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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. STEPHEN SILVERMAN, et al., Defendant.	CASE NO. CR 18-533 RS GOVERNMENT'S OPPOSITION TO MOTIONS TO DISMISS AND TO TRANSFER

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I. Introduction

Defendant Silverman and his co-conspirators engaged in a long-term criminal scheme that reached all corners of the United States. Using a front company established in Pennsylvania, an unwitting pharmaceutical technology company in Florida, and a sham wholesaler in Washington State, the defendants swindled victims across the country by selling untraceable black-market prescription drugs under false pretenses. A substantial portion of the diverted drugs were sold under the brand name of Gilead Sciences, Inc., a biopharmaceutical company headquartered in the Northern District of California. The scheme was uncovered by agents working in the Federal Bureau of Investigation's San Francisco Division, which began an investigation. The defendants thereafter knowingly and deliberately propelled their conspiracy into the Northern District of California, which subjects them to venue in this district.

Defendant Silverman's Motion to Dismiss must be denied because the Court is limited at the pretrial stage to considering the four-corners of the indictment. Defendant's invitation to wade into the anticipated evidence must be rejected; fact finding is the province of the jury. Even if the Court were permitted to act as fact finder, the government anticipates presenting more than sufficient evidence to prove by a preponderance of the evidence that venue is proper in the Northern District of California.

Similarly, Defendant Silverman's Motion to Transfer must be rejected. Defendant's arguments would apply with equal force to every white-collar scheme with national implications, and to credit Defendant's arguments here would mean every such defendant can elect to be tried in his home district. That is not the law. The co-conspirators, not the FBI, chose to project their conspiracy across the country. In addition, defendant's delay in bringing this motion—during which time he observed a co-defendant receive a substantial prison sentence—counsels against transfer. Defendants should not be permitted to observe lengthy proceedings before shopping for a new forum. Relatedly, this Court's substantive engagement in the case so far—taking guilty pleas, sentencing a co-defendant, and presiding over complex forfeiture proceedings—undermine the case for transfer. Transfer at this stage would result in substantial duplication of judicial efforts, particularly because Defendant Papyan has not joined the motion.

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II. Facts Alleged in the Superseding Indictment

As alleged in the Superseding Indictment ("SI"), defendants Ovasapyan, Kojoyan, Papyan, and Silverman agreed to participate in a variety of schemes targeting sick Americans. SI ¶ 14. Defendant Ovasapyan, using a company established in Pennsylvania called Mainspring Distribution, sold large quantities of prescription drugs to "retail pharmacies and wholesalers across the United States." *Id.* ¶¶ 10 & 14. Mainspring specialized in prescription drugs used to treat the Human Immunodeficiency Virus ("HIV"). *Id.* ¶ 14. The co-conspirators generated documents that falsely claimed that Mainspring's supply of prescription drugs had been obtained from a licensed supplier. *Id.* ¶ 15. In reality, Mainspring's prescription drugs were acquired from unlicensed sources on the black market. *Id.*

More specifically, the co-conspirators generated documentation that made it appear that Mainspring's drugs came from a particular licensed wholesaler in California (hereinafter, the "Licensed Wholesaler"). SI ¶ 15. Mainspring provided its customers with transaction documents, which are required by federal law, that listed as a supplier a company with a name misleading similar to the Licensed Wholesaler. *Id.* ¶ 17. As noted above, in reality "the vast majority of the prescription drugs sold by Mainspring were acquired from other sources that were never disclosed to customers or reflected in the Transaction Documentation." *Id.* To buttress the false claims regarding their supplier, the co-conspirators also set up a series of bank accounts held in names misleadingly similar to the Licensed Wholesaler. *Id.* ¶ 19. The co-conspirators then transferred money from Mainspring to these sham corporate accounts "in order to create banking records superficially consistent with financial transfers to" a legitimate, licensed supplier. *Id.*

During the scheme, Defendant Silverman is alleged to have communicated frequently with Ovasapyan, to have ghostwritten communications in furtherance of the scheme at Ovasapyan's request, to have assisted with licensure in various states, and with establishing corporate bank accounts. SI ¶ 20. After Ovasapyan was arrested and Mainspring ceased operations, Defendants Papyan and Silverman sought to resuscitate the scheme using a new front company in the State of Washington. SI ¶ 21.

The Superseding Indictment charges three crimes: (1) Conspiracy to Commit Wire Fraud, in violation of 18 U.S.C. § 1349; (2) Conspiracy to Commit Laundering of Monetary Instruments, in violation of 18 U.S.C. § 1956(h); and (3) Conspiracy to Engage in the Unlawful Wholesale Distribution

of Drugs. All three conspiracies are alleged to have occurred "in the Northern District of California and elsewhere." SI ¶¶ 24, 26, 29.

III. Anticipated Evidence at Trial

The government anticipates that substantial evidence in support of venue will be introduced at trial.[1] For example, as part of the investigation into Mainspring, a Confidential Human Source ("CHS") recorded various telephone conversations with defendant Kojoyan. Declaration of Federal Bureau of Investigation ("FBI") Special Agent Alexey Abrahams ("Abrahams Decl."), ¶ 2. Based on those conversations and the CHS's preexisting relationship with Kojoyan, the FBI opened an undercover bank account in the name of a fictional corporate entity with a physical address in San Mateo, California.[2] *Id.* The address was rented from a commercial mailbox company in San Mateo, and the bank sent regular bank statements to that address, which were collected by FBI personnel. *Id.* The FBI case agent established that rented address by visiting the mailbox company in San Mateo and opening an account. *Id.*

The account was opened in the name of "AMLI Wholesale LLC, DBA Brothers Wholesale." Abrahams Decl., ¶ 2. Based on the investigation at the time, the FBI understood that Kojoyan and Ovasapyan were exploring using a new "cover" supplier while the license for their prior cover supplier was suspended, and further that the proposed new supplier had a name similar to "Brothers Wholesale." *Id.* ¶ 3. Based on this context and the co-conspirators' practice of using dummy corporate bank accounts to resemble the names of suppliers, the undercover account included the name "Brothers Wholesale." *Id.* The name "AMLI Wholesale LLC" was similar to another licensed wholesaler that the co-conspirators had previously used as cover. *Id.*

During this time period, the CHS remained in contact with Kojoyan. On January 11, 2018, the undercover account received a $5,000 transfer from Mainspring's account. Abrahams Decl., ¶ 4. On or about January 29, the CHS texted details about the undercover bank account to Kojoyan, including the

[1] As discussed further below, defendant's motion must be resolved based on the allegations in the indictment. Nevertheless, the government includes these additional facts in order to more fully respond to defendant's claims, and because they may be relevant to the Court's consideration of the motion to transfer.

business's address in San Mateo, California. *Id.* ¶ 5. On March 16, 2018, the undercover account received a $42,000 transfer from Mainspring. *Id.* ¶ 7. On April 5, 2018, the undercover account received a $15,000 transfer from Mainspring's account. *Id.* ¶ 8. Kojoyan's plan at the time was for the CHS to liquidate the cash and provide the money to Kojoyan. *Id.* On April 17, 2018, an FBI UCE withdrew $12,000 from the undercover account via an in-person withdrawal at a bank branch in San Francisco, California. *Id.* The case agent then transported the cash to the Los Angeles area for use in the investigation. *Id.*

In the midst of these transactions, on January 25, 2018, an FBI UCE located in San Francisco, California, placed a ruse phone call to Defendant Ovasapyan, posing as an employee of Mainspring's bank. Abrahams Decl. ¶ 6. By that time, the undercover account held in the name of "Brothers Wholesale" had already received one $5,000 transfer from Mainspring. The UCE asked Ovasapyan about the transfer from Mainspring to the undercover account, and Ovasapyan stated that he had recently started buying wholesale products from a company called Brothers Wholesale, which ostensibly would explain why Mainspring was sending thousands of dollars to an account bearing such a name. *Id.* As noted above, however, the "Brothers Wholesale" account was not connected in any way to an actual supplier but was instead an undercover account controlled by the FBI. Ovasapyan's statements to the UCE furthered the core misrepresentation of the scheme: that Mainspring had legitimate, licensed pharmaceutical suppliers.

In addition, bank records reflect that a bank account under Defendant Silverman's control paid more than $600,000 to an account held in the name of a landmark in the Northern District of California between August and December 2015. Abrahams Decl. ¶ 9. The government believes these payments were to a corporate entity in the Northern District of California, and that they reflect a money laundering mechanism. Investigation into these transfers is ongoing.

IV. Argument

Defendant's motions should be denied. As to venue, defendant misstates both the Court's authority on a pre-trial motion and the Ninth Circuit's requirements for conspiracy venue. At this stage, the Court is limited to assessing whether the indictment alleges venue properly, without recourse to extrinsic evidence. And even if that evidence could be considered, defendant fails to identify the proper

standard. As to transfer, the relevant factors do not support transfer, particularly after the matter has been pending for more than 18 months, this Court has taken multiple pleas, and the matter is ripe for trial.

A. Venue Is an Issue for the Jury

Defendant presumes that this Court has authority to act as a fact finder for purposes of venue and that this fact-finding mission can be undertaken pretrial. Not so. In *United States v. Jenson*, the Ninth Circuit held that in considering a motion to dismiss for improper venue a "'Court should not consider evidence not appearing on the face of the indictment.'" 93 F.3d 667, 669 (9th Cir. 1996) (quoting *United States v. Marra*, 481 F.2d 1196, 1199-1200 (6th Cir. 1973)). *Jenson* reviewed a district court's dismissal of an indictment for improper venue in which the Court considered extrinsic evidence presented by the defendants. The Ninth Circuit held that consideration of such evidence was improper, explaining that "[b]y basing its decision on evidence that should only have been presented at trial, the district court in effect granted summary judgment for the defendants. This it may not do." *Id.* *Jensen* reversed the district court's dismissal order because it found that, despite whatever evidence had been submitted to the district court, the indictment on its face sufficiently alleged venue. *Id.*

Similarly here, the Superseding Indictment alleges that all the charged offenses occurred, in part, in the Northern District of California. *See* SI ¶¶ 24, 26, 29. Because the Superseding Indictment alleges that the crimes occurred in part in the Northern District of California, the motion to dismiss should be denied.

B. The Facts Support Venue in the Northern District of California.

Even if the Court had authority to weigh evidence at this stage, the government has more than sufficient evidence to prove that venue is appropriate in the Northern District of California.

1. Defendants Who Propel a Conspiracy into a District Subject Themselves to Venue.

The first problem with defendant's motion is that, apart from the evidence itself, defendant fails to cite the proper legal standard. The Ninth Circuit offered clear and binding guidance on assessing venue for conspiracy counts in *United States v. Gonzalez*, 683 F.3d 1221 (9th Cir. 2012); *United States v. Hui Hsiung*, 778 F.3d 738, 746 (9th Cir. 2015) (relying on *Gonzalez* for articulation of venue

standard). *Gonzalez* makes clear that, for conspiracy, even a seemingly minor connection to a district is sufficient to support venue.

Gonzalez arose out of a case in the Northern District of California, and it addressed the venue requirements for conspiracy to possess with intent to distribute cocaine under 21 U.S.C. § 846. The defendant in *Gonzalez* did not reside in the Northern District of California, and no co-conspirator ever set foot in this district. However, a confidential informant ("CI") acting at the instruction of law enforcement "placed at least two telephone calls to Gonzalez's cell phone number" while the CI was in the Northern District of California. 683 F.3d at 1223. There were no additional connections to this district, and there was no indication "whether Gonzalez knew or had reason to know that the CI was calling from the Northern District of California." *Id.*

The Ninth Circuit explained that "[i]t is by now well settled that venue on a conspiracy charge is proper where the conspiracy was formed or where any overt act committed in furtherance of the conspiracy occurred." 683 F.3d at 1224. But an overt act does not require the presence of any co-conspirator, and the Ninth Circuit has "never required a defendant's physical presence in the district of venue in a conspiracy case." *Id.* at 1225. The telephone communication itself, which "occurs both where [the] communication is made and where it is received," constituted an overt act because the discussion included negotiations relevant to a drug transaction, "thereby taking an overt act in furtherance of the drug-selling scheme." *Id.*

The Ninth Circuit's rule is in line with the rules in other circuits. The Second Circuit, which was quoted approvingly in *Gonzalez*, has held that "[w]hen a conspirator uses a telephone call—by whomever initiated—to further a criminal scheme, the conspirator effectively propels not only his voice but the scheme itself beyond his own physical location into that of the person with whom he is speaking." *United States v. Rommy*, 506 F.3d 108, 122 (2d Cir. 2007) (citations omitted). The First Circuit, similarly, has held that a telephone call into a district that furthered the conspiracy gave rise to venue on that district. *See United States v. Cordero*, 668 F.2d 32, 44 (1st Cir. 1981) (S. Breyer, J.); *see also Andrews v. United States*, 817 F.2d 1277 (7th Cir. 1987) (sustaining venue for a count under 18 U.S.C. § 843(b) where a defendant received at least one telephone call from an undercover agent in the challenged district).

The Ninth Circuit has also held that a financial transaction conducted by a government agent in a district gives rise to venue in that district, so long as the transaction furthered the conspiracy. In *United States v. Chi Tong Kuok*, the Ninth Circuit considered a defendant's argument that the conspiracy counts against him were improperly venued in the Southern District of California. 671 F.3d 931 (9th Cir. 2012). The defendant argued that the only connection to that district was the fact that an undercover agent had withdrawn money from a bank in San Diego, and that the government should not be allowed to "manufacture" venue in a district. *Id.* at 937. The Ninth Circuit rejected the argument and found that venue was proper. The Court concluded that there was nothing concerning about the use of an undercover operation based in San Diego to cash a check in that district. *Id.* Venue was proper because "part of the conduct that formed the offense occurred in the Southern District of California, even if that conduct was performed by a government agent." *Id.* at 938.

2. Defendants Propelled Their Conspiracy into the Northern District of California.

The telephone call from the UCE to Ovasapyan, during which Ovasapyan lied about the nature of his company's financial transactions, is alone sufficient to establish venue for the three conspiracy counts in the indictment. *First*, Ovasapyan's lie furthered the fraud conspiracy by reiterating the core lie that animated the scheme: that Mainspring had legitimate, licensed suppliers. As noted above, the government intends to prove that Mainspring's transfers to these misleading bank accounts were designed to corroborate the lies told to Mainspring's customers, and by so doing were also designed to deflect law enforcement scrutiny. *Second*, Ovasapyan's lie furthered the money laundering conspiracy by sustaining a central outlet for the proceeds reaped from the scheme. As noted above, a substantial portion of the funds transferred to the undercover account were withdrawn as cash and provided to a co-conspirator, at Kojoyan's instruction. By lying about the nature of the transfers, Ovasapyan sought to preserve that laundering mechanism. *Third*, Ovasapyan's lie furthered the drug diversion conspiracy by concealing the unlicensed nature of Mainspring's suppliers, corroborating the lies told to Mainspring's customers about the origin of the drugs, and by seeking to impede the government's ability to trace prescription drugs through the supply chain.

But the phone call is not all. Co-defendant Kojoyan also *knowingly* propelled the conspiracy into

the Northern District of California by causing multiple financial transfers to a bank account held in the name of a San Mateo entity. While Kojoyan did not know the FBI's role in that account, he was informed by the CHS that the bank account was connected to corporate entity with an in-district address, and that his and the conspiracy's activities would therefore affect that district. Indeed, he knew that the in-district address would receive regular bank statements, and the bank account itself existed only because the co-conspirators sought to use such account to further their criminal goals. And more than that, a large cash withdrawal—which furthered all three charged conspiracies and was done to accomplish the goals set forth by a co-conspirator—occurred in person in San Francisco. *See Chi Tong Kuok*, 671 F.3d at 938 (holding that a UCE's banking transaction in a district gives rise to venue in that district).

Defendant's arguments to the contrary derail quickly, as they do not account for *Gonzalez* or *Chi Tong Kuok*. For example, defendant argues that "[t]he only basis for venue over Count One would be if the conspirators were in the Northern District when they reached an illicit agreement or traveled through there in the furtherance of the conspiracy."[3] Motion at 7. *Gonzalez* flatly and conclusively rejects that argument. Defendant goes even further by arguing that because the offense alleged in Count One—wire fraud conspiracy under 18 U.S.C. § 1349—does not require an overt act, the *only* location relevant to venue is the location where the agreement was formed. *Id.* at 8. But *Gonzalez* similarly addressed a conspiracy statute without an overt-act requirement—18 U.S.C. § 846—and the result remained the same.

For Count Two, defendant acknowledges that the statute explicitly finds venue "in any district where an act in furtherance of the attempt or conspiracy took place," but wrongly argues that the location of a CHS or UCE is irrelevant to venue. Motion at 12. *Gonzalez*, again, could not be clearer on this point: "The CI's presence in the Northern District of California during the telephone calls with Gonzalez sufficed to establish venue there on the conspiracy charge." 683 F.3d at 1225; *see also Chi Tong Kuok*, 671 F.3d at 938.

Lastly, Defendant's arguments as to Count Three founder on the same grounds. Defendant

[3] Defendant makes the same argument as to Count Two. *See* Motion at 11-15 (arguing that venue exists only where the "illicit agreement was reached").

acknowledges the relevance of overt acts to venue, but he argues that "the focus for venue purposes is upon the conduct of the defendant which is essential to the crime." Motion at 16. Again, *Gonzalez* disagrees. As with the other counts, the co-defendants propelled the conspiracy into a variety of jurisdictions where they were never physically present. Under *Gonzalez*—and as would be the case in the First, Second, and Seventh Circuits—venue is proper in any such district.

C. The Interests of Justice Do Not Support Transfer.

Rule 21(b) governs a defendant's motion to transfer a trial "for the convenience of the parties, any victim, and the witnesses, and in the interest of justice." The Rule vests substantial discretion in the district judge, and the Ninth Circuit has observed that "the decision as to whether to grant such a transfer must largely rest in the sound judicial discretion of the trial judge." *United States v. Polizzi*, 500 F.2d 856 899 (9th Cir. 1974) (internal quotation marks omitted). While defendant's motion rests entirely on the factors referred to in *Platt v. Minnesota Min. & Mfg. Co.*, 376 U.S. 240 (1964), the Supreme Court never explicitly adopted those factors or held that they are the exclusive considerations. Indeed, while the Ninth Circuit has referred to the *Platt* factors for guidance, the factors themselves are not dispositive, and the trial court retains discretion to consider other factors relevant to the interests of justice. *See United States v. Testa*, 548 F.2d 847, 857 (9th Cir. 1977). In any event, the factors outlined in *Platt* do not justify transfer.

1. Transfer at this Stage Encourages Forum Shopping

The interests of justice do not support transfer in this case. The original indictment in this matter was filed on November 1, 2018. Docket No. 16. Charges against Defendant Silverman were included for the first time in the Superseding Indictment, which was filed on September 5, 2019. Docket No. 51. Defendant's pending Motion was filed 611 days, or approximately 20 months, later. Docket No. 171. In the intervening time, the Court has taken two guilty pleas, has sentenced one defendant, and has presided over complex forfeiture proceedings. Defendant has observed a co-conspirator receive a substantial sentence, and thereafter requested to be transferred to another district. To grant the defendant's request would encourage similarly situated defendants to forum shop after concluding that a different judge might be more accommodating. It also creates confusion and wastes judicial resources by duplicating efforts in multiple jurisdictions. At a minimum, given the advanced posture of the overall

case, "[i]t is proper to require a greater showing of inconvenience when a change of venue is sought late in proceedings." *United States v. Polizzi*, 500 F.2d 856, 901 (9th Cir. 1974).

Defendant fails to make such "greater showing." Instead, the factors identified by the defendant would be common to almost any white-collar defendant charged with a nationwide conspiracy. In effect, defendant suggests that such defendants have the right to sit back while the co-defendants' cases advance, all while retaining the right to shop for a new forum if they do not like what they see. Such gamesmanship is contrary to the interests of justice. *See, e.g.*, *Shurin v. United States*, 164 F.2d 566, 570 (4th Cir. 1947) (finding it would have been an "abuse of discretion" to transfer case where "defendant delayed making [the motion] for more than a year after the indictment had been found against him and until after the case had twice been set for trial . . . and [nothing relevant to a venue transfer] had occurred in the meantime").

2. The *Platt* Factors Do Not Support Transfer.

Defendant's mechanical application of the *Platt* factors fails to address the concerns underlying those factors. In any complex case with national implications, witnesses and evidence will be spread across different districts, and a defendant will always be able to articulate advantages to moving the trial closer to his or her home. But defendant fails to identify any factor that creates a compelling need for transfer.[4]

(i) Location of records and disruption of business

Defendant concedes that trial will interrupt defendant's business no matter where it occurs, but he claims that the location of records is a "neutral factor" given that advent of digital discovery. Not so. The government executed multiple physical search warrants in its investigation, including a search of Mainspring's office in Pennsylvania. Seizures from that warrant—including a dozens of bottles of prescription drugs, such as Latuda (to treat bipolar depression) and Viread (to treat HIV)—are located in FBI's custody in San Francisco. FBI San Francisco also has custody of records seized from Defendant Ovasapyan's home, in addition to multiple luxury watches that represent proceeds of the scheme. While FBI Los Angeles also has custody of some evidence, it is not the case that there is no significant

[4] For the Court's convenience, the government's memorandum will respond to each factor considered in defendant's motion.

physical evidence in this case. Defendant fails to identify any evidentiary concerns that weigh in favor of transfer.

(ii) Parties' expenses

Defendant claims that the "parties'" expenses weigh in favor of transfer, but he does not offer any particularized analysis. Moreover, he appears to claim that the *witness's* costs are to be considered, even though witness issues are assessed in another factor. Defendant elsewhere concedes that "[b]oth sides will bear expenses from travel in either instance." Motion at 19. This factor does not weigh in favor of transfer.

(iii) Location of counsel

Counsel for the government works in San Francisco, and counsel for defendant appears to work in San Diego, which is in the Southern District of California. A transfer to the Central District will still necessitate travel costs for both sets of counsel, as San Diego is an approximately three-hour drive from Los Angeles. Counsel for co-defendant Ovasapyan, whom the government anticipates calling as a witness, works in the Northern District of California. Transfer to the Central District will therefore require some travel for almost all counsel. This factor does not weigh in favor of transfer.

(iv) The courts' dockets

Defendant proffers only a high-level summary of the number of cases pending per judge in each district, which does not appear to even focus on criminal cases or consider trial calendars. As the parties have stated in prior stipulations, this matter is ready to be set for trial. A transfer to a new district—which will then require assignment to a particular division and a particular judge—will inevitably delay proceedings. Transfer will also require the newly assigned judge to learn about the case, the relevant law, and the nature of the allegations, which this Court has already done. An abstracted summary of cases-per-judge fails to adequately address questions of judicial efficiency, and such concerns weigh against transfer for the reasons listed above.

(v) Location of Defendants and accessibility of the Court

It is true that Defendants Silverman and Papyan live in Southern California. However, Defendant Papyan has not moved for a transfer, and Defendant Silverman cannot project his own preferences onto his co-defendant. While Defendant Silverman will undoubtedly have to travel for a

trial in the Northern District, the districts are adjacent and thousands of people travel between Los Angeles and San Francisco on a daily basis. To overly weigh a defendant's location in the analysis would result in granting defendants in multi-district conspiracies their choice of forum. Similarly, while it is no doubt true that Defendant Silverman's "support network" is in the Central District, a defendant's support network is always located in their home district. The government anticipates that trial in this matter will last between two and three weeks, and the inconvenience posed to defendant and his support network is manageable.

(vi) Location of witnesses

Defendant places particular weight on the location of witnesses, claiming that the "overwhelming majority of witnesses reside in the Central District." Yet defendant fails to specifically identify any such witness, instead proffering certain "types" of witnesses that may be called, such as landlords, employees of the defendant's law firm, representatives of licensed wholesalers, and certain cooperators.

At the outset, defendant fails to establish that any of these specific witnesses have concerns about making the short trip to the Northern District of California. Instead, defendant presumes to speak for them and their preferences. But the "Ninth Circuit has required more than a bald statement of numbers and general location of witnesses in the cases where the issue of witness convenience is addressed." *United States v. Daewoo Industrial Co., Ltd.*, 591 F. Supp. 157, 160 (D. Or. 1984). Instead, courts have faulted defendants seeking transfer for failing explain "which witnesses may be precluded from testifying because of the location of the trial," which Defendant similarly fails to do. *United States v. Acuna*, 2008 WL 2812306, at *2 (D. Haw. July 21, 2008). The need for specificity is particularly acute here, as the importance of these witnesses is not at all clear. Defendant seems to claim that testimony from various landlords will be a critical component of trial, while the government would be shocked if any such witness were called. Whether a particular location was leased is hardly a critical question. Similarly, while defendant may indeed choose to call certain employees of the defendant's law firm, it is hard to see how any such testimony would be critical given that those individuals were not party to incriminating communications between co-conspirators.

The critical witnesses for this case have no objection to testifying in the Northern District of

California, and many government witnesses work locally. Defendant Ovasapyan, for example, is expected to testify, and he has agreed to do so in the Northern District of California. Various agents with the FBI are expected to testify, many of whom work in the San Francisco Division. The government also anticipates calling a government financial analyst located in the Northern District of California. *See United States v.* Schoor, 597 F.2d 1303, 1308 (9th Cir. 1979) (Kennedy, J.) (affirming denial of transfer motion where "[t]he convenience of the Government" weighed in favor of venue in the Northern District of California). In addition, the government plans to call a variety of witnesses from other jurisdictions, including Pennsylvania, Washington, and perhaps Florida. While defendant is correct that *he* worked in Southern California, the nationwide scope of the conspiracy means that witnesses from all across the country will be called to testify. There is no particular efficiency to be gained by transferring venue to the Central District of California.

(vii) Contacts with the Northern District of California

Lastly, Defendant claims that neither the defendants themselves nor the events at issue have connections to the Northern District of California. For reasons explained thoroughly above, that is false. The defendants projected their conspiracy to all corners of this country, including the Northern District of California. Defendants used a criminal apparatus stretching from Pennsylvania to Florida to Washington State to defraud their victims, who resided in states across the country. Despite this broad reach, Defendant objects to standing trial in the "remote" venue of the Northern District of California. Motion at 23. San Francisco, with its international airport and web of interstate highways, has not often been described as "remote." In reality, the Northern District of California is adjacent to the defendant's home district, and the co-conspirators knowingly propelled their conspiracy into the district. Defendant's request to transfer venue should be rejected.

V. Conclusion

For the reasons explained above, Defendant's motions to dismiss and to transfer venue should be

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denied.

DATED: June 1, 2021

Respectfully submitted,

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. STEPHEN SILVERMAN, et al., Defendants.	Case No. CR 18-533 RS **DECLARATION OF SPECIAL AGENT ALEXEY ABRAHAMS**

I, Alexey Abrahams, declare and state as follows:

1. I am a Special Agent of the Federal Bureau of Investigation (FBI) and have been so employed since 2004. I participated in the investigation that led to the above-captioned criminal case, and I am knowledgeable about the evidence gathered by the FBI in the course of that investigation.

2. As part of the FBI's investigation into Mainspring Distribution LLC ("Mainspring"), a Confidential Human Source recorded various telephone conversations he had with Defendant Hakob Kojoyan. In connection with those conversations, the FBI opened an undercover bank account in the name of a fictional corporate entity with a street address in San Mateo, California. The bank account was opened under the name "AMLI Wholesale LLC, DBA Brothers Wholesale." The address associated with the account was located at a commercial mailbox company in San Mateo, California. I opened a mailbox account at that address for use in this investigation. After the account was opened, regular bank statements were mailed to that address and collected by FBI personnel.

3. The name on the undercover account was dictated by the needs of the investigation. Recorded conversations and other evidence indicated that Kojoyan and his co-conspirators wanted to use the CHS's accounts to receive financial transfers from Mainspring. The evidence at that time indicated that the co-conspirators used bank accounts under fictitious corporate names that were misleadingly similar to legitimate, licensed wholesale prescription drug distributors. Wire transfers from Mainspring to these accounts therefore resembled a legitimate supplier/customer relationship. Both "AMLI Wholesale" and "Brothers Wholesale" were used on the undercover account because those names both resembled legitimate, licensed wholesale prescription drug distributors. The investigation indicated that the co-conspirators had either used or intended to use these identities in furtherance of their scheme.

4. On January 11, 2018, the undercover account received a $5,000 credit from Mainspring.

5. On or about January 29, 2018, the CHS sent Kojoyan the address for the undercover bank account, including other bank account information, via text message. We anticipated at that time that Kojoyan would cause money to be transferred into that account as part of the overall scheme.

6. On January 25, 2018, an undercover employee ("UCE") with the FBI, posing as an employee of Mainspring's bank, placed a ruse phone call to Defendant Ovasapyan, who was listed on

Mainspring's bank records as a signer on the account. The UCE inquired about the recent transfer from Mainspring to the undercover account, and Ovasapyan stated that he had recently started buying wholesale products from Brothers Wholesale. During that conversation, the UCE was located in San Francisco, California.

7. On March 16, 2018, the undercover account received $42,000 from Mainspring.

8. On April 5, 2018, the undercover account received another $15,000 from Mainspring. The CHS's understanding was that this transfer was to be liquidated and the cash provided to Kojoyan. On April 17, 2018, an FBI UCE withdrew $12,000 from the undercover account via an in-person teller withdrawal at a bank branch in San Francisco, California. I then transported that cash to the Los Angeles area for an undercover operation.

9. As part of the investigation, I have reviewed extensive bank records related to the conspiracy. Based on my review, it appears that a bank account under Defendant Silverman's control paid approximately $647,000 to a corporate entity named after a landmark located in the Northern District of California between August and December of 2015. Based on witness statements, I believe that corporate entity is indeed located in the Northern District of California. Investigation into this entity and the nature of these transactions is ongoing.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 1st day of June, 2021, in San Francisco, California.

By: /s/
Alexey Abrahams
Special Agent, Federal Bureau of Investigation