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18 UNITED STATES DISTRICT COURT

19 FOR THE CENTRAL DISTRICT OF CALIFORNIA

20 UNITED STATES OF AMERICA,

21 Plaintiff,

22 v.

23 OUMAR SISSOKO,

24 Defendant.

No. CR 21-187-JFW

GOVERNMENT'S TRIAL BRIEF

Trial Date: March 22, 2022

Trial Time: 8:30 a.m.

Location: Courtroom of the
Hon. John F. Walter

25
26 Plaintiff United States of America, by and through its counsel
27 of record, Assistant United States Attorney Carolyn S. Small and
28 Trial Attorney Jason Covert, hereby files its Trial Brief.

1 The government respectfully reserves the right to supplement its
2 Trial Brief, if necessary, including by filing a supplemental
3 memorandum regarding criminal forfeiture.¹

4 Dated: March 15, 2022

Respectfully submitted,

5 TRACY L. WILKISON
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10 Assistant United States Attorney
11 Chief, Criminal Division

/s/

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¹ Defense counsel has informed the government that if the jury finds defendant guilty of any of the charged offenses, defendant would request retention of the jury to decide forfeiture. The parties therefore anticipate that there may be a criminal forfeiture phase of the trial.

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 Jury trial is set for March 22, 2022, at 8:30 a.m. The
4 government estimates approximately two days for its case-in-chief,
5 not including jury selection. The government anticipates calling
6 approximately eleven witnesses, as identified in the government's
7 Pre-Trial Witness List. Defendant is not in custody pending trial.

8 **II. THE INDICTMENT**

9 On April 13, 2021, a grand jury returned a four-count Indictment
10 charging defendant OUMAR SISSOKO ("defendant") with four counts of
11 wire fraud, in violation of 18 U.S.C. § 1343.

12 **III. STATEMENT OF FACTS**

13 The evidence at trial will prove the following:

14 **A. Defendant's Company, Road Doctor California LLC, Applies
15 for and Receives a \$7.25 Million PPP Loan**

16 On April 24, 2020, defendant submitted a Paycheck Protection
17 Program ("PPP") loan application to JPMorgan Chase on behalf of the
18 company Road Doctor California. (Government's Exhibit ("GX") 8.) To
19 submit the loan application, Road Doctor completed a form through
20 Chase's online portal and uploaded the following supporting
21 documents: (1) a completed PDF of a PPP Borrower Application Form
22 (the "Application Form") (GX 5); (2) a supplemental packet of
23 information in which the applicant quoted portions of the PPP rules
24 and regulations, including the SBA's PPP Interim Final Rule dated
25 April 15, 2020, and provided a breakdown of anticipated business
26 expenses (the "Supplemental Packet") (GX 6); and (3) various tax
27 documents (certain of which are contained in GX 7). Although the
28 loan application purportedly was submitted by defendant's wife, the

1 metadata and document properties from the Supplemental Packet
2 identify "Oumar Sissoko" as the author (GX 72, 73, and 74).
3 Additionally, defendant was listed as the primary contact for Road
4 Doctor on the Application Form, and provided the bank with his cell
5 phone number and email address.

6 The Interim Final Rule dated April 15, 2020 (GX 11) explained
7 how PPP loan proceeds could be used, and it advised: "If you
8 knowingly use the funds for unauthorized purposes, you will be
9 subject to additional liability [beyond repayment] such as charges
10 for fraud." While these portions of the Interim Final Rule were not
11 referenced in the Supplemental Packet submitted to JPMorgan Chase by
12 defendant, other portions of the Rule were cited, demonstrating that
13 defendant had read the Rule. Defendant also quoted in the
14 Supplemental Packet portions of a document titled "Paycheck
15 Protection Program Loans Frequently Asked Questions (FAQs)" (GX 12),
16 which contained additional guidance from the SBA about the Paycheck
17 Protection Program, demonstrating that he was aware of, and reading
18 the SBA's guidance on the PPP.

19 According to the Supplemental Packet, Road Doctor was a pothole
20 repair business that was in the process of hiring 450 employees. It
21 calculated anticipated payroll expenses of \$2.9 million, which
22 purportedly would cover operations in five states (California,
23 Arizona, Nevada, Oregon, and Washington). According to the breakdown
24 defendant provided the bank, these payroll expenses consisted of
25 monthly salaries, rent for multiple locations in California, cost of
26 goods sold, administrative expenses, and insurance.

27 Both the digital application completed via Chase's online portal
28 and the Application Form that defendant voluntarily submitted to the

1 bank contained various certifications. The third certification on
2 the Application Form stated:

3 The funds will be used to retain workers and maintain
4 payroll or make mortgage interest payments, lease payments,
5 and utility payments, as specified under the Paycheck
6 Protection Program Rule; I understand that if the funds are
7 knowingly used for unauthorized purposes, the federal
8 government may hold me legally liable, such as for charges
9 of fraud.

10 The digital application completed via Chase's online portal contained
11 a similar certification that the funds would "be used to retain
12 workers and maintain payroll or make mortgage interest payments,
13 lease payments, and utility payments."

14 Although defendant did not qualify for a PPP loan based on his
15 application, the bank mistakenly approved Road Doctor for a \$7.25
16 million PPP loan. A promissory note was issued for the loan (GX 9),
17 which required the borrower, Road Doctor California LLC, to again
18 agree: "All loan proceeds will be used only for purposes permitted
19 under the Paycheck Protection Program provided for in the CARES Act."

20 Although defendant made specific representations to the bank
21 regarding how the company would use the proceeds and further
22 certified that the proceeds would only be used for authorized PPP
23 expenses, once the defendant had access to Road Doctor California's
24 PPP funds, he spent them contrary to his representations to the bank.

25 **B. Within Ten Days, Defendant Spends More than \$370,000 of the**
26 **PPP Funds on Unauthorized Expenses Before the Bank Freezes**
27 **His Accounts**

28 On May 1, 2020, \$7.25 million of PPP loan funds were disbursed
into Road Doctor's checking account. There was a negative balance in
the account before the PPP funds were disbursed. Over the course of
the next ten days, defendant and his family spent hundreds of

1 thousands of dollars of PPP funds on various expenses --- none of
2 which were payroll, mortgage interest, rent, or utilities.

3 One of defendant's biggest purchases was a new AMG E53 Mercedes-
4 Benz on May 5, 2020, for \$113,000. (GX 2, 13.) Defendant also spent
5 \$8,780 for optional services contracts for the Mercedes, \$7,000 of
6 which he put on a debit card that drew from the PPP funds in Road
7 Doctor's checking account (Count 3). The Mercedes was registered
8 personally in the name of defendant and his wife; it was not
9 registered in the name of Road Doctor. (GX 13 at 66; GX 69.)

10 In addition to purchasing the Mercedes, defendant spent the PPP
11 money on various other expenditures, which are summarized in
12 Government's Exhibits 85 and 86. For example, he spent \$35,000 to
13 pay a lawyer in Canada; \$100,000 to make a down payment on a factory
14 in New Hampshire that he had been trying to acquire for years; and
15 over \$5,000 to purchase a computer from Apple.com (Count 4).
16 Defendant also expended over \$25,000 in transfers to his children and
17 other individuals and making a cash withdrawal, and he spent nearly
18 \$5,000 at places like Costco, Nordstrom, Birkenstock, and GOAT (a
19 sneaker seller). Additionally, \$90,000 was transferred to
20 defendant's wife personal account, and \$20,000 from those proceeds
21 were used to pay off a BMW that defendant had leased in 2016
22 (Count 1).

23 Defendant conceded in an audio recording that he and his wife
24 were the only employees of Road Doctor as of June 23, 2020, which
25 shows that defendant's children and the other individuals to whom
26 defendant sent PPP money were not employees of Road Doctor, and the
27 payments to them therefore were not for payroll. Additionally, a
28 witness from California's Employment Development Department ("EDD") -

1 -- which administers California's payroll tax programs and collects
2 taxes from employers --- will testify that defendant first filed a
3 registration form for Road Doctor on or about December 28, 2020, but
4 that the company never remitted payroll taxes or filed payroll
5 returns for any employees.

6 On or about May 4, 2020, defendant attempted to initiate wire
7 transfers to an entity he controlled in Mauritania called BOS
8 Holdings Mauritania. Because the attempted wire transfers were above
9 defendant's wire limit, a supervisor at Chase got involved to look
10 into whether the wire limit could be increased. That supervisor will
11 testify that in the course of looking into this issue, she
12 discovered that defendant's company had been granted a large PPP
13 loan. She reviewed the loan application materials and realized
14 immediately that the loan should not have been approved. She
15 escalated the issue to her manager, and defendant's accounts were
16 ultimately suspended. The remaining PPP funds in the amount of
17 approximately \$6.8 million were frozen and later clawed back by the
18 bank and applied to the outstanding loan balance.

19 **C. Defendant's False Statements to a Chase Employee and to an**
20 **Undercover FBI Agent During a Recorded Call in June 2020**

21 On May 7, 2020, after defendant's attempted wire transfers to
22 BOS Holdings Mauritania failed to go through, defendant emailed a
23 Chase employee and attempted to persuade the employee to release his
24 funds. (GX 33.) In the email, defendant falsely represented that
25 BOS Holdings Mauritania had an agreement with John Deere to supply
26 equipment for highway projects abroad. A custodian of records from
27 Deere & Company has searched Deere & Company's records and determined
28 the company has no records related to defendant or BOS Holdings at

1 all. Furthermore, a former employee for a heavy machine dealer
2 located in Riverside, will testify that he provided defendant a quote
3 for a machine in 2017, after which defendant made no further contact.

4 Later, on June 23, 2020, when to defendant's knowledge the PPP
5 funds were still frozen, an undercover FBI agent purporting to be a
6 contractor with the bank (the "UC") placed a recorded call to
7 defendant's wife, who, as noted above, was the signatory on the PPP
8 loan application. Immediately after the UC said she was calling from
9 the bank, defendant took the call over from his wife and spoke to the
10 UC for nearly an hour. In response to questioning about how the PPP
11 funds had been spent, defendant stated he had spent \$100,000 to make
12 a down payment on a factory and had spent \$35,000 to hire a Canadian
13 lawyer. After being pressed further about his expenditures,
14 defendant admitted he had purchased a Mercedes-Benz, which he
15 characterized as a "corporate car," contrary to his statement to the
16 Mercedes salesman that defendant was purchasing the car for his son.
17 When asked about the wires to his subsidiary in Africa, defendant
18 again falsely claimed to have an agreement with John Deere to provide
19 all of the equipment for Road Doctor and his overseas mining
20 operation. Although he was asked several times during the call
21 whether he had made other expenditures with the PPP funds, defendant
22 failed to disclose numerous inappropriate uses of the proceeds.

23 **IV. THE CHARGED OFFENSES**

24 The elements of wire fraud, in violation of 18 U.S.C. § 1343,
25 are as follows:

26 1. The defendant knowingly participated in, devised, or
27 intended to devise a scheme or plan to defraud, or a scheme or plan
28 for obtaining money or property by means of false or fraudulent

1 pretenses, representations, promises, or omitted facts. Deceitful
2 statements of half-truths may constitute false or fraudulent
3 representations;

4 2. The statements made or facts omitted as part of the scheme
5 were material; that is, they had a natural tendency to influence, or
6 were capable of influencing, a person to part with money or property;

7 3. The defendant acted with the intent to defraud, that is,
8 the intent to deceive and cheat; and

9 4. The defendant used, or caused to be used, an interstate or
10 foreign wire communication to carry out or attempt to carry out an
11 essential part of the scheme.

12 Ninth Circuit Model Criminal Jury Instructions, No. 15.35 (Wire
13 Fraud).

14 "[A] fraud victim's negligence is not a defense to criminal
15 charges under the federal fraud statutes." United States v. Lindsey,
16 850 F.3d 1009, 1014-15 (9th Cir. 2017). This legal principle remains
17 true even when the victim is an entity. Indeed, the Ninth Circuit
18 has specifically held in the mortgage-fraud context that a lender's
19 negligence in verifying loan application information, or even
20 intentional disregard of the information, is not a defense to fraud.
21 Id. at 1014; see also Ninth Circuit Model Criminal Jury Instructions,
22 No. 15.35 (Wire Fraud) (note regarding cases involving mortgage
23 fraud).

24 The "interstate" requirement in 18 U.S.C. § 1343 is
25 jurisdictional and not a substantive element of wire fraud. United
26 States v. Jinian, 725 F.3d 954, 965 (9th Cir. 2013). The government
27 therefore is not required to prove a defendant knew his actions had
28 an "interstate nexus" to establish a violation of a statute requiring

1 an "interstate nexus." Id. Each transmission by wire in interstate
2 commerce to advance, further, or carry out the scheme may be a
3 separate wire fraud count. See United States v. Garlick, 240 F.3d
4 789, 792 (9th Cir. 2001) ("Insofar as we have never expressly held
5 that each use of the wires constitutes a separate violation of 18
6 U.S.C. § 1343, we do so now."); see also 2A O'Malley, Grenig & Lee,
7 Federal Jury Practice and Instructions § 47.15 (5th ed. 2000).

8 Here, the wire fraud counts are based on defendant's use of PPP
9 loan proceeds for the following four expenditures:

10 (1) \$20,000 to fund a cashier's check that was used to pay off a
11 debt defendant owed on a BMW (Count 1);

12 (2) \$111,000 to fund a cashier's check that was used to purchase
13 a Mercedes-Benz (Count 2);

14 (3) A \$7,000 debit transaction to purchase optional services
15 contracts for the Mercedes-Benz that is the subject of Count 2
16 (Count 3); and

17 (4) A \$5,876 debit transaction to purchase a 27" Apple iMac Pro
18 computer (Count 4).

19 Each of these transactions involved the use of interstate wires.

20 **V. LEGAL AND EVIDENTIARY ISSUES**

21 **A. Wire Fraud Based on a Theory of Fraudulent Misappropriation**

22 The government intends to prove at trial that defendant's
23 fraudulent scheme consisted of misappropriating PPP funds by using
24 those funds to make unauthorized purchases.

25 The Supreme Court and the Ninth Circuit have repeatedly adopted
26 a "broad understanding of fraud" that includes not just the
27 fraudulent taking of money or property from a victim, but also the
28 "fraudulent appropriation" of money or property that a victim has

1 entrusted to a defendant. See, e.g., United States v. Jones, 472
2 F.3d 1136, 1140 (9th Cir. 2007) (emphasis added) (quotations
3 omitted). Jones, for instance, rejected the defendant's contention
4 that his conduct did not fall within the ambit of the wire-fraud
5 statute because he did not make any false representations prior to
6 receiving money from victims. Id. There, the defendant solicited
7 money from investors to purchase luxury cars that purportedly were
8 being sold at cut rate prices as part of an attempt to liquidate the
9 estate of a wealthy car collector. Id. at 1137. The defendant told
10 investors he would collect their money for safekeeping and would not
11 turn over their funds to the estate until the cars were delivered.
12 Id. at 1137. In reality, neither the cars nor the estate existed,
13 though it was undisputed that the defendant did not know of the
14 fraudulent nature of the investment at the time he first solicited
15 the investments. Id. However, contrary to the defendant's
16 representations that he would use the money to acquire the luxury
17 cars from the estate, the defendant instead spent the money on
18 himself. Id. The Ninth Circuit held that this conduct constituted
19 wire fraud. Id. at 1140. In reaching that conclusion, the court
20 explained that although the defendant "did not possess a fraudulent
21 intent when he received the money, his fraudulent appropriation of
22 the funds still satisfies the elements of § 1343." Id. The court
23 also noted that the Supreme Court "has interpreted § 1343 broadly and
24 twice held that individuals who retain or misappropriate the money or
25 property of others, regardless of how they acquired it, fall within
26 the purview of mail or wire fraud." Id. at 1139 (emphasis added);
27 see also Carpenter v. United States, 484 U.S. 19, 27 (1987) ("The
28 concept of 'fraud' includes the act of embezzlement, which is

1 fraudulent appropriation to one's own use of the money or goods
2 entrusted to one's care by another." (internal quotations omitted));
3 Pasquantino v. United States, 544 U.S. 349, 356 (2005) ("[F]raud at
4 common law included a scheme to deprive a victim of his entitlement
5 to money.").

6 Jones is squarely on point in this case. The government intends
7 to prove that, contrary to defendant's representation to the bank
8 that the PPP funds would be "used to retain workers and maintain
9 payroll or make mortgage interest payments, lease payments, and
10 utility payments, as specified under the Paycheck Protection Program
11 Rule," defendant in fact used the money to purchase two luxury cars;
12 send money to his children and individuals abroad; put a down payment
13 on a factory in New Hampshire; buy items from Nordstrom, Costco,
14 Birkenstock, GOAT (a sneaker seller), and Apple.com; and make various
15 other unauthorized expenditures. This conduct falls within the
16 purview of the wire-fraud statute, regardless of how defendant
17 acquired the PPP funds in the first instance. See Jones, 472 F.3d at
18 1140. Moreover, the half-truths, misrepresentations, and omissions
19 defendant made to a bank employee and the undercover agent, whom he
20 believed worked for the bank, after he received and misappropriated
21 the funds is evidence of his fraudulent intent and consciousness of
22 guilt.

23 **B. Defendant's Statements During a Recorded Call with an**
24 **Undercover FBI Agent**

25 As set forth in Government's Motion In Limine #1 ("MIL #1")
26 (Dkt. 72), the government intends to offer prior, audio-recorded
27 statements made by defendant to an undercover law enforcement
28 officer. These statements, when offered by the government, are

1 admissible under Rule 801(d)(2) of the Federal Rules of Evidence
2 because they are opposing-party statements. Defendant may not,
3 however, elicit his own prior statements from a witness (including
4 himself), because they are hearsay when offered by him. Fed. R.
5 Evid. 801(d)(2); United States v. Ortega, 203 F.3d 675, 682 (9th Cir.
6 2000); United States v. Willis, 759 F.2d 1486, 1501 (11th Cir. 1985)
7 (defendant's exculpatory statements inadmissible when offered by
8 defense). Nonetheless, defendant has informed the government that he
9 intends to offer as evidence his own prior statements from the
10 recording. The government has sought to preclude defendant from
11 introducing these hearsay statements in MIL #1. That motion is
12 currently pending before the Court. A hearing on the motion is set
13 for March 18, 2022, at 9:00 a.m.¹

14 **C. Business Records**

15 During trial, the government will seek to admit documents
16 obtained from various institutions as self-authenticating business
17 records pursuant to Federal Rule of Evidence 902(11). The government
18 has provided notice to defendant of which documents it intends to

19 Computer printouts that are compilations of data regularly
20 maintained by a business, such as printouts from a bank's internal
21 systems that the bank maintains in the ordinary course of its
22 business, are admissible as records of regularly conducted activity
23 pursuant to Fed. R. Evid. 803(6). See United States v. Catabran, 836
24 F.2d 453, 458 (9th Cir. 1988) (questions as to accuracy "of business
25 records, would have affected only the weight of the printouts, not
26 their admissibility."); U-Haul Int'l v. Lumbermans Mutual Casualty

28 ¹ No other motions in limine have been filed by either party.

1 Co., 576 F.3d 1040, 1043-44 (9th Cir. 2009) (computer records kept in
2 the regular course of business activity properly admitted under Fed.
3 R. Evid. 803(6)).

4 **D. Judicial Notice**

5 The government intends to request that the Court take judicial
6 notice of the SBA's April 15, 2020, PPP Interim Final Rule (GX 11).
7 See 44 U.S.C. § 1507 ("The contents of the Federal Register shall be
8 judicially noticed...."); Mora v. Vasquez (In re Mora), 199 F.3d
9 1024, 1028 n. 7 (9th Cir.1999) (judicially noticing postal
10 regulations that were incorporated into the Code of Federal
11 Regulations). The April 15, 2020, PPP Interim Final Rule, which was
12 published in the Federal Register at 85 F.R. 20811, applied to
13 applications submitted under the Paycheck Protection Program through
14 June 30, 2020, or until funds made available for that purpose were
15 exhausted. The parties have submitted a proposed stipulated jury
16 instruction on this issue (Stipulated Jury Instruction 3).

17 **E. Summary Witness and Exhibits**

18 This case involves a large number of financial records. To
19 assist in the jury's understanding of the case, the government has
20 prepared charts and summaries of those materials under Federal Rule
21 of Evidence 1006. Those exhibits are marked as GX 75-86. The
22 government intends to have a summary witness, Special Agent Erin
23 Bourassa of the Federal Deposit Insurance Corporation Office of
24 Inspector General, testify about, and use these charts to summarize
25 admissible evidence.

26 The Court and jury are entitled to have a witness "organize and
27 evaluate evidence [that] is factually complex and fragmentally
28 revealed[.]" United States v. Shirley, 884 F.2d 1130, 1133 (9th Cir.

1 1989) (DEA agent's testimony regarding her review of various
2 telephone records, rental receipts, and other previously offered
3 testimony held to be proper summary evidence, as it helped jury
4 organize and evaluate evidence; summary charts properly admitted);
5 United States v. Lemire, 720 F.2d 1327, 1348 (D.C. Cir. 1983)
6 (“[J]ust as an expert can assist a jury by imparting special
7 knowledge that helps the jury to understand technical evidence, a
8 non-expert summary witness can help the jury organize and evaluate
9 evidence which is factually complex and fragmentally revealed in the
10 testimony of a multitude of witnesses throughout the trial.”).

11 **F. Cross-Examination of Defendant**

12 The government does not know whether defendant intends to
13 testify at trial. If defendant does testify, he waives his right
14 against self-incrimination and subjects himself to cross-examination
15 concerning all matters reasonably related to the subject matter of
16 his testimony. See, e.g., Ohler v. United States, 529 U.S. 753, 759
17 (2000) (“It has long been held that a defendant who takes the stand
18 in his own behalf cannot then claim the privilege against cross-
19 examination on matters reasonably related to the subject matter of
20 his direct examination” (internal citation and quotation marks
21 omitted)). A defendant has no right to avoid cross-examination on
22 matters that call into question his claim of innocence. United
23 States v. Miranda-Uriarte, 649 F.2d 1345, 1353-54 (9th Cir. 1981).
24 The scope of a defendant's waiver is co-extensive with the scope of
25 relevant cross-examination. United States v. Cuozzo, 962 F.2d 945,
26 948 (9th Cir. 1992); United States v. Black, 767 F.2d 1334, 1341 (9th
27 Cir. 1985) (“What the defendant actually discusses on direct does not
28 determine the extent of permissible cross-examination or his waiver.

1 Rather, the inquiry is whether 'the government's questions are
2 reasonably related' to the subjects covered by the defendant's
3 testimony.").

4 **G. Reciprocal Discovery and Affirmative Defenses**

5 As of the date of this filing, defendant has not produced to the
6 government any reciprocal discovery to which the government may be
7 entitled under Rules 16(b) and 26.2 of the Federal Rules of Criminal
8 Procedure.² Further, defendant has not provided the government with
9 notice of any affirmative defenses. To the extent defendant attempts
10 to introduce or use any documents at trial that he has not produced,
11 or seeks to rely on an undisclosed affirmative defense, the
12 government reserves the right to object and to request that the Court
13 exclude defendant's undisclosed documents or affirmative defense.

14 See United States v. Young, 248 F.3d 260, 269-70 (4th Cir. 2001)
15 (upholding exclusion under Rule 16 of audiotape evidence defendant
16 did not produce in pretrial discovery where defendant sought to
17 introduce audiotape on cross-examination of government witness not
18 for impeachment purposes but as substantive "evidence in chief" that
19 someone else committed the crime).

20 **VI. FORFEITURE**

21 Defense counsel has informed the government that if the jury
22 finds defendant guilty of any of the charged offenses, defendant
23 intends to request retention of the jury to decide forfeiture. The
24 parties therefore anticipate there may be a criminal forfeiture phase
25 of the trial immediately following the guilt phase of the trial. A
26

27
28 ² Defendant has provided notice that he intends to call Bella Wang as an expert who will testify regarding PPP loans and has provided some background information about Ms. Wang.

1 supplemental trial memorandum regarding criminal forfeiture is filed
2 concurrently herewith.

3 **VII. CONCLUSION**

4 The government requests leave to supplement this trial
5 memorandum as may become appropriate during the course of trial.

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