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12 Attorneys for Plaintiff
 UNITED STATES OF AMERICA

13 UNITED STATES DISTRICT COURT

14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,

16 Plaintiff,

17 v.

18 BABAK BROUMAND,

19 Defendant.

No. CR 20-00224 (A) -RGK

GOVERNMENT'S MOTION IN LIMINE No. 1 TO EXCLUDE ANY REFERENCE TO THE PREVIOUSLY SCHEDULED JURY TRIAL DATE OF SEPTEMBER 13, 2022

Trial Date: September 20, 2022

Location: Courtroom 850 Roybal Federal Building

22 Plaintiff United States of America, by and through its counsel
 23 of record, the Acting United States Attorney for the Central District
 24 of California and Assistant United States Attorneys Ruth C. Pinkel
 25 Michael J. Morse, and Juan M. Rodriguez, hereby moves in limine to
 26 exclude any reference at trial to the previously scheduled jury trial
 27 date of September 13, 2022. Such evidence is not relevant, pursuant
 28

1 to Federal Rules of Evidence 401 and 402, as it has no tendency to
2 make a fact of consequence more or less probable. Thus, there is no
3 probative value to such evidence. Additionally, even assuming
4 evidence of the previously scheduled jury trial date has some
5 probative value, such evidence would be unfairly prejudicial pursuant
6 to Federal Rule of Evidence 403, as it will confuse and mislead the
7 jury, leading them to speculate regarding jury trial scheduling
8 issues, which is not properly within the jury's purview or
9 consideration.

10 This motion is based upon the attached memorandum of points and
11 authorities, the attached exhibits, the files and records in this
12 case, and such further evidence and argument as the Court may permit.

13 Dated: September 16, 2022

Respectfully submitted,

14 STEPHANIE S. CHRISTENSEN
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15 SCOTT M. GARRINGER
16 Assistant United States Attorney
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17
18 /s/ Ruth C. Pinkel

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20 JUAN M. RODRIGUEZ
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22 UNITED STATES OF AMERICA
23
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND SUMMARY

The government has a good faith belief that defendant may attempt to adduce evidence or make mention during opening statement, direct testimony, cross examination, or closing argument, of the previously scheduled jury trial date of September 13, 2022, in an effort to impeach the credibility of the government's cooperating witness. In short, the defendant may attempt to introduce evidence suggesting the government's cooperating witness disclosed certain information "the night before trial." But such evidence, if admitted, would invite the jury to speculate regarding procedural matters, and potentially open the door to litigation on the collateral issue of why the September 13, 2022 jury trial was continued. As the Court is well aware, jury trial dates are often continued for a myriad of reasons. Evidence of such procedural matters is not properly considered by a jury, and thus, this Court should exclude any reference to the previously scheduled jury trial date of September 13, 2022.

II. RELEVANT FACTUAL SUMMARY

On June 30, 2021, a grand jury charged defendant in a six-count First Superseding Indictment with conspiracy to commit bribery of a public official, in violation of 18 U.S.C. § 371 (Count One), with additional overt acts, bribery of a public official in violation of 18 U.S.C. § 201 (Counts Two, Three, and Four), monetary transactions in property derived from specified unlawful activity, in violation of 18 U.S.C. § 1957 (Counts Five and Six), and two forfeiture

1 allegations. (Dkt. 49.) (The original indictment was returned on
2 June 12, 2020.)¹

3 On August 19, 2022, the Court set trial for September 13, 2022.
4 (Dkt. 169.) On September 1, 2022, defendant moved ex parte to
5 continue trial to September 20, 2022. (Dkt. 181.) The government
6 opposed². (Dkt. 182.) On September 2, 2022, the Court denied
7 defendant's motion. (Dkt. 183.)

8 On September 12, 2022, the government's cooperating witness made
9 certain statements, which the government disclosed to the defense on
10 the same date. Defendant then filed an "emergency motion" to
11 continue trial on September 13, 2022. (Dkt. 204.) On September 13,
12 2022, after hearing argument, the Court granted defendant's motion.
13 (Dkt. 208.)

14 **III. RELEVANT LEGAL STANDARDS**

15 **A. Rule 401/402**

16 Evidence is relevant if "it has any tendency to make a fact more
17 or less probable than it would without the evidence," and "the fact
18 is of consequence in determining the action. Fed. R. Evid. 401.
19 Irrelevant evidence is not admissible. Fed. R. Evid. 402. Assessing
20 probative value of proffered evidence and weighing any factors
21 counseling against admissibility, such as danger of unfair prejudice,
22 is a matter first for the district court's sound judgment.
23 Sprint/United Co. v. Mendelsohn, 522 U.S. 379, 384 (2008).

25 ¹ In the interests of brevity, the government incorporates by
26 reference its factual recitations in prior motions and the
Government's Trial Memorandum.

27 ² Though the government opposed, on Pacer, its opposition was
28 incorrectly labeled as "in support" of defense's ex parte
application.

1 **B. Rule 403**

2 This court has broad discretion to "exclude relevant evidence if
3 its probative value is substantially outweighed by a danger" of,
4 *inter alia*, unfair prejudice, confusing the issues, misleading the
5 jury, or wasting time. See Fed. R. Evid. 403. See also Tennison v.
6 Circus Circus Enterps., Inc., 244 F.3d 684, 690 (9th Cir. 2001)
7 (district court's properly precluded testimony that "might have
8 resulted in a 'mini trial'" that would be an inefficient allocation
9 of trial time). Rule 403 permits the Court to exclude evidence
10 because of prejudicial dangers or considerations. United States v.
11 Hankey, 203 F.3d 1160, 1172 (9th Cir. 2000). Fed. R. Evid.
12 403. Unfair prejudice under Rule 403 means danger of "undue tendency
13 to suggest decision on an improper basis, commonly though not
14 necessarily, an emotional one." Hankey, 203 F.3d 1160, 1172-72 (9th
15 Cir. 2000) (quotations omitted). Among the factors justifying
16 exclusion of evidence are danger of jury prejudice, danger of jury
17 distraction by creation of side issues, and consumption of undue
18 amounts of trial time. U.S. v. Gorman, 393 F.2d 209, 212 (7th Cir.
19 1968).

20 Where there is no justifiable reason to raise issues before a
21 jury, the Court should grant the motion and exclude such evidence and
22 argument under Rules 401, 402, and 403. See United States v. Hearst,
23 563 F.2d 1331, 1341 (9th Cir. 1977) (trial court has broad
24 discretion); Hamling v. United States, 418 U.S. 87, 127 (1974)
25 (district court has wide latitude in requiring evidence be presented
26 to jury in manner least likely to confuse). Further, "[n]either a
27 defendant nor his attorney has a right to present to a jury evidence
28 that is irrelevant to a legal defense to, or an element of, the crime

1 charged. Verdicts must be based on the law and the evidence, not on
2 jury nullification as urged by either litigant.” Zal v. Steppe, 968
3 F.2d 924, 930 (9th Cir. 1992) (Trott, J., concurring).

4 **IV. ARGUMENT**

5 **A. EVIDENCE OF THE PREVIOUSLY SCHEDULED JURY TRIAL DATE IS**
6 **IRRELEVANT**

7 Any reference during opening statements, direct testimony, cross
8 examination, or closing argument to the previously scheduled trial
9 date of September 13, 2022 would be irrelevant, as it has no
10 probative value to any fact of consequence. The defendant has been
11 charged with bribery and money laundering related offenses. That
12 there was a trial date set for September 13, 2022 is of no
13 consequence, and cannot be used by any reasonable jury to reach a
14 determination on any fact of consequence, because it has no bearing
15 on the nature or the elements of the charges. Simply put, it is
16 wholly irrelevant.

17 **B. EVIDENCE OF THE PREVIOUSLY SCHEDULED JURY TRIAL DATE IS**
18 **INADMISSIBLE UNDER RULE 403**

19 There is no probative value in the jury hearing evidence of the
20 previously scheduled trial date of September 13, 2022. But even if
21 there was any probative value, it would be negligible and
22 substantially outweighed by a danger of unfair prejudice, confusion
23 of the issues, misleading the jury and jury distraction by side
24 issues.

25 Here, the defense filed an emergency motion requesting a
26 “reasonable continuance” based on information provided by the
27 prosecution. The Court granted the defense’s motion. Thus, the
28 defendant got the benefit of additional time to prepare. He should
not now be allowed to use *his* continuance request, and the Court’s

1 granting of it, as a sword to confuse the jury. Again, a one-week
2 trial continuance has no bearing on the nature of the charges or
3 their elements. This case has been continued many times, as is not
4 uncommon in complex criminal cases. Simply stated, when, why, how,
5 the number of times, or the dates a trial has been continued is of no
6 matter for the jury. The jury should not be invited to speculate on
7 procedural issues and to allow the jury to do so would be improper.

8 Indeed, it would only serve to inflame the passions of the jury
9 as to whether defendant is properly on trial. Defendant does not
10 have a "right to present to a jury evidence that is irrelevant to a
11 legal defense to, or an element of, the crime charged" and if
12 defendant is allowed to reference the previous trial date of
13 September 13, 2022 he would be doing exactly that. See Steppe, 968
14 F.2d at 930 (Trott, J., concurring). Such evidence, if allowed to be
15 introduced, would open the door to the prosecution presenting
16 evidence showing the defendant initially requested a trial
17 continuance, thus creating a slippery slope of collateral issues and
18 certainly creating an undue waste of time.

19 **V. CONCLUSION**

20 For the foregoing reasons, this Court should exclude any
21 reference to the previously scheduled jury trial of September 13,
22 2022.