

1 TRACY L. WILKISON
 United States Attorney
 2 SCOTT M. GARRINGER
 Assistant United States Attorney
 3 Chief, Criminal Division
 MACK E. JENKINS (Cal. Bar No. 242101)
 4 Assistant United States Attorney
 Chief, Public Corruption & Civil Rights Section
 5 VERONICA DRAGALIN (Cal. Bar No. 281370)
 MELISSA MILLS (Cal. Bar No. 248529)
 6 CASSIE D. PALMER (Cal. Bar No. 268383)
 Assistant United States Attorneys
 7 Public Corruption & Civil Rights Section
 1500 United States Courthouse
 8 312 North Spring Street
 Los Angeles, California 90012
 9 Telephone: (213) 894-2091/0647/0627
 Facsimile: (213) 894-6436
 10 E-mail: Mack.Jenkins@usdoj.gov
 Veronica.Dragalin@usdoj.gov
 11 Melissa.Mills@usdoj.gov
 Cassie.Palmer@usdoj.gov
 12

13 Attorneys for Plaintiff
 UNITED STATES OF AMERICA

14 UNITED STATES DISTRICT COURT

15 FOR THE CENTRAL DISTRICT OF CALIFORNIA

16 UNITED STATES OF AMERICA,
 17 Plaintiff,
 18 v.
 19 JOSE LUIS HUIZAR, et al.,
 20 Defendants.

No. 2:20-CR-326 (A) -JFW

GOVERNMENT'S STATUS REPORT
 REGARDING PROPOSED SCHEDULE FOR
 THREE TRIALS AND PRETRIAL
 DEADLINES

CURRENT JOINT TRIAL DATE:
 10/18/2022

PROPOSED NEW TRIAL DATES:
 06/14/2022 (940 HILL/LEE)
 08/02/2022 (SZNW)
 10/18/2022 (HUIZAR/CHAN)

24 Plaintiff United States of America, by and through its counsel
 25 of record, the United States Attorney for the Central District of
 26 California and Assistant United States Attorneys Mack E. Jenkins,
 27 Veronica Dragalin, Melissa Mills, and Cassie D. Palmer, hereby files
 28

1 the Government's Status Report Regarding Proposed Schedule for Three
2 Trials and Pretrial Deadlines.

3 On March 15, 2022, during a telephonic meet and confer, counsel
4 for defendants JOSE HUIZAR, SHEN ZHEN NEW WORLD I, LLC, DAE YONG LEE,
5 and 940 HILL, LLC, indicated that they oppose the government's
6 proposed schedule, and that they intend to file responses to this
7 filing.

8 This Status Report is based upon the Memorandum of Points and
9 Authorities contained herein, the complete files and records of this
10 case, and any argument upon any hearing on the parties' proposed
11 schedules.

12 Dated: March 15, 2022

Respectfully submitted,

13 TRACY L. WILKISON
14 United States Attorney

15 SCOTT M. GARRINGER
16 Assistant United States Attorney
17 Chief, Criminal Division



18 MACK E. JENKINS
19 VERONICA DRAGALIN
20 MELISSA MILLS
21 CASSIE D. PALMER
22 Assistant United States Attorneys

23 Attorneys for Plaintiff
24 UNITED STATES OF AMERICA
25
26
27
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On February 2, 2022, at defendants JOSE HUIZAR and RAYMOND CHAN's request, and with the government's agreement, this Court continued the joint trial in this case to October 18, 2022, and continued the corresponding pre-trial deadlines. (CR 368.) Despite objections from defendants SHEN ZHEN NEW WORLD I, LLC ("SZNW"), DAE YONG LEE ("LEE"), and 940 HILL LLC ("940 HILL"), the Court continued the deadlines for all defendants, and found the time period from May 24, 2022 to October 18, 2022 to be excludable under the Speedy Trial Act.

On March 7, 2022, ruling on severance motions filed by SZNW and LEE/940 HILL on August 9, 2021, the Court severed the trials for these defendants from the joint RICO trial. At the hearing, the parties discussed proposed dates for the two severed trials. Defendants LEE/940 HILL requested a trial date of June 14, 2022, and SZNW agreed to a trial date of August 2, 2022. Despite meet and confer efforts on a schedule for the three sequential trials, the parties have been unable to reach a mutually agreeable schedule. The government respectfully requests that the Court enter an amended trial order advancing the LEE/940 HILL and SZNW trials to the dates discussed at the hearing and setting the below proposed deadlines for each trial. This proposed schedule is mindful of the fact that the severed trials for LEE/940 HILL and SZNW will be far less complex and less lengthy than contemplated by the original trial schedule in light of the severance and the Court's comments at the hearing. As described below, the government's proposed schedule is modeled after another complex fraud case that was tried before this Court in

1 October 2019 (Elmezayen). Alternatively, the government asks the
2 Court to set the SZNW trial last and keep the current pre-trial
3 deadlines for the RICO trial. Because SZNW remains joined for trial
4 with fugitive defendant WEI HUANG, its sole owner, and because the
5 government's efforts to secure HUANG's apprehension and appearance
6 are ongoing, any delay caused to SZNW is properly attributable to
7 HUANG's evasion of justice. Scheduling the SZNW trial after the
8 October 2022 HUIZAR/CHAN trial would streamline pre-trial filings,
9 preserve judicial resources, achieve effective case management, and
10 otherwise serve the interests of judicial economy.

11 **II. RELEVANT PROCEDURAL HISTORY**

12 **A. Joint Trial Set for May 24, 2022**

13 In a stipulation filed on March 31, 2021, all defendants moved
14 to set a trial date of May 24, 2022, and the parties jointly
15 requested certain pre-trial briefing dates. (CR 170.) After a
16 hearing and additional submissions by the parties, on May 13, 2021,
17 the Court entered an order setting the trial for May 24, 2022,
18 setting motions deadlines and other pre-trial deadlines, and making
19 findings regarding excludable time periods pursuant to the Speedy
20 Trial Act. (CR 187.) On September 21, 2021, the Court issued an
21 amended Criminal Trial Order setting forth deadlines for the
22 government's pre-trial exhibit list as February 15, 2022, and the
23 deadline for the joint pre-trial exhibit stipulation as March 15,
24 2022. (CR 254.)

25 **B. Joint Trial Continued to October 18, 2022**

26 On January 21, 2022, HUIZAR moved to continue the trial date to
27 August 23, 2022, and requested a modified schedule of the pre-trial
28 deadlines. (CR 352.) SZNW and LEE/940 HILL objected to the

1 continuance, and CHAN took no position with respect to the
2 continuance. (CR 352, 354, 355.) On January 31, 2022, at a hearing
3 on defendants' various motions to suppress, for the reasons stated on
4 the record, the Court ordered counsel to submit a revised stipulation
5 with a new trial date of October 18, 2022. (CR 362.) Among the
6 reasons discussed at the hearing were the complexity of the case and
7 concern with the backlog of trials for in-custody defendants due to
8 the COVID-19 pandemic that has placed a significant burden on the
9 Court for the Central District of California. The Court instructed
10 SZNW and LEE/940 HILL to file their positions regarding the October
11 18, 2022 trial date. (CR 362.) On February 1, 2022, by stipulation
12 with the government, HUIZAR and CHAN moved to continue the trial date
13 to October 18, 2022. (CR 360.) On February 1 and 2, respectively,
14 LEE/940 HILL and SZNW filed their objections to the continuance. (CR
15 361, 364.) On February 3, 2022, the Court entered an order
16 continuing the joint trial to October 18, 2022 for all defendants,
17 and setting pre-trial deadlines for the joint trial. (CR 368.) In
18 that order, the Court found that the time period of May 24, 2022 to
19 October 18, 2022, inclusive, as to defendants HUIZAR, CHAN, SZNW,
20 LEE, and 940 HILL, was excluded pursuant to 18 U.S.C.
21 §§ 3161(h)(7)(A), (h)(7)(B)(i), (h)(7)(B)(ii), (h)(7)(B)(iv), and
22 (h)(6). In addition, the Court found additional time periods
23 excludable pursuant to 18 U.S.C. § 3161(h)(1)(D) for time periods
24 during which motions to dismiss/strike, motions to sever, and motions
25 to suppress were pending.

26 **C. Severance Granted for LEE/940 HILL and SZNW**

27 On August 9, 2021, SZNW and LEE/940 HILL each moved to sever
28 their trials from co-defendants, each arguing at length that the

1 overwhelming majority of the evidence against others did not involve
2 them and thus that separate trials would be far shorter, less
3 complex, and less prejudicial. (CR 200 at 1-15; CR 201 at 17-23.)

4 On March 7, 2022, the Court granted both motions to sever. (CR
5 390.) At the hearing, the Court and parties discussed the following
6 trial dates: (1) June 14, 2022 trial against LEE/940 HILL; (2) August
7 2, 2022 trial against SZNW; and (3) October 18, 2022 trial against
8 HUIZAR and CHAN. The Court ordered the parties to meet and confer
9 regarding proposed pre-trial deadlines, and to file proposed
10 deadlines.

11 **D. Government's Pre-Trial Disclosures**

12 1. Expert Disclosures

13 On December 15, 2021, the government made its expert disclosure
14 to all defendants. On January 14, 2022, LEE/940 HILL made reciprocal
15 expert disclosures to the government. On January 15, 2022, SZNW sent
16 a letter to the government styled as "expert designations," but
17 stating that "SZNW is not in a position to designate any experts to
18 testify at trial," in contravention of the Court's scheduling order
19 requiring it to do so. Instead, asserting that defense expert
20 disclosures were "not called for by the rules," SZNW provided a list
21 of three broad subject areas for which it might call experts to
22 testify and reserved its right to designate experts in the future.
23 Despite the January 15, 2022 court deadline, HUIZAR and CHAN have yet
24 to make any expert disclosures.

25 On March 7, 2022, counsel for LEE/940 HILL requested that the
26 government send a revised expert disclosure for the LEE/940 HILL
27 trial by March 18, 2022. The government has agreed to do so and will
28

1 provide such a letter by March 18, 2022. Defense counsel agreed to
2 provide defense revised expert disclosures by March 25, 2022.

3 2. Motions in Limine Meet and Confer

4 At the government's request, on January 26, 2022, counsel for
5 the government and counsel for HUIZAR, CHAN, LEE, and 940 HILL
6 participated in a telephonic meet and confer to discuss motion in
7 *limine* issues for the joint trial. On January 28, 2022, counsel for
8 the government and counsel for SZNW participated in a separate
9 telephonic meet and confer to discuss motion in *limine* issues.
10 Counsel for the government and counsel for LEE/940 HILL have
11 continued to engage in meet and confer regarding anticipated motion
12 in *limine* issues for the June 14, 2022 trial.

13 On February 1, 2022, the government provided its 404(b) notice
14 to all defendants.

15 3. Government's Early Draft Exhibit List

16 On August 2, 2021, November 1, 2021, and January 11, 2022, the
17 government provided a "Draft Exhibits Project Index" to the defense,
18 which listed the Bates numbers, corresponding Overt Act number(s),
19 and Count number(s), for the documents the government anticipated
20 including on its exhibit list for the joint trial. The most recent
21 iteration of the Draft Exhibits Project Index contained 1,062
22 documents.

23 On February 28, 2022, the government produced approximately 287
24 documents in a folder labeled "Draft Exhibits," representing specific
25 text message chains, data extracted from digital devices,
26 photographs, and other records the government anticipates will be
27 included on its final exhibit list. In many cases, the document
28 titles correspond to specific Overt Acts (e.g., a pdf titled "OA005"

1 is text message chain between HUIZAR and Ricky Zheng regarding a Las
2 Vegas trip charged as Overt Act No. 5).

3 4. Government's Revised Draft Exhibit List and Early
4 Draft Witness List to LEE/940 HILL

5 On March 10, 2022, the government provided an updated Draft
6 Exhibits Project Index to counsel for LEE/940 HILL, upon their
7 request, listing only those exhibits that correspond to Overt Acts
8 and Counts relevant to LEE/940 HILL (67 documents total). In
9 addition, the updated Index listed the Bates numbers of 58 additional
10 documents from the recent "Draft Exhibits" production that were
11 relevant specifically to LEE/940 HILL. Also on March 10, 2022, the
12 government provided counsel for LEE/940 HILL, upon their request, an
13 early draft Witness List, listing 25 witnesses. The government
14 explained to defense counsel that it anticipates narrowing this list
15 closer to trial to eliminate duplicative fact witnesses and to remove
16 certain witnesses if the parties enter into stipulations regarding
17 facts and/or authentication and admissibility.

18 **E. Meet and Confer Efforts**

19 One day after the March 7, 2022 hearing, counsel for the
20 government and counsel for SZNW met and conferred by telephone
21 regarding, among other things, proposed pre-trial deadlines. The
22 government proposed trying SZNW last, in late 2022. While defense
23 counsel expressed interest in that possibility during the call and
24 confirmed in a subsequent email that he would review the proposal
25 with his client, counsel ultimately rejected that proposal on March
26 11, 2022.

27 Beginning on March 9, 2022, counsel for the government and
28 counsel for LEE/940 HILL met and conferred by telephone, and later

1 exchanged e-mails regarding potential proposed pre-trial deadlines.
2 During those meet and confer efforts, the government believed, based
3 on its discussion with counsel for SZNW, that it could reach
4 agreement with SZNW to set deadlines that would not overlap with or
5 interfere with preparation for the LEE/940 HILL trial.

6 On March 14, 2022, after it became clear that SZNW requested
7 dates that would overlap with the June 14, 2022 trial, the government
8 sent the below proposed schedule to all defense counsel in the case.
9 The government's initial efforts to separately coordinate, with each
10 individual counsel, pretrial schedules for three related trials that
11 were recently severed and set in very close succession resulted in
12 confusion and dissatisfaction by various defense counsel. During
13 these discussions, the government recognized the need for a coherent
14 schedule that would account for each of these related trials and
15 permit the government and the Court to fulfill their respective
16 obligations as to each trial. Accordingly, the government requested
17 that all counsel participate in a joint meet and confer on the below
18 proposed schedule and solicited input from the defense.

19 On March 15, 2022, counsel for the government and counsel for
20 HUIZAR, SZNW, and LEE/940 HILL participated in telephonic meet and
21 confer to discuss the proposed deadlines.¹ Counsel for LEE/940 HILL
22 noted that the government's new proposed schedule contained different
23 dates than those initially discussed in the parties' preliminary
24 discussions last week. Counsel for SZNW expressed his belief that
25 the government was operating in bad faith by continuing to advocate

26
27 ¹ Harland Braun, counsel for CHAN, represented by email on March
28 14, 2022, that he would be in court during the time scheduled for the
joint meet and confer call. The government does not yet know CHAN's
position with respect to the below proposed schedule.

1 for the government's proposed schedule, but he offered no
2 counterproposal on this call. Counsel for HUIZAR noted that the
3 current HUIZAR trial date afforded her team more time for ongoing
4 negotiations and agreed to continue those efforts. She further
5 indicated that because her co-counsel was then in trial, their team
6 would be unable to provide further feedback before this filing, which
7 counsel for LEE/940 HILL requested be lodged today.

8 Thus, the parties have been unable to reach agreement on the
9 proposed pre-trial deadlines.

10 **III. GOVERNMENT'S PROPOSED PRE-TRIAL DEADLINES**

11 The government has been diligently working on this complex case
12 and has already made many pre-trial disclosures as outlined above.
13 On March 7, 2022, the government added another AUSA to the case,
14 bringing the number to four AUSAs who will continue to work on the
15 case to prepare for three separate back-to-back trials beginning in
16 June.

17 The deadlines proposed below follow the pre-trial schedule of
18 another complex fraud case before this Court that involved two
19 murders and an attempted murder and voluminous discovery, United
20 States v. Ali Elmezayen, CR-18-809-JFW. That case was tried in 9
21 court days and included 24 government witnesses, over 450 government
22 exhibits, and over 100 marked defense exhibits. The government
23 respectfully submits that following the same approximate pre-trial
24 schedule in each of the three trials in this case will allow ample
25 time for the defense to prepare for trial and will serve the
26 interests of justice. Given the government's disclosures to date far
27 in advance of any of the trial dates, the defense teams not only have
28 an early start with respect to the government exhibit list, but they

1 also have a draft exhibit list keyed to particular overt acts, giving
2 them a significant preview of how the government will prove its case
3 and ample time to prepare for trial.

4 Importantly, given the Court's severance of what would have been
5 one large trial, the trials against LEE/940 HILL and SZNW are no
6 longer as lengthy or complex as the joint RICO trial that initially
7 warranted exceptionally early deadlines. Indeed, both severance
8 motions were premised on an argument that the overwhelming majority
9 of the evidence against other defendants did not involve the moving
10 defendants, and both defendants reasoned that the severed trials
11 would be far simpler, shorter, and more limited than the joint RICO
12 trial for which the Court previously scheduled significantly advanced
13 deadlines. See, e.g., CR 200 at 1 (LEE/940 HILL argued that the
14 evidence against them would be "a very small part of the overall case
15 that the government intends to present at a joint trial"); CR 201 at
16 20 (SZNW argued that "the great majority of the government's evidence
17 of other schemes is necessarily unrelated to SZNW").

18 The Court agreed, expressing concern that these developer
19 defendants might suffer prejudice from the overwhelming amount of
20 evidence that HUIZAR solicited and accepted bribes from other
21 developers. Defendants have prevailed on this argument, and they are
22 now bound by it. They cannot now reap the benefits of the contrary
23 position by claiming that their cases are so complex that they are
24 entitled to special treatment that would not apply in any other trial
25 that, in LEE/940 HILL's words, is "relatively small," "do[es] not
26 require presenting evidence about anything especially intricate," and
27 "would be a relatively contained event in terms of witnesses and
28 evidence." (CR 200 at 3, 6.)

1 Furthermore, given that HUIZAR and CHAN will now have the
2 benefit of a preview of a majority of their case, the pre-trial
3 deadlines for the RICO trial similarly do not warrant such an
4 advanced timeline. The government estimates that its final Pre-Trial
5 Exhibit List for the joint trial would have contained approximately
6 1,000 exhibits (removing certain documents from the Draft Exhibits
7 Project Index and adding others). Of the total exhibits and the
8 evidence in the overall case, approximately 40% pertains to the L.A.
9 Grand Hotel Project Overt Acts and Counts (approximately 400
10 exhibits), approximately 20% pertains to the 940 Hill Project Overt
11 Acts and Counts (less than 200 exhibits), and the remaining
12 approximately 40% pertains to the additional Overt Acts and Counts
13 charged against HUIZAR and CHAN (approximately 400 exhibits). Thus,
14 after the June 14, 2022 trial, HUIZAR and CHAN would have a full
15 preview of 20% of their trial, including a complete Exhibit List,
16 Witness List, witness testimony, corresponding Brady/Giglio/Jencks
17 materials, and government closing arguments. After the August 2,
18 2022 trial, HUIZAR and CHAN would have a full preview of 60% of their
19 trial to include the L.A. Grand Hotel Project exhibits, witnesses,
20 materials, and government arguments.

21 The below proposed deadlines are sufficiently far apart to avoid
22 overlapping filings and hearings between the three trials, allowing
23 the Court sufficient time to consider motions in connection with each
24 trial. For example, the government estimates that the LEE/940 HILL
25 trial will conclude no later than around July 1, 2022. Setting the
26 SZWN motions *in limine* hearing for July 8, 2022 avoids having the
27 parties brief issues and having the Court hold hearings for the
28 second trial while the first trial is still ongoing. Similarly, the

1 current motions *in limine* hearing for the October 18, 2022 trial is
 2 scheduled for August 22, 2022, a date when the second trial may still
 3 be ongoing. Setting the below deadlines for all three trials takes
 4 into account the Court's and the parties' schedules to ensure
 5 efficient case management and preserve judicial resources.

Event	LEE/ 940 HILL Trial	SZNV Trial	HUIZAR/ CHAN Trial
<u>Giglio/Brady</u> Declaration	4/29/2022	6/17/2022 ²	9/2/2022 ³
MIL Filing	5/2/2022	6/20/2022	9/6/2022
MIL Hearing	5/20/2022	7/8/2022	9/23/2022
Gov Pre-Trial Exhibit List	5/23/2022	7/11/2022	9/26/2022
Meet & Confer re Exhibit List	5/27/2022	7/15/2022	9/30/2022
Joint Exhibit Stipulation	5/31/2022	7/18/2022	10/3/2022
Certified Translations	5/31/2022	7/18/2022	10/3/2022
Expert Offer of Proof	5/31/2022	7/19/2022	10/4/2022
Gov Pre-Trial Witness List	5/31/2022	7/19/2022	10/4/2022
Def Resp to Witness List	6/02/2022	7/21/2022	10/6/2022
Proposed Voir Dire	6/03/2022	7/22/2022	10/7/2022
Gov Trial Brief	6/06/2022	7/25/2022	10/10/2022
Jury Verdict Form	6/06/2022	7/25/2022	10/10/2022
Jury Instructions	6/06/2022	7/25/2022	10/10/2022
Pretrial Conference	6/08/2022	7/27/2022	10/12/2022
Joint Statement of Case	6/09/2022	7/28/2022	10/13/2022

26 _____
 27 ² This deadline would be for any supplemental witnesses that did
 not previously testify in the first trial.

28 ³ This deadline would be for supplemental witnesses that did not
 previously testify in the first or second trials.

Event	LEE/ 940 HILL Trial	SZNW Trial	HUIZAR/ CHAN Trial
Def Pre-Trial Witness List	6/13/2022	8/1/2022	10/17/2022
TRIAL	6/14/2022	8/2/2022	10/18/2022
Def Exhibit Stipulation	<i>(start of Δ case)</i>	<i>(start of Δ case)</i>	<i>(start of Δ case)</i>

IV. ALTERNATIVELY, DEFENDANT SZNW SHOULD BE TRIED LAST

Alternatively, if the Court prefers the early pre-trial deadlines already set for the October 2022 trial (CR 368), defendant SZNW should be tried last, shortly after the RICO trial against HUIZAR and CHAN. If SZNW were tried last, it should still follow the current pre-trial deadlines for the October 2022 trial, allowing the parties to brief evidentiary and other trial issues on the same schedule to avoid duplicative pleadings and arguments.⁴ The government estimates that the SZNW trial could proceed in late November or early December 2022, allowing all trials in this case to be concluded before the end of this year.

Defendant WEI HUANG, the sole owner of SZNW, is aware of the indictment against him,⁵ but has thus far successfully evaded arrest

⁴ For example, the government anticipates that approximately 400 exhibits will be introduced both in the SZNW trial and the RICO trial. Combining the meet and confer for this set of exhibits will streamline the case and avoid burdening the Court with multiple rounds of the same arguments. Similarly, based on early meet and confer regarding motions *in limine* issues, defendants HUIZAR, CHAN, and SZNW will have overlapping *in limine* arguments, such as the prejudicial nature of certain benefits provided to by HUANG/SZNW to HUIZAR and the scope of co-conspirator statements. Briefing these issues on the same schedule will avoid wasting judicial resources and the potential of inconsistent rulings.

⁵ The assigned AUSAs have participated in discussions with attorneys who represent defendant HUANG individually, both before and after the indictment was filed in this case.

1 and refused to appear in this jurisdiction to face the charges
2 against him. Instead, HUANG is getting a full preview of the
3 government's case against him as the sole owner and decision-maker
4 for SZNW, putting on a defense for his company from afar while
5 evading justice.⁶ In this way, HUANG hopes to get two bites at the
6 apple in defending his actions--once on behalf of the company SZNW,
7 and a second time in his individual capacity when he is apprehended
8 or elects to submit to the jurisdiction of this Court in order to
9 regain freedom of movement among the many countries with extradition
10 treaties with the United States.

11 In evaluating SZNW's assertion of its speedy trial right and the
12 need to try SZNW (a corporate entity) before individual defendants
13 HUIZAR and CHAN in this case, the Court can consider co-defendant
14 HUANG's fugitive status for purposes of calculating excludable time
15 under the Speedy Trial Act. To date, SZNW remains joined for trial
16 with HUANG,⁷ who has yet to make an appearance in this district and
17

18 ⁶ In fact, counsel for SZNW informed the government during a
19 call on March 8, 2022, that an attorney who represents HUANG
20 individually intends to join the trial team for SZNW to participate
21 as trial counsel in the August 2, 2022 trial.

22 ⁷ Defendant SZNW's severance motion only addressed prejudice
23 from being tried with co-defendants HUIZAR, CHAN, LEE, and 940 HILL.
24 Defendant SZNW did not claim, nor could it, any spillover prejudicial
25 effect with respect to co-defendant HUANG, since the two are in
26 essence one and the same for many purposes in this criminal case.
27 See, e.g., United States v. King, 134 F.3d 1173, 1176 (2d Cir. 1998)
28 ("We fully appreciate that state law recognizes the separateness of a
wholly owned corporation from its sole shareholder for purposes of
insulating the shareholder from liability for the corporation's
debts, at least in the absence of circumstances warranting piercing
the corporate veil. But the state law principle that insulates the
shareholder from the debts of his corporation does not warrant
insulating the corporation under the Confrontation Clause....
Corporate separateness need not be recognized for all purposes.").
Courts have recognized that constitutional principles of criminal law
"should not be construed to aid the sole owner of a corporation to
adjust his testimony in the hope of shifting blame from himself to
his wholly owned company." Id.

1 for whom the Speedy Trial clock has not begun. "Although the
2 unapprehended codefendants in the instant case had been indicted,
3 their speedy trial clock clearly could not begin until they were
4 apprehended and appeared before the court." United States v.
5 Davenport, 935 F.2d 1223, 1229-30 (11th Cir. 1991) (citing 18 U.S.C.
6 §§ 3161(c)(1) & (h)(3)(A)). "Because appellant was properly joined
7 with the unavailable codefendants during the relevant time period and
8 no motion to sever had been granted, the delay occasioned by those
9 codefendants under 3161(h)(3)(A) is charged to appellant under
10 § 3161(h)[6]." Id. *This is even more true when SZNW is wholly owned*
11 *by the fugitive co-defendant HUANG, who has freely chosen to evade*
12 *justice in this case. The delay occasioned by HUANG can and should*
13 *be charged to SZNW under subsection (h)(6). See also United States*
14 *v. Pena, 793 F.2d 486, 488-89 (2d Cir. 1986) (clock never begins to*
15 *run on defendants who are fugitives and never arraigned, and any*
16 *delay attributable to one defendant is attributable to all co-*
17 *defendants); United States v. Tobin, 840 F.2d 867 (11th Cir. 1988)*
18 *(eight-month reasonable delay attributable to the fugitive status of*
19 *a co-indictee was excludable as to those defendants awaiting trial);*
20 *United States v. Felton, 592 F. Supp. 172, 184-85 (W.D. Pa. 1984)*
21 *(delay of almost one year awaiting apprehension of indicted*
22 *codefendant held reasonable in light of congressional preference for*
23 *joint trials), rev'd on other grounds, 753 F.2d 256 and 753 F.2d 276*
24 *(3d Cir. 1985).*

25 Subsection (h)(6) of the Speedy Trial Act "represents a
26 congressional effort to build into the Speedy Trial Act sufficient
27 flexibility to allow the government to stop criminal activity by
28 arresting the suspected perpetrators as soon as it has probable

1 cause, without precluding a joint trial with compatriots who may be
2 apprehended at a later date." United States v. Novak, 715 F.2d 810,
3 815 (3d Cir. 1983). Congress entrusted courts with the
4 responsibility of determining reasonableness based on the facts of
5 each case, taking into account the congressional intent underlying
6 § 3161(h)(6): to permit joint trials of defendants to "continue to be
7 available as a means of promoting judicial efficiency by avoiding
8 duplicative proof at successive trials." Pena, 793 F.2d at 489.

9 Determining whether a particular delay is reasonable in a given
10 case requires courts to balance the length of the proposed delay and
11 the reasons for the delay against any prejudice to the defendant.
12 Davenport, 935 F.2d at 1236-37. Prejudice in this context generally
13 means either impairment of the defendant's ability to put on a
14 defense or prolonged pretrial incarceration. United States v.
15 Salerno, 108 F.3d 730, 738 (7th Cir. 1997). Here, the corporate
16 entity SZNW is not detained. A continuance of the trial against SZNW
17 to allow the RICO trial to proceed first would not impair its ability
18 to put on a defense. To the contrary, SZNW would get a full preview
19 of the government's case with respect to the L.A. Grand Hotel bribery
20 scheme, including all exhibits, witness testimony, arguments, and
21 relevant pre-trial disclosures. SZNW would have the added benefit of
22 a full preview of the cross-examination by HUIZAR and CHAN's
23 attorneys and could later cross-examine government witnesses with
24 prior inconsistent statements from the RICO trial. Trying SZNW
25 second instead prejudices the government's case against the most
26 culpable defendants by allowing HUIZAR and CHAN to take advantage of
27 government witnesses having to testify on the same subjects in two
28 (or even three) separate trials.

1 In addition, as noted above, the government estimates that 40%
2 of the RICO trial will consist of evidence of the bribery conduct
3 implicating HUANG and SZNW. Allowing the RICO trial to proceed
4 before the SZNW trial could conceivably lead to pre-trial
5 dispositions for HUANG and SZNW, resulting in effective case
6 management and the conservation of judicial resources. Conversely,
7 convictions against SZNW are not likely to lead to pre-trial
8 dispositions for HUIZAR and CHAN, who face more serious charges (and
9 the custodial consequences applicable only to a human defendant) than
10 SZNW. When HUANG is apprehended, the government will have to put on
11 a trial against HUANG as an individual that is entirely duplicative
12 of the trial against SZNW. A continuance of the SZNW trial to late
13 November or early December 2022 will give the government more time to
14 continue its ongoing efforts to apprehend HUANG, which could result
15 in a joint trial for HUANG and SZNW.⁸

16 SZNW's speedy trial right is the only basis for allowing it to
17 be tried second. Courts have been reluctant to allow fugitive
18 defendants to play games in asserting their speedy trial rights when
19 their evasion of justice is the cause of the delay. See, e.g.,
20 United States v. Sandoval, 990 F.2d 481, 484-85 (9th Cir. 1993)
21 ("barring extraordinary circumstances, we would be reluctant indeed
22 to rule that a defendant was denied this constitutional [speedy
23 trial] right on a record that strongly indicates ... that the
24 defendant did not want a speedy trial") (citation omitted). "[A]
25 true fugitive, whose location is unknown, or who is successfully
26

27 ⁸ The prosecution team has been working with other components of
28 the U.S. government and international authorities on various
mechanisms to ensure that defendant HUANG is ultimately brought to
face justice in this case.

1 resisting government efforts to bring him into the jurisdiction, will
2 not be able to obtain dismissal of an indictment. This is as it
3 should be. Otherwise, the courts would be sanctioning the playing of
4 games by fugitives." Id. (citation omitted). Here, setting the SZNW
5 trial for late November or early December 2022 will serve the
6 interests of justice and has the greatest potential to conserve
7 judicial resources.

8 Once the Court issues a ruling on the trial dates and pre-trial
9 deadlines, the government will prepare and file proposed orders for
10 findings of excludable time periods pursuant to the Speedy Trial Act
11 as necessary for each defendant.

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