

1 John Hanusz (State Bar No. 277367)
2 HANUSZ LAW, PC
3 515 South Flower Street, Suite 3500
4 Los Angeles, California 90071
5 Telephone: (213) 204-4200
6 Email: john@hanuszlaw.com

7 Michael G. Freedman (State Bar No. 281279)
8 THE FREEDMAN FIRM PC
9 1801 Century Park East, Suite 450
10 Los Angeles, California 90067
11 Telephone: (310) 285-2210
12 Facsimile: (310) 425-8845
13 Email: michael@thefreedmanfirm.com

14 Attorneys for Raymond Chan

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 UNITED STATES OF AMERICA,
18
19 Plaintiff,
20
21 v.
22
23 RAYMOND SHE WAH CHAN,
24
25 Defendant.

Case No. 20-CR-00326-JFW

**RAYMOND CHAN'S
OBJECTIONS TO THE
PRESENTENCE REPORT**

1 Raymond Chan, by and through his counsel of record, John Hanusz and
2 Michael G. Freedman, hereby files the following objections to the presentence
3 report. The report was filed on May 6, 2024.

4 These objections are based on the attached Memorandum of Points and
5 Authorities in support, all files and records in this case, and such argument and
6 evidence as may be presented to the Court at the sentencing hearing in this
7 matter.

8
9 Dated: May 20, 2024

Respectfully submitted,

10
11 */s/ John Hanusz*

JOHN HANUSZ

12
13 */s/ Michael G. Freedman*

MICHAEL G. FREEDMAN

14
15 Attorneys for Raymond Chan
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On March 27, 2024, Raymond Chan was found guilty after a jury trial of
4 12 counts relating to the CD-14 Racketeer Influenced and Corrupt Organizations
5 (RICO) conspiracy. The Probation Office determined that the total offense level
6 was 41. In making this finding, it erroneously applied a number of sentencing
7 enhancements. PSR ¶¶ 91-111. Prior to sentencing, Chan will file his sentencing
8 memorandum to address the calculation of the Sentencing Guidelines and the
9 application of the Section 3553(a) factors, but initially submits the following
10 objections to the presentence report (PSR) pursuant to Federal Rule of Criminal
11 Procedure Rule 32(f).

12 **II. LEGAL OBJECTIONS**

13 **A. Application of U.S.S.G. § 2C1.1(b)(2), § 2B1.1(b)(1)(I)**

14 The Probation Office calculated a loss amount of \$1,949,565 in bribe
15 payments from four developers. PSR ¶ 97. This amount is a gross exaggeration
16 of Chan’s liability. The guideline does not value loss based on simply what was
17 paid by the developers; instead, it asks this Court to arrive at a value based on
18 payments/benefits received or obtained by the defendant or others acting with the
19 defendant. U.S.S.G. § 2C1.1(b)(2).

20 While Chan was convicted of facilitating benefits for others, Chan did not
21 himself receive or obtain many benefits or payments from his actions. For
22 instance, he was not “acting with” Huizar such that he went on any of the trips
23 that were intended to benefit Huizar. Nor was he given a share in any of the
24 money/chips that went to Huizar. The only time Chan obtained any payments
25 for his efforts was through his post-retirement work with Synergy. As far as the
26 evidence demonstrated, Chan did not obtain more than \$69,939 in payments
27

1 through his work with Synergy. PSR ¶ 55-57. The guidelines permit only a four-
2 level enhancement for that loss calculation.

3 The remaining amount is derived from benefits that Chan did not receive.
4 For example, \$919,562 in benefits were paid to Huizar as part of the L.A. Grand
5 Hotel scheme. Another \$965,571 in benefits were payments related to the Luxe
6 Hotel that Chiang, Huizar, and others received. Chan cannot and should not be
7 held liable for benefits and payments he never received. An enhancement of four
8 levels, instead of 16, represents the true gains that Chan received.

9 **B. Application of U.S.S.G. § 2C1.1(b)(3)**

10 Citing U.S.S.G. § 2C1.1(b)(3), the Probation Office also applied a four-
11 level enhancement for an offense involving an elected public official or any
12 public official in a high-level decision-making or sensitive position. PSR ¶ 98-
13 99. Application note 4 provides that this enhancement applies to those officials
14 who have “direct authority to make decisions....” U.S.S.G. § 2C1.1(b)(3), app. n.
15 4(A). Here, the Probation Office relies on Chan’s role as the General Manager of
16 LADBS, where he oversaw building permit application and approval processes.
17 However, California law states that the issuance of building permits “shall be
18 presumed to be ministerial.” Cal. Code Regs. Tit 14 § 15268(b)(1). California
19 law further defines “ministerial” as “a governmental decision involving little or
20 no personal judgment by the public official as to the wisdom or manner of
21 carrying out the project.” Cal. Code Regs. Tit. 14 § 15369. Moreover, “the public
22 official merely applies the law to the facts as presented but uses no special
23 discretion or judgment in reaching a decision.” *Id.* No evidence was presented
24 indicating that Chan was able to make direct decisions on such building permits,
25 especially as to the LA Grand Hotel or Luxe projects. Consequently, this
26 enhancement should not be applied.

1 **C. Application of U.S.S.G. § 3B1.1(b)**

2 U.S.S.G. § 3B1.1(b) provides: “If the defendant was a manager or
3 supervisor (but not an organizer or leader) and the criminal activity involved five
4 or more participants or was otherwise extensive, increase by 3 levels.” The
5 Probation Office applied this enhancement despite stating that Huizar was the
6 main leader and manager of the enterprise. PSR ¶ 102. In doing so, it relied
7 primarily on the contention that Chan recruited and mentored Chiang and his
8 son, Jeremy Chan. PSR ¶ 103.

9 Chan did not exercise control over Chiang or Jeremy Chan. Teaching
10 Chiang and his son about local politics and real estate development is not the
11 same thing as exercising “some degree of control or organizational authority”
12 over that person. *United States v. Koenig*, 952 F.2d 267, 274 (9th Cir.1991)
13 (quoting *United States v. Mares-Molina*, 913 F.2d 770, 773 (9th Cir.1990)).
14 Moreover, the two paragraphs of the PSR that describe Chan’s interactions with
15 both Chiang and his son do not evince control or organizational authority. PSR ¶
16 49, 58. According to these paragraphs, Chan only advised them on strategy and
17 introduced them to key players and told them how those key players could help
18 their strategy. *See id.* Chan further objects to the PSR’s conclusion that he
19 formed an equal partnership with Chiang as far back as 2014. PSR ¶ 49.

20 Of the many factors listed in the commentary, two important factors are
21 “the claimed right to a larger share of the fruits of the crime and the degree of
22 participation in planning or organizing the offense.” U.S.S.G. § 3B1.1 cmt. n. 4.
23 The individual who profited the most from Synergy’s work was not Chan, but
24 Chiang. And Huizar was the main beneficiary who planned and organized the
25 enterprise, not Chan. As a result, this enhancement should not be applied to
26 Chan’s conduct of mentoring Chiang and introducing him to key influencers. At
27 most, a two-level enhancement under U.S.S.G. § 3B1.1(c) is applicable.

1 For the reasons set forth above, the defense respectfully submits that
2 Chan's maximum total offense level should be 24.

3 **D. Application of U.S.S.G. § 3C1.1**

4 The Probation Office applied an obstruction of justice enhancement under
5 U.S.S.G. § 3C1.1 based on Chan's false-statements conviction under 18 U.S.C. §
6 1001. U.S.S.G. § 3C1.1 permits a two-level enhancement only if "[p]roviding a
7 materially false statement to a law enforcement officer ... significantly
8 obstructed or impeded the official investigation or prosecution of the instant
9 offense;" U.S.S.G. § 3C1.1, Application Note 4 (g). Application Note 5 provides
10 examples of non-obstructive conduct. Example 5 (b) states: "making false
11 statements, not under oath, to law enforcement officers, unless Application Note
12 4(g) above applies;" U.S.S.G. § 3C1.1, Application Note 5 (b).

13 The two-level adjustment is not warranted unless the false statement
14 resulted "in a significant hindrance to the investigation or to [the defendant's]
15 prosecution." *United States v. Solano-Godines*, 120 F.3d 957, 963 (9th Cir. 1997)
16 (*citing United States v. Magana-Guerrero*, 80 F.3d 398, 401 (9th Cir. 1996);
17 *United States v. Benitez*, 34 F.3d 1489, 1497 n.6 (9th Cir. 1994)); *see also United*
18 *States v. McNally*, 159 F.3d 1215, 1217 (9th Cir. 1998) ("[W]hen a defendant
19 makes a materially false, unsworn statement to a police officer, the false
20 statement must constitute an actual impediment, rather than a mere attempt to
21 impede the investigation.").

22 Chan's false statements did not hinder his prosecution. A conviction under
23 18 U.S.C. § 1001(a)(2) only requires that the false statement be material in the
24 sense that it is relevant and could influence an agent, but it "does not actually
25 have to influence the agency and the agency does not actually have to rely on the
26 information for it to be material." *United States v. Silva*, 119 F. App'x 892, 894
27 (9th Cir. 2004) (*citing United States v. Service Deli Inc.*, 151 F.3d 938, 941 (9th
28

1 Cir. 1998)). As described above, the standard under U.S.S.G. § 3C1.1 is much
2 more demanding, and the false statement had to impede the investigation in some
3 way. There is no evidence of that here, so this enhancement should not apply.

4 **III. FACTUAL OBJECTIONS**

5 In addition to the legal objections referenced above, Chan makes the
6 following factual objections to the PSR:

- 7 • Paragraph 129: the second and third sentences in this paragraph should be
8 modified to make clear that they refer to Chan's schooling in Hong Kong,
9 rather than in Canada.
- 10 • Paragraph 130: Chan's wife is 68 years old, not 67 years old.
- 11 • Paragraph 131: Chan's son, Jeremy Chan, played no role in his defense at
12 trial. The payments referenced in this paragraph relate to the assistance
13 that Even Chan, Chan's daughter in-law, provided prior to and during trial.
- 14 • Paragraph 139: the penultimate sentence in this paragraph should be
15 revised to add falling and knee injuries to the list of difficulties Chan
16 encounters on account of Type 2 Charcot-Marie-Tooth disease.
- 17 • Paragraph 148: the first sentence of this paragraph should be revised to
18 make clear that Chan smoked marijuana while in college in Canada. The
19 second sentence should be revised to make clear that he ceased smoking
20 marijuana upon moving to Los Angeles. The third sentence of this
21 paragraph should be revised to make clear that Chan smoked marijuana on
22 only one occasion four years ago.
- 23 • Paragraph 160: the liabilities portion of this paragraph should clarify that
24 the mortgage for the Olvera Way property and the personal loan are one
25 and the same. As a result, Chan's overall liabilities should be reduced by
26 \$200,000 (to \$542,920) and his net worth should be increased to
27 \$1,482,040 (from \$1,282,040).

- 1 • Paragraph 163: this paragraph should be revised to make clear that Troy
2 Augborne is Chan’s martial arts colleague, rather than his martial arts
3 student.

4 Chan also objects to the narrative set forth in the PSR at ¶¶ 26-73
5 regarding his purported criminal conduct.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28