and 33 Motions (ECF 686 and 687)[1]. This opposition is based upon the attached memorandum of points and authorities, the testimony and exhibits admitted during 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,

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/s/

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[1] Defendant Artur Ayvazyan also filed a motion joining defendant Richard Ayvazyan's Rule 29 and 33 Motion. (ECF 683 and 688.) The government is filing a separate opposition to defendant Richard Ayvazyan's motion.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

At trial, the government presented overwhelming evidence seized from defendant Artur Ayvazyan's ("defendant's") and his co-conspirator and wife Tamara Dadyan's phones, and residence, which directly implicated defendant, Tamara Dadyan, defendant's older brother Richard Ayvazyan, and others in a conspiracy to submit fraudulent Paycheck Protection Program ("PPP") and Economic Injury Disaster Loans ("EIDL") and launder the proceeds. Although defendant took the stand to claim ignorance and blame his wife, his testimony was internally inconsistent and contradicted by texts sent by his own brother. Not surprisingly, the jury did not believe defendant and, based on the overwhelming evidence presented at the seven-day trial, found defendant guilty on all counts.[1]

This Court previously denied defendant's motion for acquittal (6/22/21 P.M. Tr. 65:4-72:24 and 77:20-2) and should do so again. Defendant's motions are solely based on his insistence that the jury should have credited his testimony at trial. But it is the exclusive province of the jury to determine the credibility of a witness and, when considering a motion for judgment of acquittal, the reviewing court must respect the jury's ultimate determination. Moreover, in light of the overwhelming evidence of defendant's guilt, the jury's disbelief does not entitle him to a new trial. The Court should sustain the jury's well-supported verdict and deny defendant's motion for a judgment of acquittal under Federal Rule of Criminal Procedure 29 and/or a new trial under Federal Rule of Criminal Procedure 33.

[1] References to counts refer to counts charged against defendant in the First Superseding Indictment. (ECF 154.)

II. RELEVANT FACTUAL BACKGROUND

A. Co-Conspirator Text Messages Detail Defendant's Extensive Role in the Charged Fraud and Money Laundering Conspiracies and Substantive Fraud Counts

At trial, the government presented evidence from phones belonging to defendant and his wife, co-defendant Tamara Dadyan, seized from their residence (the "Weddington residence") on November 5, 2020. (6/17/21 P.M. Tr. 59:18-82:22 (testimony of Federal Bureau of Investigation ("FBI") Special Agent Madison MacDonald).) Tamara Dadyan's phone included text messages sent between herself ("tammy") and an individual listed as "Rich New" and referenced by "tammy" as "big brother."[2] (Government Trial Exhibit ("GEX") 10 at 1 and 16 (text message 3369).) The "tammy" and "Rich New" text messages include references to "Art," both in the context of personal and familial expressions of care (GEX 10 at 16 (text messages 3369-70)) and in discussions regarding Art's participation in the conspiracy (see e.g., GEX 10 at 16 (text message 3371 ("Send em the account number again so I have Art go deposit the 157k Vahe[3]")) and 17 (text message 3479 ("Tom comming over now I told art show him the decline letter from the eidl and it's simple it's 35 percent for ppp")).

These text messages explicitly discuss "Art's" receipt of funds that correspond to PPP loans and wire transfers benefitting defendant. For example, "tammy" informs "Rich New" that she's "expecting a wire for Art for $73,500" (see Excerpt 1, below (text

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[2] The phone number for "Rich New" was subscribed to "Iuliia Zhadko," an identity co-defendant Richard Ayvazyan, along with his co-conspirators, was charged and convicted of using to open accounts and submit PPP and EIDL applications. (GEX 10 at 1, GEX 61 at 1, GEX 19c at 4; see also count 1 and GEX 116).)

[3] This is a reference to the $157,500 PPP loan signed by co-defendant Vahe Dadyan and submitted on behalf of Voyage Limo. (See 6/21/21 P.M. Tr. 66:3-71:3 (testimony of Special Agent Massino).)

message 3504)), and provides an image showing a wire transfer from New Acre Farm Produce and "Thanh P. Tran" to "Runya (sic) Tax Service" for the purported purpose of "Payroll New Acre Farm Produce." (6/21/21 P.M. Tr. 71:4-75:2 and GEX 10-24.) This receipt corresponded to bank account records for New Acre Farms showing an incoming PPP wire transfer for $210,000. (GEX 110 at 21.) An image of the same wire receipt was also found on defendant's phone (GEX 24e at 4), along with images of the front and back of Tran's California Driver's License ("CADL") (GEX 24c at 27-28). Furthermore, 35% of the $210,000 PPP loan is exactly $73,500 – corresponding to the "35 percent for ppp" that "Art" was going to discuss with another person (see Excerpt 1, below (message 3479)).

#	Date	Time (UTC)	From	Body	GEX. 10-
3479	7/2/2020	2:56 AM	tammy	Tom comming over now I told art show him the decline letter from the eidl and it's simple it's 35 percent for ppp	
3480	7/2/2020	2:57 AM	Rich New	Ok let me do this. Give me 30 min	
3481	7/2/2020	3:04 AM	Rich New	When was company established	
3482	7/2/2020	3:05 AM	Rich New	Hurry	
3483	7/2/2020	3:05 AM	tammy	March 25 2016	
3484	7/2/2020	3:05 AM	tammy	2015	
3485	7/2/2020	3:05 AM	tammy	Not 16 sorry	
3486	7/2/2020	3:37 AM	tammy	[Open TAX ID.png	
3487	7/2/2020	3:57 AM	Rich New	Check your email	
3488	7/2/2020	3:57 AM	tammy	Ok I got it so if they want w2 you can't really run from that	
3489	7/2/2020	3:57 AM	tammy	And that has all the info in it	
3490	7/2/2020	3:58 AM	Rich New	Ya	
3491	7/2/2020	4:02 AM	tammy	Bro read this tell me if u think I should send this now or not yet basically she's answering my emailed with her dark tying [Screenshot 2020-07-01 at 9.01.06 PM.png]	
3492	7/2/2020	4:04 AM	Rich New	Ya that's exactly what she needs. I gave one like this it passed but not sure if you should wait or send it. I think u should send it since they are busy	
3493	7/2/2020	4:07 AM	tammy	So last I send her the schedule c	
3494	7/2/2020	4:08 AM	tammy	And the quarterly for entire 4 2019 Hima should I send This or now ? Seems like she's saying she send that in so she's asking for either what u gave or w2	
3495	7/2/2020	4:09 AM	tammy	Spasem for them to get a word back or no ?	
3496	7/2/2020	4:09 AM	tammy	Just email	
3497	7/2/2020	4:09 AM	tammy	Because bottom says 2 days some bullshit	
3498	7/2/2020	4:09 AM	Rich New	Email man don't be Christmas chicken	
3499	7/2/2020	4:09 AM	Rich New	Lol	
3504	7/3/2020	6:14 PM	tammy	I'm expecting a wire for Art for $73500 [IMG_5861.jpg]	23
3505	7/3/2020	6:14 PM	tammy	And for me $157	
3506	7/3/2020	7:00 PM	tammy	How many times can people apple for the sister relief I feel like u can apply with different emails and different information	
3507	7/3/2020	7:04 PM	Rich New	As many businesses as you have with different eins	

Excerpt 1. Selected Text Messages from GEX 10 at 18 (see also Testimony of Special Agent Massino (6/21/21 P.M. Tr. 71:4-75:2)).

In his later testimony, defendant admitted on cross-examination, among other things, that he controlled the accounts associated with his trucking business, Allstate Towing and Transport; that Thanh Tran was "a good friend of mine"; and to the check from Runyan Tax Service to Allstate Towing and Transport in the amount of $73,500. (6/23/21 A.M. Tr. 120:8-124:13 (referencing GEX 1.h and GEX 1.j (Allstate Towing and Transport accounts) and GEX 1.p at 59).) Furthermore, photographs of PPP and EIDL submission confirmations and approvals, including an approval for a $210,000 PPP loan (GEX 24d at 1-3), confirmation of an application submitted on behalf of his own business, Allstate Towing and Transportation (GEX 24d at 8), and confirmation of a $210,000 PPP loan submitted on behalf of New Acre Farm Produce (GEX 24d at 12), were found on defendant's phone.

B. Defendant Possessed and Used Identities Belonging to Foreign Exchange Students, including Count 24's Identity Theft Victim, Anna Dzukaeva

The government established, through official records and witness testimony, that certain stolen names and identities used in furtherance of the fraud and money laundering offenses belonged to foreign students who had traveled to the United States on student visas and had left the United States years before their names were used in PPP and EIDL applications charged in this case (see e.g., GEX 116 (charts summarizing, among other things, PPP and EIDL applications submitted in the names of Iuliia Zhadko, Viktoria Kauichko, and Anton Kudiumov).) Customs and Border Patrol ("CBP") Officer Nicholas Felando testified as to the content of GEX 44, which established that individuals such as Anna Dzukaeva (the aggravated identity theft victim for count 24), Liudmyla Kopytova, Iuliia Zhadko, Anton Kudiumov, Medet Murat, Viktoria Kauichko, and others had entered the United States on J-1 exchange student visas and departed years before the onset of the COVID-19 pandemic in 2020. (6/16/21 P.M. Tr. 25:10-39:22 (testimony of CBP Office Felando); see also id. at 39:24-41:3 (stipulation to the accuracy of GEX 44 by all trial defendants) and GEX 44.)

The government found copies of numerous visas, including J-1 visas (GEX 57.c at 1, 3, and 5-8), matching social security work authorizations, and passports in the names of individuals other than defendants, including the name of Anastasiya Rysik (GEX 57.c at 8-10), at the Weddington residence. (6/17/21 P.M. Tr. 59:18-82:22 (testimony of Federal Bureau of Investigation ("FBI") Special Agent Madison MacDonald regarding the search of the Weddington residence).) The government also admitted evidence, through Special Agent MacDonald, of additional personal identification and financial documents found at the Weddington residence in names other than those of defendant, co-defendant Tamara Dadyan, or any other defendant. These included the front and back of purported California Driver's Licenses ("CADLs") and social security cards in names matching the stolen J-1 foreign exchange student identities, including count 24's identity theft victim Anna Dzukaeva (GEX 57.a at 1-2), and three copies of a CADL bearing the name Liudmyla Kopytova with two different photos, as well as a purported social security card bearing her name (id. at 1-2, 7-10). The trial evidence also included identification documents bearing handwritten notes regarding personal identifiers, addresses, emails, and passwords (GEX 57.b at 3 and 5-7) as well as photographs of faces used in purported CADLs (id. at 8), all seized from the Weddington residence.

Consistent with the handwritten notes of email addresses and passwords, the government found at the Weddington residence printouts and notes of email addresses, usernames associated with websites or financial institutions, and passwords, for identities that matched identification documents also found at the Weddington residence (GEX 57.d). The government also found at the Weddington residence handwritten and typed California Secretary of State forms for businesses such as "Six Star Farms" and EIDL and PPP loan applications, including for Six Star Farms submitted in the name of count 24's identity theft victim Anna Dzukaeva (GEX 57.e at 21-39), and others, including Liudmyla Kopytova and the purported business LK Designs (GEX 57.e at 22-45).

In addition, the government found handwritten notes of financial account information, including for Anna Dzukaeva and Liudmyla Kopytova (GEX 57.f at 1, 3), handwritten notes regarding personal names and information to use in association with PPP lenders referencing the names of other co-conspirators and individual and business identities used in the PPP and EIDL scheme (GEX 57.h at 1 (bearing notes such as "Send Richard Bluevine paper that guy send when DBA sole prop they have to send money to personal" and "Anna Duzkaeva – Bluevine / Liberty / Fundbox")), and voluminous copies of checks bearing the names of defendants and others, including Anna Dzukaeva (GEX 57.g at 3 and 8), Anastasiya Rysik (id. at 20), and Medet Murat (id. at 22).

A significant portion of the information underlying the vast amounts of fraudulent documentary and hard evidence described above was also found on defendant's cellphone. For example, foreign exchange student names and identities found in handwritten notes, printed CADLs, social security cards, J-1 visas, and other documents at the Weddington residence further matched images of identification, checks, credit and debit cards and other images found on defendant's phone. Specifically, images found on defendant's phone included, among others, the image of a social security card bearing Anna Dzukaeva's name (GEX 24b 1-2), two different CADLs each displaying Dzukaeva's name but a different photograph (id. 2-4), and images of checks bearing the name of Anna Dzukaeva (GEX 24c at 5). The Anna Dzukaeva CADLs found on defendant's phone included a version of the Anna Dzukaeva CADL found at the Weddington residence (GEX 57.a at 1-2), which was also used in a PPP loan submitted in the name of Anna Dzukaeva on behalf of Six Star Farms (GEX 2-q at 29). Defendant further possessed, on his phone, the front and back of a Visa card bearing the name of foreign exchange student Liudmyla Kopytova (GEX 24c at 9-10), as well as images of various PPP and EIDL submission confirmations, including confirmation of an EIDL application for "LKdesign15@yahoo.com" (GEX 24d at 10).

The government also presented evidence related to the false and fraudulent nature of the identification documents and PPP and EIDL applications submitted in the names of the stolen foreign exchange student identities. This included witness testimony from the California Department of Motor Vehicles ("DMV") regarding their lack of records supporting the fake CADLs found at the Weddington residence and on defendant's phone that were submitted with PPP and EIDL applications, including the CADL of identity theft victim Anna Dzukaeva. (6/16/21 A.M. Tr. 74:14-21 (testimony of DMV employee Breanna Fitzgerald).) Trial evidence further included witness testimony identifying loan files associated with purportedly different individuals and businesses that nonetheless used the exact same information in supporting payroll records and tax forms (06/21/21 A.M. Tr. 78:23-87:7 (testimony of Special Agent Massino discussing GEX 116 at 5-7)), including applications filed in the names of foreign exchange students Viktoria Kauichko and Medet Murat (GEX 116 at 5), Viktoria Kauichko, Anton Kudiumov, and Liudmyla Kopytova (GEX at 7).

C. Defendant's Phone Contained Overwhelming Evidence of His Role in the Fraud

The government seized defendant's phone on November 5, 2020, during a search of the Weddington residence. As discussed above, defendant's phone contained evidence relating to the foreign exchange student identities. Defendant's phone also contained evidence relating to numerous other identities used on images of identification documents and financial account records and cards that match evidence found at the Weddington residence and in the possession of defendant's co-conspirators. This includes, but is not limited to, the identities listed below.

- "Corinne Bartoumian," whose purported CADL was found on defendant's phone (GEX 24b at 5 and 6), and whose name was used on images of Internal Revenue Service ("IRS") Form 940s found on co-defendant Tamara Dadyan's phone, and included the name of tax preparer and testifying identity theft victim Alexander Fard (GEX 13e at 3).
- "Osbaldo Velasquez," for whom two different versions of a purported CADL bearing different photos were found on defendant's phone (GEX 24b at 8, 9-10).

- "Mykhail Diuzhenko," for whom defendant possessed an image of a CADL and social security card bearing the image of bearded, balding man (GEX 24b at 11), but also possessed three versions of a different CADL bearing a different photograph but the same name, CADL number, and three different addresses (id. at 12-14). Defendant's phone also contained an image of an SBA website confirming the submission of an EIDL loan application through the email address "Myk_Diuzhenko@aol.com" (GEX 24d at 11). The same social security card and CADL for Diuzheko found in defendant's phone was also found in text messages sent between "tammy" and "Rich New" (GEX 10-31). In addition, Diuzheko's name and purported business, MD Acquisitions, were used in EIDL loan applications (GEX 3.l) and for a Wells Fargo account whose records showed checks written to, among others, Anastayia Rysik (GEX 5.h at 8). Furthermore, the EIDL loan file for MD Acquisitions contained the exact same payroll report as the loan files submitted in the names of foreign exchange students Liudmyla Kopytova, Viktoria Kauichko, and Anton Kudiumov. (GEX 116 at 7.)
- "Roza Avakian," whose purported social security card and CADL were found on defendant's phone (GEX 24b at 15-17), and whose loan application contained the same IRS Form 940 as the PPP and EIDL applications submitted in defendant's own name and business (GEX 116 at 6).
- "Nerses Nakshchyan" and "Tony Gleb," for whom defendant possessed images of purported CADLs bearing the same addresses on his phone, along with handwritten notes with

personal identifiers for Gleb and Nakshchyan found on the purported CADLs and instructions that included, for Nakshchyan, "Please use a [sic] old Armenian guy and Please match his Description to him thank you". (GEX 24a at 16-19). A purported Tony Gleb CADL and social security card were found at the Weddington residence (GEX 57.b at 1), as well as a photocopy of a CADL for Nerses Nakshchyan bearing a different photograph with handwritten notes containing additional personal identifiers (GEX 57.b at 6), and a checkbook bearing the name Nerses Nakshchyan (GEX 57.g at 28).

The images seized from defendant's phone also provided the jury evidence of his role in the conspiracy, which included creating false identification cards and documents in support of the charged offenses. Specifically, in addition to the handwritten instructions on changing CADLs and the matching CADLs, images of a logo bearing the name "ID Now" and photos of various different types of identification documents showing editing marks were further found in defendant's phone. (GEX 24a at 1-13.)

D. Defendant Artur Ayvazyan Used Accounts in His Name to Transfer and Launder PPP and EIDL Funds and Benefitted from the Fraudulent Use of Accounts in the Names of Victims

The government also presented witness testimony from summary witness Marylee Robinson to further support the fraud and money laundering conspiracies charged in counts 1 and 26. (6/16/21 P.M. Tr. 116:7-144:16 (direct examination of Ms. Robinson) and 6/17/21 P.M. Tr. 12:12-43:17 (cross examination by co-defendant Richard Ayvazyan's counsel).) Ms. Robinson's testimony and the summary chart exhibit she prepared (GEX 115) showed that PPP and EIDL loan applications were submitted in the names of the co-conspirators, including defendant and his company Allstate Towing and Transport, as well as other names associated with the charged offenses, including identity theft victim Anna Dzukaeva. This testimony and evidence also showed the proceeds obtained through these fraudulent loans were transferred through accounts in those and other names for the benefit of co-defendants and co-conspirators Richard Ayvazyan and Marietta Terabelian. (6/16/P.M. Tr. 128:5-16 (testimony of Ms. Robinson discussing GEX 115 page 7) and 141:24-144:19 (testimony of Ms. Robinson discussing GEX 115 page 9).) Ms. Robinson further testified that – despite receiving PPP loan funds – the Anna Dzukaeva Capital One account analyzed in GEX 115 did not show activity supporting purported business expenses like payroll. (6/16/21 P.M. Tr. 141:24-144:19 (discussing GEX 115 at 11 and Dzukaeva Capital One account activity).) The PPP loan funded into the Anna Dzukaeva Capital account was the basis for count 12's bank fraud offense, which was the predicate to the aggravated identity theft charged in count 24.

E. Defendant's Testimony and Admissions

At trial, defendant testified that: (1) he lived at the Weddington residence with Tamara Dadyan (6/23/21 A.M. Tr. 78:12-20); (2) the handwriting on various notes found in the Weddington residence belonged to Tamara Dadyan, and only she used the office where numerous records and CADLs were found (id. at 87:12-88:2 and 89:22-101:23; see also 6/17/21 P.M. Tr. 65:20-80:15 and 94:1-11 (testimony of Special Agent Madison MacDonald)); (3) he owned a trucking company called Allstate Towing and Transport, which employed "a couple of drivers" and had significantly reduced work in 2020 due to COVID-19 (6/23/21 A.M. Tr. 83:3-12, 84:13, and 86:13-23); (4) he had attempted to divorce Tamara Dadyan and moved out but ultimately returned because "some guys" related to his wife's business activities put his family in jeopardy of being harmed by dangerous people (id. at 106:10-107:16); and (5) he kept his business and finances for his business, Allstate Towing and Transport, including yearly tax filings, independent of and separate from Tamara Dadyan because he "didn't want to get involved in filing with her" (id. at 101:24-103:19).

Despite this alleged lack of trust, defendant testified that he: (1) gave Tamara Dadyan his tax forms and permitted her to fill out and submit the PPP and EIDL applications for his business without knowing the amount of the loans (id. at 108:3-110:12); (2) gave Tamara Dadyan full and consistent access to his phone (id. at 102:14-103:7) even after finding forms of identification ("IDs") on his phone and erasing them (id at 104:22-105:21); (3) claimed that it was "likely my wife" who put the false identification cards found by the government on his phone, and that he first learned about them in this case even though then testified that he had previously found IDs on his phone, confronted Tamara Dadyan about them, and erased them (id at 104:22-105:21); and (4) agreed to "help her out" by making deposits (id. at 88:25-89:4). Furthermore, despite making numerous statements regarding his lack of trust in his wife, Tamara Dadyan, defendant testified that his brother and co-defendant Richard Ayvazyan was a "great guy" and that asserted that he transferred PPP money to his brother, co-defendant Richard Ayvazyan, simply to repay a supposed business loan. (Id. at 89:5-18 and 111:18-113:4.) The jury had previously seen the text messages exchanged between "tammy" and "Rich New" describing the fraud in minute detail; however, unlike

Tamara Dadyan, defendant's brother was present at trial as a defendant challenging his alleged role in the charged offenses.

On cross-examination, defendant made a number of admissions related to his use of PPP funds and knowledge of individuals and accounts associated with fraudulent account transfers. First, defendant admitted that, despite claiming that Tamara Dadyan was not involved in his business and defendant deliberately kept his business and taxes separate from her, he agreed to let her "take care of" the loan applications for that very same business and gave her full access to his phone (id. at 118:19-120:7). Second, despite previously testifying that he had been behind on payments for his business (id. at 11:7-11), defendant admitted that one of the first recorded expenses on his account statement after receiving government funds was for an approximately $24,067.15 cashier's check for a Harley Davidson motorcycle (id. at 122:3-123:1). Third, defendant admitted that he had received government funds for Allstate Towing and Transport (id. at 121:2-8), that he "pay[s] close attention to [his business] accounts" (id. at 121:9-11), and acknowledged a check made out to his business for $73,500 from the Runyan Tax Services account (id. at 123:23-124:13), which constituted proceeds of a PPP loan-funded wire transfer from the account of his "good friend" and previous business partner, Thanh Tranh (id. at 123:4-19).

III. RELEVANT LEGAL STANDARDS

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:

> But this inquiry does not require a court to ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt. Instead, the

> 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) (emphasis in original) (internal quotation and citations omitted).

In addition to viewing the evidence in the light most favorable to the government, a reviewing court must assume that the jury resolved any conflicts of evidence in favor of the prosecution, determined witness credibility in favor of the verdict, and made any reasonable inferences from the evidence in a way that supports the conviction. The Ninth Circuit has explained the analysis as follows:

> First, the evidence must be viewed in the light most favorable to the government; and second, the reviewing court 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. In brief, the reviewing court must determine: whether the evidence, considered most favorably to the government, was such as to permit a rational conclusion by the jury that the accused was guilty beyond a reasonable doubt.

United States v. Ramos, 558 F.2d 545, 546-47 (9th Cir. 1977) (citation omitted) (reversing trial court's grant of a motion for judgment of acquittal).

Thus, "when 'faced with a record of historical facts that supports conflicting inferences,' a reviewing court 'must presume - even if it does not affirmatively appear in the record - that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution.'" United States v. Del Toro-Barboza, 673 F.3d 1136, 1143 (9th Cir. 2012) (quoting Jackson, 443 U.S. at 326). "It is not the district court's function to determine witness credibility when ruling on a Rule 29 motion."

United States v. Alarcon-Simi, 300 F.3d 1172, 1176 (9th Cir. 2002) (affirming denial of Rule 29 motion where defendant's theory was that "the [g]overnment's witnesses were not credible"). The testimony of only a single witness can be sufficient in supporting a verdict. See, e.g., United States v. Gudino, 432 F.2d 433, 434 (9th Cir. 1970) ("The testimony of the one witness, if believed, was sufficient to support the conviction, and the resolution of any question as to his credibility was properly entrusted to the jury.").

B. Federal Rule of Criminal Procedure 33

Federal Rule of Criminal Procedure 33 permits defendants to move for a new trial "if the interest of justice so requires." Fed. R. Crim. P. 33(a). While Rule 33 motions may be cast as based on a review of the weight of the evidence, the Ninth Circuit counsels that "[a] motion for a new trial . . . should be granted only in exceptional cases in which the evidence preponderates heavily against the verdict." United States v. Pimentel, 654 F.2d 538, 545 (9th Cir. 1981) (citation omitted).

Although the Rule 33 analysis does not require the same level of deference as Rule 29, the "exceptional" nature of the Rule 33 remedy requires a court take great care in assessing the evidence. A reviewing court "may not reweigh the evidence and set aside the verdict simply because it feels some other result would be more reasonable." United States v. Archer, 977 F.3d 181, 188 (2d Cir. 2020) (reversing district court's granting of Rule 33 motion) (internal quotation and citation omitted). Indeed, "a district court may not grant a Rule 33 motion based on the weight of the evidence alone unless the evidence preponderates heavily against the verdict to such an extent that it would be 'manifest injustice' to let the verdict stand." Id.

Courts consistently follow these principles in granting Rule 33 motions "sparingly and with caution, doing so only in those really exceptional cases." United States v. Martinez, 763 F.2d 1297, 1313-14 (11th Cir. 1985). See also, e.g., United States v. LaVictor, 848 F.3d 428, 455–56 (6th Cir. 2017) (Rule 33 motions "granted only in the extraordinary circumstances where the evidence preponderates heavily against the verdict") (internal quotation marks omitted); United States v. Wheeler, 753 F.3d 200, 208 (D.C. Cir. 2014) ("[G]ranting a new trial motion is warranted only in those limited circumstances where 'a serious miscarriage of justice may have occurred.'") (citation omitted); United States v. Reed, 875 F.2d 107, 114 (7th Cir. 1989) (reversing grant of Rule 33 motion where case was "not one of those 'exceptional cases' where the evidence preponderates so heavily against the defendant that it would be a manifest injustice to let the guilty verdict stand").

IV. ARGUMENT

The evidence presented at trial against defendant is more than sufficient to withstand both defendant's motion for judgment of acquittal and his motion for a new trial on all counts of conviction.

A. Conspiracy to Commit Bank Fraud and Wire Fraud (Count 1); Wire Fraud (Counts 2-12); Bank Fraud (Counts 13-20); and Conspiracy to Commit Money Laundering (Count 24)

1. Elements of the Charged Offenses

a. *Elements of Conspiracy to Commit Bank/Wire Fraud*

With respect to count 1, alleging conspiracy to commit bank fraud and wire fraud in violation of 18 U.S.C. § 1349, the elements are as follows: (1) beginning no later than in or around March 2020, and continuing until at least in or around August 2020, there was an agreement between two or more persons to commit bank fraud and/or wire fraud; and (2) defendant became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it. Ninth Circuit Manual of Modified Jury Instructions ("9th Cir. MJI") No. 8.20 (modified for 18 U.S.C. § 1349). "An agreement to commit a crime can be explicit or tacit, and can be proved by direct or circumstantial evidence, including inferences from circumstantial evidence." United States v. Kaplan, 836 F.3d 1199, 1212 (9th Cir. 2016) (internal quotation and citation omitted). A person may be a member of a conspiracy even though the person does not know all of the purposes of or participants in the conspiracy. United States v. Escalante, 637 F.2d 1197, 1200 (9th Cir. 1980). Moreover, "[a]fter a conspiracy is established, proof of the defendant's connection to the conspiracy must be shown beyond a reasonable doubt, but the connection can be slight." United States v. Montgomery, 384 F.3d 1050, 1062 (9th Cir. 2004).

b. Elements of Wire Fraud

With respect to Counts 2-12, alleging wire fraud in violation of 18 U.S.C. § 1343, the elements are as follows: (1) defendant knowingly participated in or devised a scheme or plan to defraud, or a scheme or plan for obtaining money or property by means of false or fraudulent pretenses, representations, or promises; deceitful statements of half-truths may constitute false or fraudulent representations; (2) the statements made or facts omitted as part of the scheme were material; that is, they had a natural tendency to influence, or were capable of influencing, a person to part with money or property; (3) defendant acted with the intent to defraud, that is, the intent to deceive and cheat; and (4) defendant used, or caused to be used, an interstate wire communication to carry out or attempt to carry out an essential part of the scheme. 9th Cir. MJI No. 8.124.

The Ninth Circuit has made clear that based on its "longstanding precedent, 'anyone who knowingly and intentionally participates in the execution of [a] fraudulent scheme comes within the prohibition of the mail and wire fraud statutes regardless of whether the defendant devised the scheme.'" United States v. Holden, 908 F.3d 395, 400 (9th Cir. 2018) (emphasis in original) (quoting United States v. Manion, 339 F.3d 1153, 1156 (9th Cir. 2003). The government also alleged an aiding and abetting theory under 18 U.S.C. § 2(a) as part of its wire fraud scheme allegations in this case. (See Counts 2-12.)

c. Elements of Bank Fraud

With respect to Counts 13-20, alleging bank fraud in violation of 18 U.S.C. § 1344(2), the elements are as follows: (1) defendant knowingly carried out a scheme or plan to obtain money or property from the financial institution specified in the count by making false statements or promises; (2) defendant knew that the statements or promises were false; (3) the statements or promises were material; that is, they had a natural tendency to influence, or were capable of influencing, a financial institution to part with money or property; (4) defendant acted with the intent to defraud; and (5) the specified financial institution was federally insured. 9th Cir. MJI No. 8.127. The government also alleged both an aiding and abetting theory and a willful causation theory of liability under 18 U.S.C. §§ 2(a) and

2(b) as part of its bank fraud scheme allegations in this case. (See Counts 13-20.)

d. *Elements of Money Laundering Conspiracy*

With respect to count 26, alleging conspiracy to engage in money laundering in violation of 18 U.S.C. § 1956(h), the elements are as follows: (1) beginning no later than in or around March 2020 and continuing until at least in or around October 2020, there was an agreement between two or more persons to commit money laundering and/or engaging in monetary transactions in property derived from specified unlawful activity; and (2) defendant became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it. 9th Cir. MJI No. 8.20 (modified for 18 U.S.C. § 1956(h)). The same general principles regarding conspiratorial liability described in section III.A.1.a apply with equal force here.

2. The Evidence Against Defendant Was Overwhelming

As discussed in detail above, the government's evidence against defendant was overwhelming. The government presented mountains of evidence seized from defendant's phone and residence that directly implicated him in the conspiracies to submit fraudulent PPP and EIDL loan applications and launder the fraudulently obtained proceeds. The evidence included fake and stolen identities used to fraudulently apply for PPP and EIDL loans, copies of the fraudulent PPP and EIDL loan applications, screenshots of PPP and EIDL application submitted using the names of identity theft victims, and bank statements related to accounts used to launder the proceeds. The government also presented text message from defendant's wife and brother detailing defendant's extensive role in the conspiracies, including how and when he was compensated for his role in the fraud.

Defendant's arguments for acquittal and/or a new trial rely exclusively on the purported unreasonableness of the jury's rejection of his incredible, self-serving, and internally contradictory testimony. Despite defendant's attempt to blame the entirety of the fraud on his wife, his testimony was internally inconsistent and contradicted by other evidence. He claimed he mistrusted Tamara Dadyan so much that he refused to jointly file taxes with her, but provided her those same tax forms to submit loan applications on behalf of his personal business, no questions asked. He claimed his business was devastated by the pandemic, but he used a significant percentage of COVID-19 disaster relief funds on a Harley Davidson motorcycle shortly after receiving the money. He claimed he legitimately transferred loan proceeds to his brother to repay an outstanding loan, but he layered that transfer through two different accounts, both in the names of his business, before sending it – not to his brother, but to Encore Escrow - for a multi-million dollar mansion purchased in his brother's name (GEX 115 at 7). Such activity is more consistent with conspiracy to submit fraudulent PPP and EIDL loan applications and launder the proceeds, than being the unwitting beneficiary of someone else's crime.

Given the overwhelming evidence of defendant's knowledge and participation in the charged offenses, and the internal contradictions in his testimony highlighted not only through cross-examination but also in the government's closing argument (6/24/21 A.M. Tr. 55:23-64:16), any rational trier of fact could have found him guilty of the charged offenses. Given defendant's direct denial of his role in the charged offenses, the jury's verdict was a clear rejection of his testimony and credibility. Since a reviewing must respect the exclusive province of the jury to determine the credibility of witnesses when considering a Rule 29 motion, the Court should defer to the jury's verdict. Jackson, 443 U.S. at 319-20; Ramos, 558 F.2d at 546-47. Moreover, given the record described above, this is hardly the "exceptional case[] in which the evidence preponderates heavily against the verdict." Pimentel, 654 F.2d at 545. As such, defendant's motions should be denied.

B. Aggravated Identity Theft (Count 24)

1. Elements of Aggravated Identity Theft

With respect to count 24, alleging aggravated identity theft in violation of 18 U.S.C. § 1028A(a)(1), the elements are as follows: (1) defendant knowingly transferred, possessed, or used without legal -authority a means of identification of another person, to wit, the name and date of birth of Anna Dzukaeva; (2) defendant knew that the means of identification belonged to a real person; and (3) defendant did so during and in relation to the crime of wire fraud, in violation of 18 U.S.C. § 1343, charged in count 12. 9th Cir. MJI No. 8.83.

The word "person" includes both living and deceased persons, and the government is not required to prove that the defendant knew the person was living when the defendant committed the crime of aggravated identity theft. United States v. Maciel-Alcala, 612 F.3d 1092, 1100-02 (9th Cir. 2010). The government need not prove that the identification document was stolen. United States v. Osuna-Alvarez, 788 F.3d 1183, 1185 (9th Cir. 2015); see also United States v. Gagarin, 950 F.3d 596, 604-605 (9th Cir. 2020) (holding that government is not required to prove that other person did not consent to use of his or her means of identification). The government also alleged both an aiding and abetting theory and a willful causation theory of liability under 18 U.S.C. §§ 2(a) and 2(b) as part of its aggravated identity theft charge against defendant. (See Count 24.)

2. Proof of Defendant's Commission of the Aggravated Identity Theft of Anna Dzukaeva's Name Charged in Count 24

The government's evidence also provided substantial proof of defendant's knowledge that Anna Dzukaeva, a foreign exchange student, was a real person. Among other things, the trial evidence included numerous other J-1 visa applicant identifications found in the Weddington residence, and evidence of the co-conspirators' repeated use of real names and identities belonging to foreign exchange students found in defendant's phone and in his home. These identities included Iuliia Zhadko, Anton Kudiumov, Liudmyla Kopytova, and others. Given the actual possession of J-1 visas and identification documents found at the Weddington residence, the jury could – and did – reasonably infer that defendants knowingly used these real persons' names and identities in combination with fake and fraudulent information to submit fraudulent PPP and EIDL applications and open accounts to transfer the resulting proceeds. (See 6/24/21 A.M. Tr. 70:3-71:3.) A rational juror would have been able to find that it was a deliberate and knowing choice to target foreign exchange students, not an unknowing coincidence, and the weight of the evidence supports this conclusion as well. Defendant's motions with respect to count 24 should, therefore, be denied.

V. CONCLUSION

For the foregoing reasons, the government respectfully requests that this Court deny defendant's motion for a judgment of acquittal under Federal Rule of Criminal Procedure 29 and/or a new trial under Federal Rule of Criminal Procedure 33.