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SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

5

Defendant.

) Case No. [REDACTED]
)
) **MEMORANDUM OF POINTS &**
) **AUTHORITIES IN SUPPORT OF**
) **DEFENDANT'S MOTION TO DISMISS**
) **MONEY-LAUNDERING COUNTS**
) **(PENAL CODE § 995)**
)
) *filed concurrently with Notice of Motion;*
) *Declaration of Timothy A. Scott.*
)
) DATE: August 16, 2019
) TIME: 8:30 a.m.
) DEPT: 63
)
) BEFORE THE HONORABLE
) SAMUEL DIAZ, JR.
) SUPERIOR COURT JUDGE
)

I. INTRODUCTION AND ISSUE PRESENTED

California’s money-laundering statute reaches only financial transactions “*involving monetary instruments*.”¹ Wire transfers are “financial transactions,” but they are not “monetary instruments.”² Here, the People premised every money-laundering count on wire transfers, and

¹ See Penal Code § 186.10 (criminalizing only financial transactions “*involving monetary instruments*”); CALCRIM 2997 (same).

² See § 186.9(d) (defining “monetary instruments,” excluding wire transfers from that definition).

1 did not otherwise prove up transactions involving monetary instruments. Should dismissal result
2 under Penal Code § 995?

3 **II. CHARGES AT ISSUE IN THIS MOTION**

4 The People obtained a 90-count grand-jury indictment. Count 1 alleges a conspiracy to
5 make fraudulent health-care claims under Penal Code § 182. Counts 2-12 allege substantive
6 health-care-fraud counts under PC § 550. This motion focuses on the remaining counts: 13-90.

7 Counts 13-90 each allege money laundering. Count 13, for example, charges:

8 . . . a violation of Penal Code section 186.10 subdivision (a), a felony, in that on or about
9 December 17, 2015 through and including December 29, 2015, in the County of Riverside,
10 State of California, the defendant did willfully, knowingly and unlawfully conduct a
11 transaction, and more than one transaction in a seven day period, *involving monetary*
12 *instruments* of a total value exceeding five thousand dollars (\$5,000.00), and more than
13 one transaction *involving monetary instruments* of a total exceeding twenty-five thousand
dollars (\$25,000.00) with the specific intent to promote or facilitate the promotion,
management, establishment, or carrying on of any criminal activity, or knowing that the
monetary instrument is derived directly or indirectly from criminal activity.³

14 Counts 14-90 are identical but-for the dates alleged, as each count covers 2-4 week
15 increments from 2015 forward.

16 **III. STATEMENT OF FACTS**

17 Despite making up dozens of counts in the indictment, the evidence and argument about
18 money-laundering transactions was rather brief.

19 **A. Testimony.**

20 As evidence of substantive bank transactions, a forensic accountant testified about
21 accounts at two different banks, and the People admitted Exhibit 373—a CD with certain
22 financial exhibits upon it.⁴ The testimony took 10 pages of transcript.⁵ The accountant testified
23 that the exhibits focused on wire transfers, and wire transfers alone:

24 _____
25 ³ See Indictment (emphasis provided.) As highlighted above, the indictment correctly cited
the monetary-instrument requirement in Penal Code § 186.10. But the evidence never proved
that necessary element.

27 ⁴ See Exhibit A (Grand Jury Exhibit 373).

28 ⁵ See Exhibit B (Zimmerman testimony). --

1 Q. Okay. And does this schedule show any particular type of transaction?

2 A. These show *all of the wire transfers and the wires out of the account.*

3 Q. Okay. And in doing your analysis, did you first start with all of the *wire transfers* and
4 then narrow down *the transfers* that, based on your information, might be related to
5 this investigation?

6 A. Yes. That's correct.

7 Q. And then those transactions are what we're seeing on this spreadsheet here?

8 A. Correct.⁶

9 Grand Jury Exhibit 373, A1, bore this out. It demonstrated that every transaction that the
10 People relied upon for money-laundering counts was based on wire transfers:

11 Exhibit A1

12 DAR2017-122-001 Blue Oak Medical Group

ENTRY NO.	ACCT.	TRANS. DATE	DESCRIPTION	TRANS #	AMOUNT	BATES NO.<NOTES>
12		2/1/2016		6174	\$ (25,000.00)	
13		2/10/2016		4303	\$ (18,616.96)	
14		2/10/2016		4141	\$ (40,902.04)	
15		2/22/2016		3817	\$ (12,000.00)	
16		2/22/2016		4089	\$ (20,000.00)	
17		2/25/2016		3772	\$ (12,500.00)	
18		2/25/2016		3579	\$ (20,000.00)	
19		2/26/2016		5607	\$ (48,131.69)	
20		3/1/2016		7158	\$ (5,000.00)	
21		3/2/2016		5111	\$ (5,172.40)	
22		3/3/2016		5307	\$ (30,000.00)	

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28⁶⁶ Exhibit B, pages 2194-95.

1 While the People introduced other exhibits and evidence to argue that Matt [REDACTED] took
2 financial instructions from co-defendant Uwaydah, and to show the underlying alleged fraud,
3 Exhibit 373 remained all that the People keyed to the substantive money-laundering counts.

4 **B. “Holey Moley”: Jury Instructions and Argument.**

5 After the close of evidence, the People also provided jury instructions to the panel. A
6 “monetary instrument,” they instructed, “*means money of the United States of America, bank*
7 *check, cashier's check, or money order.*”⁷ Notably, the instructions did *not* say that a wire
8 transfer could constitute a monetary instrument.

9 After giving the legal instructions for money-laundering generally, the Deputy District
10 Attorney asked the grand jury rhetorically, “Holy moley, what does that mean?”⁸
11 “This” she argued: “One, at least one financial institution; two, with a single \$5,000 transaction,
12 or multiple in seven days totaling \$5,000, or multiple in 30 days totaling \$25,000; three, to
13 operate a criminal enterprise, or they knew the money was dirty; and, four, [REDACTED] attorney’s fees
14 only, accepted the money to hide it.” Whether intentional or not, this “holey-moley” summary—
15 apparently designed to make the elements of Penal Code § 186.10 accessible to a lay jury—had
16 the effect of omitting the monetary-instrument requirement entirely.

17 Later argument by the Deputy District Attorney confirmed that the People sought to
18 prove up only wire-transfer *transactions*, without considering the requirement for *monetary*
19 *instruments*. The People stated, “So this is Exhibit A1, which is part of 373. *This is a list of*
20 *wires; right? The reason that we chose the wires is because the law defines financial*
21 *transactions for money laundering in sort of a weird way, and wires -- my argument is that wires*

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27 ⁷ *See Exhibit C (relevant jury instructions and portions of closing argument) at 2772.*

28 ⁸ *Id.* at page 2786.

attribute [sic] that.”⁹ The Deputy again confirmed that the summaries in Exhibit 373 summarized the money-laundering counts, and purported to prove them via wire transfers.¹⁰

The grand jury returned a true bill. But the fact remains that the People had to prove monetary instruments for each count, and that they failed to do so. This element went unproven before the grand jury. Mr. [REDACTED] brings this motion consequently, and the result should be the dismissal of Counts 13-90 under Penal Code § 995.

III. DISCUSSION

A. Money laundering requires *both* a “transaction” and a “monetary instrument.”

Under Penal Code § 186.10, every element of money laundering must relate to a relevant *monetary instrument*. CALCRIM 2997 lists the applicable elements as follows:

1. The defendant conducted one or more financial transactions *involving at least one monetary instrument* through at least one financial institution;

2. The defendant conducted the financial transactions within a thirty-day period *and the monetary instrument[s] involved had a total value of more than \$25,000;*

AND

3. The defendant knew that *the monetary instrument[s]* represented the proceeds of criminal activity or were derived directly or indirectly from the proceeds of criminal activity;

AND

4. [For Mr. █] The attorney defendant accepted a fee for representing a client in a criminal investigation or proceeding and *accepted the monetary instrument* with the intent to disguise or aid in disguising the source of the funds or the nature of the criminal activity.

See also Penal Code § 186.10 (same elements).

⁹ *Id.* at 2817. See also *id.* (“And so the decision that you guys have to make is is it money laundering based on the actual transfer. Right?”).

¹⁰ *Id.* at 2818 (“So the way it works is that when you look at all these charts, we’ve grouped them together by month, and that lines up with each of the money laundering counts, 13 through 90.”)

1 Thus, for purposes of this motion, there are two separate elements that the People are
2 required to prove: 1) a financial transaction; and 2) that the transaction *involves a “monetary*
3 *instrument.”* The People’s proof before the grand jury showed the former, but not the latter.
4 The People proved many “transactions.” But they did *not* show that any of them involved
5 “monetary instruments.”

6 It is reversible error to overlook this distinction. In *People v. Lee*, (2017) 11 Cal. App.
7 5th 344, 349-50, the defendant was accused of running a sham “investment club.” The People
8 alleged that the defendant solicited investments from victims, but then used the funds for
9 personal expenses and other unauthorized purposes. *Id.* at 347. The funds were generally
10 provided in the form of personal check, which the defendant deposited into his own account. *Id.*
11 The jury convicted on all money-laundering counts. The defendant appealed, arguing that the
12 evidence showed neither a “transaction” or “monetary instruments.”

13 The Court of Appeal reversed in part. It first rejected the defendant’s argument that the
14 deposits did not constitute “transactions” because “[a] ‘transaction’ includes withdrawing money
15 from a bank account.” *Id.* at 350 (quoting § 186.9(c)’s definition of “transaction”). But it
16 nevertheless reversed on the “monetary instrument” prong of the statute. Because personal
17 checks do not fit the definition of monetary instruments, and because the People relied upon
18 those personal-check transactions for many of the counts of conviction, the Court of Appeal
19 reversed those counts. As the Court explained, “We are not at liberty to focus only on the source
20 of the funds where [defendant’s] withdrawals are the relevant transactions, where many of the
21 withdrawals were by check, and where the statute does not criminalize all transactions involving
22 personal checks.” *Id.* at 351. *See also id.* (“[f]or the checks [defendant] wrote, if the payees
23 endorsed and deposited them into their bank accounts, then they were not transactions *involving*
24 *monetary instruments.*”) (emphasis provided). The Court reversed the check-based money-
25 laundering counts accordingly.

26 Similarly, in *People v. DeVaughn* (2014) 227 Cal.App.4th 1092, the Court of Appeal
27 again reversed for failure to prove a valid monetary instrument. It did so because, again, the
28 transactions involved personal checks. 227 Cal.App.4th at 1100–1101. There, one conviction

1 was based on a transaction involving a personal check made payable to a defendant's company,
2 and the defendant deposited the check into the company's account. *Id.* at 1098, 1100. Three
3 other convictions involved personal checks payable to, and endorsed by, third party payees. *Id.* at
4 1100–1101. The court concluded these transactions did not involve a “monetary instrument”
5 within the meaning of § 186.9. It reversed accordingly.

6 Thus, Penal Code § 186.10(a) does not prohibit all financial transactions involving
7 alleged criminality. Rather, it only “prohibits conducting transactions through financial
8 institutions ‘*involving a monetary instrument or instruments.*’” *Lee*, 11 Cal.App.5th at 349
9 (emphasis provided) (quoting Penal Code § 186.10). The question becomes: did the People base
10 their money-laundering counts on cognizable *monetary instruments*?

11 **B. Because wire transfers are not “monetary transactions,” and because every money-
12 laundering charge in the indictment is premised on wire transfers, Counts 13-90
13 must be dismissed.**

14 Because the People based their money-laundering counts on wire transfers, and because
15 wire transfers are not monetary instruments, they did not meet the monetary-instruments element
16 before the grand jury.

17 **1. A wire transfer is not a monetary instrument.**

18 First, wire transfers are not included in the definition of “monetary instrument.” Per
19 Penal Code § 186.9(d):

20 “Monetary instrument” means United States currency and coin; the currency, coin, and
21 foreign bank drafts of any foreign country; payment warrants issued by the United States,
22 this state, or any city, county, or city and county of this state or any other political
23 subdivision thereof; any bank check, cashier’s check, traveler’s check, or money order; any
24 personal check, stock, investment security, or negotiable instrument in bearer form or
25 otherwise in a form in which title thereto passes upon delivery; gold, silver, or platinum
26 bullion or coins; and diamonds, emeralds, rubies, or sapphires. Except for foreign bank
27 drafts and federal, state, county, or city warrants, “monetary instrument” does not include
28 personal checks made payable to the order of a named party which have not been endorsed
or which bear restrictive endorsements, and also does not include personal checks which
have been endorsed by the named party and deposited by the named party into the named
party’s account with a financial institution.

1 To summarize, the statute lists the following items as monetary instruments: cash; foreign
2 bank drafts; government-issued payment warrants; cashier's checks, traveler's checks, and
3 money orders; checks or negotiable instruments *in bearer form*; ¹¹ and precious metals or jewels.

4 Wire transfers are simply not on the list. They are not “monetary instruments” per the
5 plain language of the statute.

6 Admittedly, a wire transfer can be a financial “transaction.” *See* Penal Code § 186.9(c).
7 See also *Lee*, 11 Cal.App.5th at 351 (discussing that the definition of “transaction” was amended
8 in 1992 to add wire transfers). But it still isn’t a monetary instrument. *See id.*; *cf.* § 186.9(c)
9 (defining “transaction,” including wire transfer) *with* § 186.9(d) (defining “monetary
10 instrument,” omitting wire transfer). And the statute still requires both. *See Lee*, 11 Cal.App.5th
11 at 350 (rejecting defendant’s argument that a deposit was not a “transaction,” but reversing
12 conviction because personal checks did not constitute “monetary instrument.”)

13 This reading of the statutes is consistent with legislative intent. Of course, “statutory
14 language is generally the most reliable indicator of legislative intent.” *Klein v. United States of
15 America*, (2010) 50 Cal.4th 68, 77, and here, the language is plain. Though the legislature was
16 well-aware of wire transfers, and even added it to the list of things that are “transactions,” it did
17 not add it to the list of “monetary instruments.” Under the canons of statutory construction—
18 which, again, are not necessary given the statute’s plain language—the result would remain the
19 same. Observe the maxim, *expressio unius est exclusio alterius*: “[t]he expression of some
20 things in a statute necessarily means the exclusion of other things not expressed.” *Gikas v. Zolin*
21 (1993) 6 Cal.4th 841, 852. This maxim provides that “[w]hen the Legislature ‘has employed a
22 term or phrase in one place and excluded it in another, it should not be implied where
23 excluded.’” *Pasadena Police Officers Assn. v. City of Pasadena* (1990) 51 Cal.3d 564, 576. So it
24 is here: this statute expressly includes wire transfers in the list of things that were “transactions,”
25 Penal Code § 186.9(c). It then *excludes* wire transfers it from the list of things that are

27 ¹¹ “When a check, note, draft, etc., is payable to ‘bearer,’ it imports that the contents thereof
28 shall be payable to any person who may present the instrument for payment.” *See*
<https://thelawdictionary.org/bearer>, last visited July 26, 2019. This has been law since at least
the 19th century. *See e.g. Thompson v. Perrine*, 106 U. S. 589, 592-93 (1883).

1 “monetary instruments.” § 186.9(d). If the legislature wanted a wire transfer to be a monetary
2 instrument, it would say so.

3 For these reasons, the Court should conclude that a wire transfer cannot constitute a
4 “monetary instrument,” and analyze the People’s proof accordingly.

5 **2. Every count thus lacks a monetary instrument.**

6 The problem for the People is that *every count* is premised on wire transfers. The Deputy
7 District Attorney explicitly told the grand jury so. Describing its main money-laundering
8 Exhibit, 373, the prosecutor stated: “So this is Exhibit A1, which is part of 373. *This is a list of*
9 *wires; right? The reason that we chose the wires is because the law defines financial*
10 *transactions for money laundering in sort of a weird way, and wires -- my argument is that wires*
11 *attribute [sic] that.*” Exhibit C at 2817 (emphasis provided). The prosecutor framed the
12 “decision that [the grand jurors] have to make is is it money laundering based on the actual
13 transfer. Right?” *Id.* He continued, “[s]o the way it works is that when you look at all these
14 charts, we’ve grouped them together by month, and that lines up with each of the money
15 laundering counts, 13 through 90.” *Id.* at 2818.

16 The exhibits bear this out. Exhibit A1 to 373 lists wire transfer after wire transfer as
17 making up the money-laundering counts. Not one of them pertain to a monetary instrument
18 within the meaning of § 186.9. The People’s proof on this element is simply non-existent.

19 The People may argue that the checks made out to Blue Oak and deposited into the
20 relevant bank accounts could constitute the necessary “monetary instruments.” But there are two
21 problems with that argument.

22 First, the record is clear as to what the grand jury indicted upon. The People cannot
23 pretend that it indicted upon different proof and argument at this juncture.

24 Second, these checks are not “monetary instruments” as a matter of law either. Under
25 Penal Code § 186.9(d), only “bearer checks” are cognizable instruments under the statute.
26 “While the definition of ‘monetary instrument’ includes personal checks in bearer form, it
27 excludes other kinds of personal checks.” *People v. Lee*, (2017) 11 Cal. App. 5th 344, 351
28 (reversing convictions based on personal checks). *See also People v. DeVaughn* (2014) 227

1 Cal.App.4th 1092, 1100) (reversing convictions because the transactions involved personal
2 checks). None of the checks in this case were bearer notes. Each was deposited into an account
3 designated for the benefit of the payee.

4 For these reasons, each count of money laundering should be set aside.
5

6 **IV. CONCLUSION**

7 With this motion, the Court is not being asked to dismiss the entire indictment. The
8 People have alleged an overarching fraud conspiracy, and numerous substantive counts of fraud.
9 Those counts are the real heart of this case anyway, as the money-laundering counts all depend
10 upon, and are thus derivative to, a finding of underlying criminality. Mr. [REDACTED] will be prepared
11 to defend these fraud charges before a jury. But it should be a fair fight. That jury should not
12 receive dozens of extra counts that are derivative, inherently prejudicial, and—above all—
13 unsupported by California law.

14 For all of these reasons, Counts 13-90 should be dismissed with prejudice.
15

16 Respectfully Submitted.
17

18 **SCOTT TRIAL LAWYERS, APC**
19

20 DATED: August 2, 2019

21 BY: _____
22

23 Timothy A. Scott
24 Attorneys for Defendant
25 [REDACTED] [REDACTED]
26