APPENDIX

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APPENDIX A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellee*, v. SHEN ZHEN NEW WORLD I, LLC, *Defendant-Appellant*.	No. 23-972 D.C. No. 2:20-cr-00326-JFW-4 OPINION

Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding

Argued and Submitted July 19, 2024
Pasadena, California

Filed September 11, 2024

Before: Kim McLane Wardlaw, Richard A. Paez, and Gabriel P. Sanchez, Circuit Judges.

Opinion by Judge Sanchez

SUMMARY*

Criminal Law

The panel affirmed a real estate development company's convictions on three counts of honest services mail and wire fraud, in violation of 18 U.S.C. §§ 1341, 1343, 1346; one count of federal-program bribery, in violation of 18 U.S.C. § 666(a)(2); and four counts of interstate and foreign travel in aid of racketeering, in violation of the Travel Act, 18 U.S.C. § 1952(a)(3).

The company, Shen Zhen New World I, LLC ("Shen Zhen"), was owned and operated by Chinese billionaire Wei Huang who, for nearly forty years, lavished extravagant Las Vegas hotel stays, gambling chips, and prostitutes on then-Los Angeles City Councilmember Jose Huizar. Shen Zhen sought to redevelop the L.A. Grand Hotel into Los Angeles's tallest skyscraper. Huang's right-hand man confided in Huizar's aide that Huang's strategy was to "give, give, give" so that he could later make a "big ask" for Huizar's support on the redevelopment project.

The panel held that sufficient evidence supports the convictions. The panel rejected Shen Zhen's argument that the Government's failure to establish either an agreement between the parties or any official action by Huizar taints all of the counts against the company. When based on bribery, conviction for honest-services fraud requires proof of the bribe-giver's intent to enter

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

a quid pro quo. But the bribery offense does not require an agreement to enter a quid pro quo with the public official when the defendant is the bribe-giver. A defendant offering a benefit to a public official with the intent to influence any official act in exchange suffices. Viewing the evidence in the light most favorable to the prosecution, the evidence at trial was more than sufficient to support conviction for honest-services fraud. The same evidence also supports Shen Zhen's convictions for federal-program bribery and Travel Act violations, which entail the same or more permissive mens rea requirements.

The panel held that the district court did not err in its jury instructions. Shen Zhen argued that the district court denied it a fair trial by refusing to give its proposed instruction on a quid pro quo. The panel wrote that the proposed instruction was not legally sound because bribery does not require an agreement to enter a quid pro quo with the public official; that Shen Zhen's reliance on campaign-contribution precedents does not alter this conclusion; that a proposed instruction requiring the jury to find that Huizar clearly identified "specified official acts" was also legally unsound; and that a proposed instruction on the difference between unlawful bribery and "lawful ingratiation" was unnecessary.

The panel affirmed Shen Zhen's Travel Act convictions. Shen Zhen argued that California's bribery statutes are too broad to serve as predicates under the "categorical approach" required under the Travel Act. The panel determined that, as construed by the California courts, bribery under California law is broader than the Travel Act's generic definition of bribery. The panel held, however, that the mismatch

between the generic definition of bribery under the Travel Act and California bribery statutes do not require vacating Shen Zhen's convictions because the jury convicted Shen Zhen based on elements that conform to the generic definition of bribery under the Travel Act.

The panel held that the district court properly admitted evidence of Huizar's general-pay-to-play scheme but wrongly excluded Huang's alleged statements about his state of mind regarding his gift-giving. The panel concluded that the error was harmless and does not warrant reversal of the jury's verdict.

COUNSEL

Susan S. Har (argued), James J. Buxton, Brian R. Faerstein, and Veronica Dragalin, Assistant United States Attorneys, Public Corruption & Civil Rights Section; Rajesh R. Srinivasan and Patrick Castaneda, Assistant United States Attorneys; David R. Friedman, Criminal Appeals, Section; Mack E. Jenkins and Bram M. Alden, Assistant United States Attorneys, Chiefs, Criminal Division; E. Martin Estrada, United States Attorney; United States Department of Justice, Office of the United States Attorney, Los Angeles, California; for Plaintiff-Appellee.

Jacob M. Roth (argued), Harry S. Graver, and Alexis Zhang, Jones Day, Washington, D.C.; Richard M. Steingard, Law Offices of Richard M. Steingard, Los Angeles, California; Defendant-Appellant.

OPINION

SANCHEZ, Circuit Judge:

For nearly four years, Chinese billionaire Wei Huang lavished extravagant Las Vegas hotel stays, gambling chips, and prostitutes on then-Los Angeles City Councilmember Jose Huizar. Huang owned and operated Defendant-Appellant Shen Zhen New World I, LLC ("Shen Zhen"), a real estate development company, that sought to redevelop the L.A. Grand Hotel into Los Angeles's tallest skyscraper. Huizar was not only the councilmember of the district that encompassed the hotel but also a key figure on committees that oversaw all development in the city. Huang's right-hand man confided in Huizar's aide that Huang's strategy was to "give, give, give" so that he could later make a "big ask" for Huizar's support on the redevelopment project.

In 2022, a federal jury convicted Shen Zhen on three counts of honest-services mail and wire fraud, in violation of 18 U.S.C. §§ 1341, 1343, 1346; one count of federal-program bribery, in violation of 18 U.S.C. § 666(a)(2); and four counts of interstate and foreign travel in aid of racketeering, in violation of the Travel Act, 18 U.S.C. § 1952(a)(3). Although indicted along with Shen Zhen, Huang never stood trial and remains a fugitive in China. Shen Zhen now makes four arguments on appeal: (1) the Government failed to present sufficient evidence to support the jury convictions; (2) the district court abused its discretion in formulating its jury instructions for quid pro quo bribery; (3) California's bribery statutes served as improper predicate offenses for Shen Zhen's Travel Act convictions; and (4) the district court's evidentiary

rulings warrant reversal. The district court had jurisdiction pursuant to 18 U.S.C. § 3231, and we have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm.

I.

In 2010, Shen Zhen bought downtown Los Angeles's L.A. Grand Hotel for $63 million. As confirmed by Huang's right-hand man Ricky Zheng, Huang hoped to transform the 13-story hotel into a 77-story mixed-use skyscraper that would constitute the tallest tower in Los Angeles.

Then-Los Angeles City Councilmember Jose Huizar held substantial authority over development in downtown Los Angeles. The 15-member Los Angeles City Council approves land-use "entitlements," or city permissions to build large-scale projects. Huizar was the councilmember for Council District 14, which includes the downtown area that contains the L.A. Grand Hotel. Other councilmembers typically defer to the district councilmember's preferences regarding a real estate project in that member's district. Huizar also chaired the Planning and Land Use Management Committee ("PLUM"), which hears and votes on entitlements before providing recommendations to the full City Council. As PLUM chair, Huizar set the committee's agenda and determined if the committee would consider a project. Finally, Huizar was on the Economic Development Committee that approves Transient Occupancy Tax rebates for large-scale hotels. Real estate developers were thus vying for meetings with Huizar and jockeying for his support during the 2010s—a period of significant commercial real estate growth in downtown Los Angeles.

Councilmember Huizar was concurrently running a "pay-to-play" bribery scheme with Los Angeles developers. Huizar's office treated developers who provided Huizar with money and perks as "friends of the office," leveraging his power to advance their projects. Huizar's aide George Esparza testified that he tracked requests from "friends of the office" and relayed Huizar's requests for benefits to developers. Developers who failed to pay got "no play," and Huizar "would essentially pay no attention to their project."

In 2013, Raymond Chan—a member of the Los Angeles Department of Building and Safety and a friend of Huang's—introduced Huang to Huizar over dinner. Huang's assistants and Esparza also attended. Chan explained to Huang that Huizar was the councilmember for Council District 14, the PLUM chair, and ultimately the "big boss" of downtown. Huang spoke limited English, often communicating through bilingual associates, but responded "very, very good" and gave a thumbs up. Esparza told Zheng on multiple occasions over the coming years that Huizar "could essentially make or break" a development project.

Huang understood Huizar's power. The redevelopment of the L.A. Grand Hotel required approximately four entitlements overseen by PLUM and City Council: (1) a specific plan project permit; (2) a "vesting tentative tract" that allowed a developer to use a building for multiple uses, such as a hotel and apartments; (3) the "Transfer of Floor Area Rights" that allowed developers to add floors to a building; and (4) a permit for the sale and service of alcohol. Huang told Zheng and other employees that it was "very important" to have Huizar's support based on his

ability to expedite and approve the L.A. Grand Hotel's redevelopment.

Soon after their first meeting, Huang began inviting Huizar to all-expense-paid trips to Las Vegas. These trips included flights on a private jet, luxury hotel villas with private pools, tens of thousands of dollars in gambling chips, Rolls-Royce car services, expensive food and alcohol, private casino hosts, and prostitutes. Huang called Huizar "the VIP within the group" and treated him accordingly, sitting next to Huizar in the Rolls-Royce, serving him first at dinner, allowing him to pick the wine, providing him the most gambling chips, and giving him "first pick" of the prostitutes. Huang gave Huizar approximately $260,000 in gambling chips over the course of four years and 20 trips to Las Vegas. Huizar also joined Huang on other all-expense-paid trips—what the Defense itself describes as "a gambling junket to Australia and a golf outing to Pebble Beach." Zheng told Esparza that Huang's plan with Huizar was to "give, give, give" as an "investment" until the time was right to make the "big ask" for Huizar's support on the redevelopment project.

Huang's lavish gift-giving quickly made him a "friend of the office" and "top priority" for Huizar. Huang frequently made requests of Huizar en route to Las Vegas in the private jet or soon after returning. Huizar's support to Huang included ensuring that permits for the initial multi-million-dollar renovations of the L.A. Grand Hotel were "handled properly," helping negotiate the purchase of an adjacent parking lot, resolving union disputes, issuing a city certificate honoring a boarding school located in the L.A. Grand Hotel, and holding a press conference for the school.

Huang and Huizar attempted to conceal the nature of their close relationship. Huizar had trained Esparza to tell developers that something was "important to the councilmember" to solicit a bribe, rather than "directly say, hey, we want this contribution for this vote." For their Las Vegas trips, Huang's associates used false names for Huizar on the private jet's flight manifests, while Esparza would cash out Huizar's gambling chips in inconspicuous amounts and give Huizar the cash in the bathroom. During a 2015 trip to the Palazzo casino, casino staff recognized Huizar and requested that he sign a form affirming that he was not gambling with public funds; Huizar refused and instead left the casino floor. Huang subsequently stopped bringing Huizar to Las Vegas for a "cooling-off period" because they wanted to "be careful."

Huang also assisted Huizar with a hush-money payment after a sexual-harassment lawsuit threatened Huizar's 2015 reelection campaign. A former staffer had sued Huizar for sexual harassment in late 2013, and Huizar sought money from Huang "to silence the other side." During ongoing discussions for the settlement money in 2014, Huizar moved and voted for a resolution honoring Huang's "achievements" in a City Council proceeding. The resolution, which the rest of City Council seconded, thanked Huang "for the contributions he has and will continue to make to [the] economy of the Fourteenth District."

In an attempt to keep Huang's assistance in Huizar's sexual harassment lawsuit "discreet and confidential," Huang funneled a $600,000 payment through a foreign shell company and directed a Shen Zhen accounting employee to wire the funds to a

disbarred attorney and eventually to an account at East West Bank in Pasadena. This payment became the collateral for a private loan, which Huizar used to settle his lawsuit.[1] Huizar later won reelection and flew to Las Vegas with Huang to celebrate. At a Las Vegas hotel villa, Huizar thanked Huang for saving his political career with the settlement money.

The year after Huizar's reelection, Huang made his "big ask." Huang informed Huizar of his plans to convert the L.A. Grand Hotel into a 77-floor mixed-use skyscraper. Huang held meetings with architects, a real estate firm, and consultants about the redevelopment in 2016, projecting that he could finish the billion-dollar project by 2020 or 2021. During a cigarette break with Huizar and staff at the Sheraton Hotel that Huang also owned, Huang asked for Huizar's support on the redevelopment of the L.A. Grand Hotel. Esparza testified that Huizar pledged "100 percent support" to Huang for the project and explained what he could do as the PLUM chair, including changing any necessary ordinances, rezoning the project, and granting entitlements for Huang to "go as high as he wants."

Huizar began using his office to support the L.A. Grand Hotel redevelopment project. On August 4, 2016, Huizar organized a City meeting at Huang's request to discuss the project. In attendance were Huizar and his staff, Huang and his project team, the

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[1] Huizar then made interest-only payments on this loan with other cash he received from Huang. Following the corruption revelations against Huizar, the East West Bank seized the collateral and Huizar never paid Huang back for the $600,000 payment.

Deputy Mayor, and the heads of two City departments responsible for major redevelopment work. Huang's team presented its redevelopment plan, and attendees discussed City programs such as Transfer of Floor Area Rights and Transient Occupancy Tax rebates. After the meeting, Huang asked Huizar for an official letter that would help finance the project. Huang provided Huizar with a draft letter trumpeting the redevelopment and the August 4 City meeting. Huizar signed off on the letter despite misrepresentations as to a "civic hearing" that never occurred and false urgency about the status of the project's application. Huizar also steered Huang away from a land-use consultant who was not loyal enough to Huizar. Their Las Vegas trips together continued throughout, including one trip taken the day after the August 4 City meeting.

The scheme began to unravel in February 2017, when Huang learned from a Ceasars Palace hostess that the Federal Bureau of Investigation ("FBI") was investigating Huizar. Huang instructed Zheng that there would be no more trips to Las Vegas with Huizar. Huang also found out that Huizar was involved in another sexual affair, which Huang complained was "no good" for the L.A. Grand Hotel redevelopment because he had "all his eggs in one basket with Jose Huizar." Huang sought to court another city councilmember by taking him to Las Vegas, while he supported Huizar's wife in the 2020 election to fill Huizar's seat as he had termed out of office. In November 2018, the FBI executed search warrants at Huizar's office and home and interviewed Huang about the investigation into Huizar. The FBI also interviewed Zheng and seized his phone. When Zheng

informed Huang, Huang expressed alarm that the FBI "may find him." The following day, Huang fled to China, where he remains a fugitive.

In November 2020, a grand jury indicted Shen Zhen, Huang, Huizar, and three others on 41 counts related to the corruption enterprise. The counts against Shen Zhen consisted of three counts of honest-services mail and wire fraud, in violation of 18 U.S.C. §§ 1341, 1343, 1346; one count of federal-program bribery, in violation of 18 U.S.C. § 666(a)(2); and four counts of interstate and foreign travel in aid of racketeering, in violation of the Travel Act, 18 U.S.C. § 1952(a)(3). The district court granted defendants' motions for severance after determining that the Government failed to present sufficient evidence that "a single scheme exist[ed]" involving all defendants and there was "a significant danger that defendants [would] be severely prejudiced by a joint trial with their co-defendants."

With Huang remaining a fugitive in China, the ten-day trial against Shen Zhen began on October 27, 2022. The jury deliberated for approximately four hours before convicting Shen Zhen on all counts. Shen Zhen now appeals its convictions.

II.

We review de novo the sufficiency of the evidence supporting a conviction. *United States v. Kimbrew*, 944 F.3d 810, 813 (9th Cir. 2019). This review is "highly deferential" to the jury's verdict. *United States v. Rubio-Villareal*, 967 F.2d 294, 296 (9th Cir. 1992) (en banc). Evidence is sufficient if, after viewing it "in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential

elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *see also United States v. Nevils*, 598 F.3d 1158, 1163–64 (9th Cir. 2010) (en banc). A reviewing court draws "all reasonable inferences" in favor of the government and resolves "any conflicts in the evidence . . . in favor of the jury's verdict." *United States v. Alvarez-Valenzuela*, 231 F.3d 1198, 1201–02 (9th Cir. 2000).

Shen Zhen challenges the sufficiency of the evidence on the ground that it "did not commit federal 'bribery.'" It argues that federal bribery requires a "quid pro quo for official action" but the Government proved at trial nothing more than "lawful ingratiation." Shen Zhen asserts that the Government's failure to establish either an agreement between the parties or any official action by Huizar taints all of the counts against the company, necessitating acquittal or a new trial. We disagree.

When based on bribery, conviction for honest-services fraud requires proof of the bribe-giver's intent to enter a quid pro quo. The federal bribery statute, 18 U.S.C. § 201, criminalizes "directly or indirectly, corruptly giv[ing], offer[ing] or promis[ing] anything of value to any public official . . . with intent" "to influence any official act," "to influence such public official" to commit fraud on the United States, or "to induce such public official . . . to do or omit to do any act in violation of the lawful duty of such official." *Id.* § 201(b)(1); *see also McDonnell v. United States*, 579 U.S. 550, 562 (2016).[2] Bribery contemplates a quid

[2] While 18 U.S.C. § 201 by its terms applies only to federal "public official[s]," *id.* § 201(a)(1), section 666 extends the prohibition against bribery to state and local officials employed by agencies

pro quo; that is, bribery requires the "specific intent to give or receive something of value in exchange for an official act." *United States v. Sun-Diamond Growers of California*, 526 U.S. 398, 404–05 (1999); *see also United States v. Garrido*, 713 F.3d 985, 996–97 (9th Cir. 2013). But conviction for federal bribery does not require that an official act be performed by the public official receiving the bribe. *See McDonnell*, 579 U.S. at 572 ("[A] public official is not required to actually make a decision or take an [official] action . . . ; it is enough that the official agree to do so."). Rather, the crime of bribery is completed when the bribe-giver offers or gives something of value to the public official with the requisite "intent to influence an official act." *Sun-Diamond*, 526 U.S. at 404 (internal quotation marks omitted). This showing conforms to the plain language of the honest-services fraud statute, which prohibits any "scheme or artifice to defraud" that "deprive[s] another [such as a public official's constituents] of the intangible right of honest services." 18 U.S.C. § 1346; *see also McDonnell*, 579 U.S. at 562–63.

In challenging its conviction, Shen Zhen conflates the specific intent required of a bribe-giver with that of the *bribe-taker*, i.e., a public official. A public official is guilty of bribery if he agrees to "receive[] a thing of value knowing that it was given with the expectation that the official would perform an 'official act' in return." *McDonnell*, 579 U.S. at 572. The bribe-taking official need not "intend to perform the 'official act,' so long as he agrees to do so." *Id.* Furthermore, "[t]he

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that receive federal funds. *See Salinas v. United States*, 522 U.S. 52, 58 (1997).

agreement need not be explicit, and the public official need not specify the means that he will use to perform his end of the bargain." *Id.*

When the defendant is the *bribe-giver*, however, the bribery offense does not require an agreement to enter into a quid pro quo with the public official. Under the plain terms of § 201, the bribe-giver commits bribery when he "corruptly gives, offers or promises anything of value to any public official" "with intent . . . to influence any official act." 18 U.S.C. § 201(b)(1). Thus, "[t]he crime of offering a bribe is completed when a defendant expresses an ability and a desire to pay the bribe." *United States v. Rasco*, 853 F.2d 501, 505 (7th Cir. 1988).

In *United States v. Suhl*, 885 F.3d 1106 (8th Cir. 2018), the defendant was convicted of bribing an Arkansas state official. Relying on *United States v. McDonnell*, the Eighth Circuit distinguished the intent requirement for the bribe-giver from that of the bribe-taker. *Id.* at 1109, 1112. The court held, "Neither [§§ 201, 666], nor *McDonnell*, imposes a universal requirement that bribe payors and payees have a meeting of the minds about an official act." *Id.* at 1113. Rather, "[a] payor defendant completes the crimes of honest-services and federal-funds bribery as soon as he gives or offers payment in exchange for an official act, even if the payee does nothing or immediately turns him in to law enforcement." *Id.*

Several of our sister circuits have drawn the same mens rea distinction between bribe-givers and bribe-takers that *Suhl* adopted. *See, e.g.*, *United States v. Silver*, 948 F.3d 538, 551 (2d Cir. 2020) (noting there need not be a "meeting of the minds between the payor

and the official as to the corrupt purpose of the payments"); *United States v. Ring*, 706 F.3d 460, 467 (D.C. Cir. 2013) (A bribe-giver is guilty of honest-services bribery "where he offers an official something of value with a specific intent to effect a quid pro quo even if that official emphatically refuses to accept."); *Rasco*, 853 F.2d at 505; *cf. United States v. Lindberg*, 39 F.4th 151, 172 (4th Cir. 2022) (Section 666 criminalizes the act of a bribe-giver who "intended for the official to engage in some *specific* act" in return for payment (citation omitted)). Thus, a defendant offering a benefit to a public official with the intent "to influence any official act" in exchange suffices for federal bribery charges. 18 U.S.C. § 201(b)(1)(A); *see also id.* § 666(a)(2); *Sun-Diamond*, 526 U.S. at 404–05.

Viewing the evidence in the light most favorable to the prosecution, *see Jackson*, 443 U.S. at 319, the evidence at trial was more than sufficient to support conviction for honest-services fraud. The Government demonstrated Huang's specific intent to acquire the L.A. Grand Hotel to build a 77-story mixed-use skyscraper that would constitute the tallest tower in Los Angeles, and Huang viewed Huizar as "an investment" in his plan. The evidence established that Shen Zhen provided benefits—amounting to over one million dollars—to Huizar intending to receive official action supporting Huang's L.A. Grand Hotel redevelopment project. Huang took Huizar on over a dozen all-expense-paid trips to Las Vegas, furnished him with hundreds of thousands of dollars in gambling chips, expensive food and alcohol, and prostitutes, and helped settle Huizar's sexual harassment lawsuit with a $600,000 payment—all in exchange for Huang's "big

ask": official support from Huizar on the redevelopment of the L.A. Grand Hotel.

Shen Zhen argues that the quid pro quo must be clear to distinguish bribery from "goodwill gift[-giving]." Shen Zhen explains that "something is a bribe (or not) 'at the time' the gift is given," and a "gift cannot *become* a bribe retrospectively." As discussed above, however, all that the law requires to establish bribery is a defendant's specific intent to receive future official acts on a specific matter at the time the defendant pays or offers something of value in return. *See Sun-Diamond*, 526 U.S. at 404–05; *Rasco*, 853 F.2d at 505; *Suhl*, 885 F.3d at 1113. Huang did not need to voice his requests for official action explicitly at the same moment he paid for Huizar's trips to Las Vegas or provided other benefits. Instead, as the evidence showed, Huang's intent was to "give, give, give" before making the "big ask," an intent made clear by Esparza's testimony that Huizar agreed to "100 percent support" the redevelopment project through official acts such as changing ordinances, rezoning the building, and moving the project through the PLUM committee he chaired.[3]

Huizar's official act prior to Huang's "big ask" also supports the jury's verdict. An "'official act' is a decision or action on a 'question, matter, cause, suit,

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[3] Shen Zhen's concern—that ingratiation may be misconstrued as bribery in retrospect—is misplaced. Under §§ 201 and 666, a bribe must be "corruptly" given or offered with the specific intent to influence official action. *See Lindberg*, 39 F.4th at 172. This mens rea requirement protects against the possibility that goodwill gift-givers, harboring no intent to receive official action in exchange for their gifts, will later be deemed to have given a bribe.

proceeding or controversy'" that "involve[s] a formal exercise of governmental power that is similar in nature to . . . a hearing before a committee." *McDonnell*, 579 U.S. at 574 (quoting 18 U.S.C. § 201(a)(3)). Again, "[t]he agreement need not be explicit, and the public official need not specify the means" for an official act. *Id.* at 572. During the discussions with Huang over the lawsuit settlement payment, Huizar moved and voted for a City resolution honoring Huang in a formal City Council proceeding. Although "[s]etting up a meeting, talking to another official, or organizing an event (or agreeing to do so)—without more—does not fit th[e] definition of 'official act,'" this resolution was "a formal exercise of governmental power" so as to qualify as an official act. *Id.* at 574. The Government argued that the official City resolution bolstered Huang's professional reputation with the City Council, which was to later vote on his redevelopment project. The jury, in its special verdict form, found that Shen Zhen had provided financial benefits to Huizar with the specific intent of receiving an "official act": Huizar's introduction and vote on a City resolution that would enhance Shen Zhen and Huang's "professional reputation and marketability" in Los Angeles and benefit Shen Zhen's redevelopment of the L.A. Grand Hotel. [4] Substantial evidence supports the jury's official act finding.

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[4] Huizar also convened multiple meetings and held a press conference for Huang, in addition to signing a letter to help Huang with the financing of L.A. Grand Hotel's redevelopment. While these constituent services are not "official acts" under § 201(a)(3), they are probative of Shen Zhen's intent to influence

Finally, a reasonable jury could find that Huang's concealment efforts evinced his intent to commit bribery in support of the jury's verdict. The evidence established that Huang gave Huizar gambling chips in private VIP rooms, Huang knew that Huizar had directed Esparza to cash out the chips, Huang's associates listed false names for Huizar during their trips, and Huang sought a "cooling-off period" for their Las Vegas trips after Palazzo casino security personnel confronted Huizar. Huang also concocted a scheme to provide Huizar with a $600,000 payment to settle a sexual harassment lawsuit through a shell company and a disbarred attorney's trust account. These facts support the jury's finding that Huang, as the owner and agent of Shen Zhen, acted with the requisite corrupt intent to commit bribery.

The same evidence also supports Shen Zhen's convictions for federal-program bribery (18 U.S.C. § 666(a)(2)) and Travel Act (18 U.S.C. § 1952(a)(3)) violations, which entail the same or more permissive mens rea requirements. *See* 18 U.S.C. § 666(a)(2) (prohibits corruptly giving benefit "with intent to influence or reward"); *Garrido*, 713 F.3d at 996 ("[Section] 666 does not require a jury to find a specific *quid pro quo*."); *Perrin v. United States*, 444 U.S. 37, 42 (1979) (construing Travel Act to make a "federal offense to travel or use a facility in interstate commerce to commit 'extortion [or] bribery . . . in violation of the laws of the State in which committed or of the United States.'" (quoting 18 U.S.C.

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an official act in furtherance of the hotel's redevelopment. *See McDonnell*, 579 U.S. at 573.

§ 1952(b))).[5] Because a rational factfinder "could have found the essential elements of the crime beyond a reasonable doubt," *Jackson*, 443 U.S. at 319, we hold that sufficient evidence supports Shen Zhen's jury convictions.

III.

We review for abuse of discretion a district court's formulation of the jury instructions but review de novo whether the instructions misstate the law and adequately cover the defense's theory of the case. *United States v. Rodriguez*, 971 F.3d 1005, 1017 (9th Cir. 2020); *United States v. Flucas*, 22 F.4th 1149, 1154 (9th Cir. 2022). "[A] defendant is entitled to an instruction concerning [its] theory of the case if the theory is legally sound and evidence in the case makes it applicable, even if the evidence is weak, insufficient, inconsistent, or of doubtful credibility," as long as a jury "could rationally sustain the defense." *United States v. Kayser*, 488 F.3d 1070, 1076 (9th Cir. 2007) (citations omitted); *see also United States v. Marguet-Pillado*, 648 F.3d 1001, 1006 (9th Cir. 2011). "A

[5] Prior to oral argument, Shen Zhen submitted a supplemental authority letter citing the Supreme Court's recent decision in *Snyder v. United States*, 144 S. Ct. 1947 (2024). *Snyder* is inapposite, as it concerns an alleged bribe-taker (a local mayor) under 18 U.S.C. § 666(a)(1), not a bribe-giver under § 666(a)(2). *See Snyder*, 144 S. Ct. at 1954–55. *Snyder* also held that § 666(a)(1)(B) does not make it a "federal crime for state and local officials to accept *gratuities* for their *past* official acts." *Id.* at 1954 (emphases added). As Defendant concedes, "*Snyder* specifically excluded *gratuities* from [§ 666's] scope" whereas "this case instead involves goodwill gifts." *Snyder*'s analysis of a public official's criminal liability for receiving gratuities for past official acts is irrelevant to this appeal.

defendant is not entitled to any particular form of instruction, nor is he entitled to an instruction that merely duplicates what the jury has already been told." *United States v. Kaplan*, 836 F.3d 1199, 1215 (9th Cir. 2016) (citation omitted).

Shen Zhen argues that the district court denied it a fair trial by refusing to give the jury its proposed instruction on a quid pro quo. It contends that even assuming the Government's evidence was sufficient to deduce quid pro quo bribery, the court's jury instructions failed to distinguish between an illicit bribe and a "goodwill gift," requiring a new trial. We conclude that the district court did not err in its jury instructions.

Shen Zhen's proposed jury instruction No. 35 stated that for "[a]ll counts," the jury would have to find that Huang provided gifts "in exchange for Councilman Huizar's agreement to take one or more of the specified official acts to benefit the L.A. Grand Hotel project." Although Shen Zhen's theory of the case may have been that it was conducting "lawful ingratiation" and not bribery, a defendant's entitlement to an instruction requires that the theory be "legally sound." *Kayser*, 488 F.3d at 1076 (citation omitted). Shen Zhen's proposed instruction is not legally sound because bribery does not require an agreement to enter into a quid pro quo with the public official. *See Sun-Diamond*, 526 U.S. at 404–05; discussion *supra* Part II.

Shen Zhen's reliance on campaign-contribution precedents does not alter our conclusion. Shen Zhen cites *Citizens United v. Federal Election Commission* for the proposition that "[i]ngratiation and access . . .

are not corruption," but the Supreme Court was addressing the distinct context of corporate political donations as a form of speech. *See* 558 U.S. 310, 360 (2010). As *Citizens United* noted, political campaign contributions enjoy unique First Amendment protections that stand in contrast to federal laws "preventing *quid pro quo* corruption." *Id.* at 361. Shen Zhen's reliance on *Buckley v. Valeo*, 424 U.S. 1 (1976) is similarly inapt because Shen Zhen's benefits to Huizar were indisputably *not* political campaign contributions and Huang—as a foreign national—was barred from making any direct or indirect campaign contributions. *See* 52 U.S.C. § 30121.

It is in the political-contributions context that the Government must prove that a defendant public official received a contribution "in return for an *explicit* promise or undertaking" to perform or not perform an official act. *McCormick v. United States*, 500 U.S. 257, 273 (1991) (emphasis added); *see also McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 209 (2014) ("The line between *quid pro quo* corruption and general influence may seem vague at times, but the distinction must be respected in order to safeguard basic First Amendment rights."); *Fed. Election Comm'n v. Cruz*, 596 U.S. 289, 308 (2022) (same). In contrast, the Government here was required to show that a defendant *bribe-giver* possessed the "specific intent" to enter a quid pro quo for an official act at the time it offered or gave something of value to the public official. *See Garrido*, 713 F.3d at 996–97 (quoting *Sun-Diamond*, 526 U.S. at 404–05). Shen Zhen's proposed instruction thus incorrectly required the jury to find that Huizar entered into an express agreement to perform an official act.

The proposed instruction requiring the jury to find that Huizar clearly identified "specified official acts" he would perform for Huang is also legally unsound. As *McDonnell v. United States* makes clear, the corrupt "agreement need not be explicit, and the public official *need not specify the means* that he will use to perform his end of the bargain." 579 U.S. at 572 (emphasis added).

Finally, Shen Zhen contends that its instruction was necessary to instruct the jury on the difference between unlawful bribery and "lawful ingratiation." The proposed instruction stated, "The fact that the person who provides the financial benefit to the public official seeks to ingratiate himself or obtain access to the public official is not sufficient." The instruction was unnecessary. The jury was already instructed on each substantive count that it had to find the requisite intent to influence an official action through the exchange of benefits, beyond general goodwill-building or ingratiation. The honest-services fraud counts required a finding of "financial benefits that defendant provided intending, at the time, to receive in exchange at least one official act by Jose Huizar in connection with the approval of the redevelopment of the L.A. Grand Hotel." The federal-program bribery counts required finding that Shen Zhen gave or offered benefits "intended to influence [Huizar or Esparza] in connection with the redevelopment of the L.A. Grand Hotel." And the Travel Act counts required finding that Shen Zhen "provided [benefits] in exchange for Jose Huizar agreeing to perform official acts to benefit the redevelopment of the L.A. Grand Hotel." Shen Zhen was not entitled to further instruction on

ingratiation "that merely duplicate[d] what the jury ha[d] already been told." *Kaplan*, 836 F.3d at 1215.

IV.

As to the Travel Act counts, Shen Zhen argues that courts must use the generic definition of bribery at the time Congress enacted the Travel Act in 1961, and California's bribery statutes are too broad to serve as predicates under the "categorical approach" required under the Travel Act. Shen Zhen maintains that its Travel Act convictions fail as a matter of law due to the inconsistency between the generic definition of bribery and California law. To address Shen Zhen's contentions, we first must determine the meaning of bribery under the Travel Act. Then we must determine whether there is a mismatch between bribery under the Travel Act and California law. Finally, we must determine whether any mismatch requires vacating Shen Zhen's Travel Act convictions.

A.

"We begin with the language of the Travel Act itself." *Perrin*, 444 U.S. at 42; *see also N.L.R.B. v. SW Gen., Inc.*, 580 U.S. 288, 299 (2017) ("Our analysis of [the statute] begins with its text."). With the statutory title of "Interstate and foreign travel or transportation in aid of racketeering enterprises," the Travel Act states:

> Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to—
>
> (1) distribute the proceeds of any unlawful activity; or
>
> (2) commit any crime of violence to further any unlawful activity; or

> (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,
>
> and thereafter performs or attempts to perform [an act described above, shall be subject to fine or imprisonment.]

18 U.S.C. § 1952(a). In turn, "unlawful activity" means, among other things, "extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States." *Id.* § 1952(b). The statute does not define "bribery" or cite any other provision defining bribery. *See id.*

In the absence of an express definition in the Travel Act, Shen Zhen argues that we should look to 18 U.S.C. § 201 for a definition of "bribery." However, binding precedent forecloses this argument. In *Perrin v. United States*, the Supreme Court applied the statutory canon that "words will be interpreted as taking their ordinary, contemporary, common meaning," 444 U.S. at 42, holding that a "generic definition of bribery, rather than a narrow common-law definition, was intended by Congress" in the Travel Act, *id.* at 49. The Court then held that "Congress intended 'bribery . . . in violation of the laws of the State in which committed' as used in the Travel Act to encompass conduct in violation of state commercial bribery statutes [outlawing bribery of private individuals]." *Id.* at 50 (quoting 18 U.S.C. § 1952(b)).

We have similarly rejected the notion that "bribery" for the purposes of § 201 controls other federal bribery statutes. The defendant in *United States v. Chi* sought

to confine the term "bribery of a public official" as used in the money-laundering statute, 18 U.S.C. § 1956, to "bribery" as used in § 201, "frequently referred to as 'the federal bribery statute.'" 936 F.3d 888, 896 (9th Cir. 2019) (quoting *McDonnell*, 579 U.S. at 562). We noted that § 201 is "merely one strand of an intricate web of regulations, both administrative and criminal, governing the acceptance of gifts and other self-enriching actions by public officials." *Id.* (quoting *Sun-Diamond*, 526 U.S. at 409). We held that "'bribery of a public official' in § 1956 is defined by that phrase's 'ordinary, contemporary, common meaning,' and is not constrained by 18 U.S.C. § 201, a statute to which § 1956 makes no reference." *Id.* at 890–91 (quoting *Perrin*, 444 U.S. at 42). Like § 1956, the Travel Act makes no reference to § 201 and instead refers to "bribery" as proscribed by "the laws of the State in which committed or of the United States." 18 U.S.C. § 1952(b).

Case law does support, however, the conclusion that the Travel Act proscribes a uniform type of conduct qualifying as "bribery," rather than deferring to a patchwork of state law definitions. In *United States v. Nardello*, 393 U.S. 286 (1969), the Supreme Court interpreted "extortion" in the Travel Act and held that "the inquiry is not the manner in which States classify their criminal prohibitions but whether the particular State involved prohibits the extortionate activity charged." *Id.* at 295. Similarly, in *Taylor v. United States*, 495 U.S. 575 (1990), the Supreme Court interpreted "burglary" in a sentence-enhancement statute which lacked any definition of the term. *See id.* at 580. The Court held that a generic definition applied, and not the definition adopted by the state of

conviction, because otherwise a defendant committing the exact same conduct would receive varying sentence enhancements depending on whether the state classified the conduct as "burglary." *Id.* at 590–92.

We have identified a generic definition of "bribery" in a similar context. In *Chi*, we looked to Black's Law Dictionary and the 1962 Model Penal Code to determine the "ordinary, contemporary, common meaning" of "bribery of a public official" in 2001, when Congress passed 18 U.S.C. § 1956. *See Chi*, 936 F.3d 897 ("In 2001, the latest edition of Black's Law Dictionary defined 'bribery' as '[t]he corrupt payment, receipt, or solicitation of a private favor for official action.'" (quoting *Bribery*, Black's Law Dictionary (7th ed. 1999))). We then listed the generic elements of public bribery as requiring (1) "two parties—one who 'paid,' 'offered,' or 'conferred' the bribe, and one who 'received,' 'solicited,' or 'agreed to accept' it"; (2) "something to be given by the bribe-giver—either a 'private favor,' a 'pecuniary benefit,' or 'any benefit'"; and (3) "something to be given by the bribe-taker—either 'official action,' 'the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a public servant,' or 'a violation of a known legal duty as public servant.'" *Id.*

The generic definition of bribery in 1961 thus controls what the Travel Act proscribes. Applying *Chi*'s methodology here, Black's Law Dictionary (4th ed. 1951)— the latest edition in 1961—defines bribery as the "offering, giving, receiving, or soliciting of any thing of value to influence action as official or in discharge of legal or public duty." The first edition of the Model Penal Code similarly defines a person

"guilty of bribery" as one who "offers, confers or agrees to confer upon another" "any pecuniary benefit as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter" or "any benefit as consideration for a violation of a known legal duty as public servant or party official." Model Penal Code § 240.1, Bribery in Official and Political Matters (Am. Law Inst., 1962); *see also Chi*, 936 F.3d at 897. Materially the same as public bribery in 2001, public bribery in 1961 would therefore require the following: (1) two parties—one who "offered," "conferred" or "agreed to confer" the thing, and one who "received," "solicited," or "agreed to accept" it; (2) something to be given by the bribe-giver—either a "thing of value," a "pecuniary benefit," or "any benefit"; and (3) something to be given by the bribe-taker—either "official action," "the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a public servant," or "a violation of a known legal duty as public servant." *Cf. Chi*, 936 F.3d at 897.

This generic understanding of public bribery in 1961 thus requires both a contemplated (1) quid pro quo and (2) an official act involving a public official. First, Black's describes giving "any thing of value" to "influence action," while the Model Penal Code describes conferring "pecuniary benefit as consideration" for a recipient's action. "Quid pro quo"—or "one thing for another"—comfortably encapsulates these descriptions of an exchange. Second, Black's requires that the bribe-giver seek to "influence action as official or in discharge of legal or public duty," while the Model Penal Code describes the bribe recipient's contemplated "exercise of discretion

as a public servant" or "violation of a known legal duty as public servant." An "official act" captures this requirement.

B.

We now compare the generic definition of bribery under the Travel Act to the California bribery statutes that served as predicates to Shen Zhen's Travel Act convictions. The district court instructed the jury on three California bribery statutes. First, California Penal Code § 67.5 proscribes "giv[ing] or offer[ing] as a bribe" "any thing the theft of which would be petty theft" to any California city employee. Second, California Penal Code § 85 criminalizes "giv[ing] or offer[ing] to give a bribe to . . . any member of the legislative body of a city," "or attempts by menace, deceit, suppression of truth, or any corrupt means, to influence a member in giving or withholding his or her vote, or in not attending the house or any committee of which he or she is a member." Third, California Penal Code § 165 prohibits "giv[ing] or offer[ing] a bribe to any member of any common council" of any city "with intent to corruptly influence such member in his action on any matter or subject pending before, or which is afterward to be considered by, the body of which he is a member." In turn, a "bribe" is defined by California law as giving or promising something of value "with a corrupt intent to influence, unlawfully, the person to whom it is given, in his or her action, vote, or opinion, in any public or official capacity." Cal. Penal Code § 7(6). The district court instructed the jury on these California provisions.

Shen Zhen's primary contention is that "bribery" under the Travel Act requires a quid pro quo *and* a

contemplated official act, but California's bribery statutes do not, and therefore California's bribery statutes categorically cannot suffice as predicates. In *People v. Gaio*, 81 Cal. App. 4th 919 (2000), the California Court of Appeal held that bribery under California law "does not require that a specific official action be pending when the bribe is given, or that there be proof that the bribe was intended to influence any particular such act." *Id.* at 929 (citing *People v. Diedrich*, 31 Cal. 3d 263 (1982)). "Rather," the Court of Appeal stated, "it is sufficient that the evidence reflect that there existed subjects of potential action by the recipient, and that the bribe was given or received with the intent that some such action be influenced." *Id.* Before the district court, the Government acknowledged that bribery under California law does not require a quid pro quo or a specific official act, and the district court's jury instructions reflected the same understanding.

California bribery law does not require that a thing of value be "intended to influence any particular . . . act" (a quid pro quo) or that "a specific official action be pending when the bribe is given" (an official act). *Id.* As construed by the California courts, bribery under California law is therefore broader than the Travel Act's generic definition of bribery.

C.

We must now determine if this mismatch between the generic definition of bribery under the Travel Act and the California bribery statutes requires vacating Shen Zhen's Travel Act convictions. We conclude that it does not. Even if broader, state law violations can serve as predicates under the Travel Act if the jury

convicted the defendant based on elements that conformed to the generic definition of the crime.

The Supreme Court in *Nardello* noted that "Congress' intent [in passing the Travel Act] was to aid local law enforcement officials, not to eradicate only those extortionate activities which any given State denominated extortion." 393 U.S. at 293–94. It then concluded that "the acts for which appellees have been indicted fall within the generic term extortion as used in the Travel Act." *Id.* at 296. The Court in *Taylor* likewise provided in the sentencing context that the "categorical approach . . . may permit the sentencing court to go beyond the mere fact of conviction in a narrow range of cases where a jury was actually required to find all the elements of generic burglary." 495 U.S. at 602.[6] The Court has reiterated this rule in requiring a sentencing judge to "look only to 'the elements of the [offense], not to the facts of [the] defendant's conduct.'" *Mathis, v. United States*, 579 U.S. 500, 510 (2016) (quoting *Taylor*, 495 U.S. at 601).

The Government charged and the jury convicted Shen Zhen based on required findings of both a specific intent to enter a quid pro quo and to receive an official act—the elements of the generic definition of "bribery" proscribed by the Travel Act. Here, the jury instructions stated that the jury had to find that Shen Zhen "performed *the charged act* . . . in violation of [the California statutes]." For each "charged act," the jury was required to find that Shen Zhen "provided

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[6] Citing *Perrin* and *Chi*, Shen Zhen asserts that the court must apply a "categorical approach" when analyzing predicate state law offenses under the Travel Act. Neither case applied such an approach or requires us to do so here.

[benefits] in exchange for Jose Huizar agreeing to perform official acts to benefit the redevelopment of the L.A. Grand Hotel." The jury's required findings specify the quid pro quo (benefits in exchange for Huizar agreeing to perform) and the official acts (Huizar acting in his official capacity to benefit the redevelopment of the L.A. Grand Hotel). Indeed, jury instruction language matches what Shen Zhen itself proposed to the district court for the Travel Act jury instructions, requiring a showing that Defendant "agreed to pay [benefits] in exchange for . . . Huizar agreeing to take official acts to benefit the L.A. Grand Hotel project." Shen Zhen has no cause to complain.

The jury therefore convicted Shen Zhen based on elements that conform to the generic definition of "bribery" under the Travel Act, not merely California's broader "intent to influence" without a specific official action in mind. *See Gaio*, 81 Cal. App. 4th at 929, 931. Although a case *could* exist in which only California law and not the Travel Act proscribes certain conduct, Shen Zhen's convictions do not present that scenario. Because California law proscribes the generic definition of bribery, for which a jury convicted Defendant under the Travel Act, the California bribery statutes were proper predicate offenses. We affirm Defendant's Travel Act convictions.

V.

We review for abuse of discretion a district court's evidentiary rulings. *United States v. Boulware*, 384 F.3d 794, 800–01 (9th Cir. 2004). We may affirm an evidentiary ruling on any basis supported by the record, even if it differs from the district court's reasoning. *United States v. Alexander*, 48 F.3d 1477,

1487 (9th Cir. 1995). We will reverse "only if such error 'more likely than not affected the verdict.'" *United States v. Schales*, 546 F.3d 965, 976 (9th Cir. 2008) (quoting *United States v. Pang*, 362 F.3d 1187, 1192 (9th Cir. 2004)); *see also United States v. Gonzalez-Flores*, 418 F.3d 1093, 1099 (9th Cir. 2005) (requiring reversal "unless there is a 'fair assurance' of harmlessness" (citation omitted)).

Shen Zhen argues that it is entitled to a new trial because the district court admitted evidence of "Huizar's pay-to-play dealings with *other* people in *unrelated* real-estate projects" "that Huang knew nothing about." Shen Zhen contends that this evidence was prejudicial because it "allowed the Government to brand Huang before the jury as just another corrupt developer, buying an illicit product everyone knew Huizar was selling." In addition, Shen Zhen maintains the district court wrongly excluded hearsay evidence concerning Huang's innocent state of mind.

We conclude that the district court properly admitted evidence of Huizar's general-pay-to-play scheme but wrongly excluded Huang's alleged statements about his state of mind regarding his gift-giving. Because any error is unlikely to have affected the verdict on this record, however, we do not disturb the convictions on evidentiary grounds.

A.

Prior to trial, the district court granted Defendant's motion to exclude evidence of "other schemes" between Huizar and other developers but permitted the Government to present evidence of "the general framework of the pay-to-play-scheme" where that

framework "equally applied" to Defendant. The district court also allowed the Government to present evidence of Huizar's money laundering, finding "the fact that Huizar felt the need to go to such lengths to conceal the cash tends to demonstrate that Huizar understood that Mr. Huang and Shen Zhen intended to enter into a corrupt relationship."

Federal Rule of Evidence 404(b) supports admitting evidence of Huizar's general pay-to-play scheme. While character evidence is inadmissible, evidence of "[o]ther [c]rimes, [w]rongs, or [a]cts" may be admitted to "prov[e] motive, opportunity, intent, preparation, plan[ning], knowledge, identity, absence of mistake, or lack of accident." Fed. R. Evid. 404(b)(2). Evidence of other acts must (1) "tend to prove a material issue;" (2) "not be too remote in time;" (3) provide "sufficient evidence for a reasonable jury to conclude that the [party] committed the prior acts;" and (4) "when used to show knowledge and intent, . . . be sufficiently similar to the charged offense." *United States v. Jimenez-Chaidez*, 96 F.4th 1257, 1264 (9th Cir. 2024). The district court did not abuse its discretion in admitting this evidence.

Discussion of how Huizar and his staff generally interacted with developers was probative of Huizar's motive, intent, and plan to receive bribes at the time of his relationship with Defendant, and was relevant to Huizar's "sufficiently similar" pay-to-play scheme with developer Huang and Shen Zhen. *See id.*; *see also United States v. McCourt*, 925 F.2d 1229, 1234 (9th Cir. 1991) (noting evidence of third-party acts are admissible to show "a modus operandi or a common plan"). Evidence is admissible to establish "the circumstances surrounding the crime with which the

defendant has been charged" so that the jury can "make sense of the testimony in its proper context." *United States v. Ramirez-Jiminez*, 967 F.2d 1321, 1327 (9th Cir. 1992). Here, Esparza explained that a developer who provided benefits to Huizar would become a "friend of the office" and receive favorable treatment on a project; Huizar and the developer often used middlemen such as Esparza to communicate; and a goal of the scheme was to maintain Huizar's political power and conceal the bribes.

The scheme's general framework provided context for Esparza's testimony explaining how Huang became a "friend of the office," Esparza and Zheng became the middlemen for advancing Huang's redevelopment project, and Huang supported Huizar's reelection through concealed funds. Esparza's initial testimony on Huizar's pay-to-play methods provided "sufficient contextual or substantive connection" to Shen Zhen's involvement and was necessary "to permit the prosecutor to offer a coherent and comprehensible story regarding the commission of the crime." *United States v. Vizcarra-Martinez*, 66 F.3d 1006, 1012–13 (9th Cir. 1995).

Contrary to Defendant's assertion, the Government did not introduce evidence of specific examples of other developers or their particular gifts to Huizar. Esparza testified as to how Huizar's office operated to solicit bribes from "friends of the office," but the jury did not hear evidence of other named developers, their projects, or their bribes.

Testimony from Huizar's family members about his money-laundering activities also directly concerned Shen Zhen's crimes. Huizar's family members

testified as to how he used them to launder illicitly gained funds by asking them to deposit cash with banks and then to write him checks. The court allowed this testimony because it found the Government had provided sufficient foundation that the cash Huizar laundered through his family members, often immediately after his Las Vegas trips, derived from Huang.

The family members' testimony evinced acts in furtherance of the bribery scheme between Huizar and Defendant. "Just as acts and statements of co-conspirators are admissible against other conspirators, so too are the statements and acts of co-participants in a scheme to defraud [through mail or wire fraud] admissible against other participants." *United States v. Lothian*, 976 F.2d 1257, 1262 (9th Cir. 1992). As the district court correctly found, the evidence of Huizar's money-laundering activities demonstrated that Huizar perceived he was in a corrupt relationship with Huang and that a bribery scheme existed between the two men, even if Huang was unaware of how Huizar was laundering the funds. *See id.* In addition, the evidence showed that Huizar used his mother to launder some of the cash Huang gave him in Las Vegas and then make payments on the East West Bank loan that he had received on account of Huang's collateral. The district court did not abuse its discretion in admitting probative evidence of Huizar's general pay-to-play bribery scheme and money-laundering activities.

B.

During the Government's direct examination of Zheng, he testified that he had discussed with

colleagues his concerns about Huang giving Huizar casino chips. On cross-examination, Zheng stated that he raised his concerns directly with Huang. When defense counsel asked Zheng about Huang's response, the district court sustained the Government's objection on hearsay grounds. The court erred in doing so.

Zheng's expected testimony falls under the state-of-mind exception to hearsay. Federal Rule of Evidence 803(3) allows for the admission of "[a] statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional . . . condition (such as mental feeling . . .)." As the parties acknowledge, defense counsel sought to elicit Huang's out-of-court response to Zheng that Huang thought he and Huizar "were just having fun," "not doing anything wrong," and that he "had not asked . . . Huizar for anything." Had Zheng been able to offer this testimony, it would have been probative not as to the truth of these statements but whether Huang *felt* culpable in his interactions with Huizar. *See Wagner v. Cnty. of Maricopa*, 747 F.3d 1048, 1052–53 (9th Cir. 2013) ("None of this testimony would have been put forth in order to establish the truth of what he had said" but "to show his state of mind at the time of the conversation."). Although Zheng could not testify as to the *factual basis* for Huang's mindset, *see United States v. Fontenot*, 14 F.3d 1364, 1371 (9th Cir. 1994), at least some of the excluded statements were probative of Huang's "then-existing state of mind" and "mental feeling" about his actions—admissible as an exception to the rule against hearsay. Fed. R. Evid. 803(3).

Nevertheless, we find that the court's exclusion of Zheng's testimony constituted harmless error. The overwhelming evidence that Shen Zhen participated in a bribery scheme with the requisite corrupt intent far outweighs the minimal scope of how Huang responded to Zheng's concerns. The Government presented substantial evidence of Huang's culpable mental state, including that Huang passed Huizar gambling chips in discreet VIP rooms, Huang was aware that Zheng used pseudonyms for Huizar during the Las Vegas trips, and the men agreed to a "cooling-off period" from Las Vegas after Palazzo casino security personnel confronted Huizar. Huang later provided Huizar with the $600,000 settlement payment through an elaborate arrangement involving a shell company, a trusted employee left in the dark about the reason for the transfer, and a disbarred attorney's trust account. Moreover, Zheng was still able to testify as to Huang's mens rea by describing how Huang continued to take Huizar to Las Vegas even after Zheng had voiced his concerns and how Huang persisted in the redevelopment project after learning of the FBI's investigation.

Because it is highly unlikely that the district court's evidentiary error "affected the verdict" in light of the record before the jury, *Schales*, 546 F.3d at 976 (citation omitted), we conclude that the error was harmless and does not warrant reversal of the jury's verdict.

CONCLUSION

The Government presented sufficient evidence to support Shen Zhen's jury convictions, and the district court did not abuse its discretion in formulating its

jury instructions for quid pro quo bribery. Further, California's bribery statutes served as proper predicate offenses for Shen Zhen's Travel Act convictions. Because no evidentiary ruling or other error warrants reversal, Defendant's convictions are **AFFIRMED**.

APPENDIX B

United States District Court
Central District of California

UNITED STATES OF AMERICA vs.	**Docket No.** **CR 20-326(A)-JFW**
Defendant 4. Shen Zhen New World I, LLC	**Federal Tax ID:** 27-1896960

Identifying Information: Date of Establishment: February 5, 2010; California Corporate Number: 21003910401; Pacts No: 830393; The L.A. Grand Hotel Downtown 333 S. Figueroa Street, Los Angeles, CA 90071

In the presence of the attorney for the government, the defendant appeared in person on

MONTH DAY YEAR
May 12, 2023

COUNSEL	**Richard Steingard, Retained and Craig Wilke, Retained**
PLEA	☐ **GUILTY**, and the court being satisfied that there is a factual basis for the plea. ☐ NOLO CONTENDERE ☒ **NOT GUILTY**

FINDING	There being a jury verdict of **GUILTY**, defendant has been convicted as charged of the offense(s) of: **Honest Services Mail and Wire Fraud in violation of 18 U.S.C. §§ 1341, 1343, 1346, 2(b) [Counts 2, 3, 4] ; Interstate and Foreign Travel in Aid of Racketeering in violation of 18 U.S.C. §§ 1952(a)(3), 2(b) [Counts 18, 19, 20, 21]; Bribery Concerning Programs Receiving Federal Funds in violation of 18 U.S.C. § 666(a)(2) [Count 23] as charged in the 41-Count Superseding Indictment filed on November 12, 2020 amended on October 19, 2022**
JUDGMENT AND PROB/ COMM ORDER	The Court asked whether there was any reason why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that:

Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant, Shen Zhen New World I, LLC, is hereby placed on probation on Counts 2, 3, 4, 18, 19, 20, 21 and 23 of the First Superseding Indictment for a term of five years under the following terms and conditions:

1. During the period of probation, the defendant organization shall pay the special assessment, fine, and costs in accordance with this judgment's orders pertaining to such payment.
2. The defendant organization shall not commit another federal, state, or local crime.
3. The defendant organization shall provide the Probation Officer access to any requested financial information.
4. Within 30 days from the date of this judgment, the defendant organization shall designate an official of the organization to act as the organization's representative and to be the primary contact with the Probation Officer.
5. The defendant organization shall answer truthfully all inquiries by the Probation Officer and follow the instructions of the Probation Officer.
6. The defendant organization shall notify the Probation Officer ten days prior to any change in the principal business or mailing address or within 72 hours if advance notice is not possible.
7. The defendant organization shall permit a Probation Officer to visit the organization at any of its operating business sites.

8. The defendant organization shall report to the Probation Officer as directed and shall submit a truthful and complete written report within the first five days of each month.
9. The defendant organization shall be required to notify the Court or Probation Officer immediately upon learning of (1) any material adverse change in its business or financial condition or prospects, or (2) the commencement of any bankruptcy proceeding, major civil litigation, criminal prosecution, or administrative proceeding against the organization, or any investigation or formal inquiry by government authorities regarding the organization.
10. The defendant organization shall notify the Probation Officer immediately of any intent to sell the organization, change the name of the organization, merge with another business entity, or otherwise dissolve and/or modify, in any form or manner, the organizational structure from its present status.
11. If the defendant organization changes its name, or merges with another company through a stock or assets purchase, the renamed, newly-created, or merged company shall be obliged to meet all of the obligations of the defendant organization in accordance with this judgment's orders pertaining to payment of the fine, special assessment, and costs.
12. The defendant organization shall publicize the nature of the offense committed, the fact of conviction, the nature of the punishment imposed, and the steps that will be taken to prevent the

recurrence of similar offenses on defendant's company website (in both the Chinese and English languages. Drafts of publication shall first be reviewed and approved by the Probation Office. The defendant organization shall bear the expense of the publication.

13. The defendant organization shall develop and submit to the Court an effective compliance and ethics program consistent with the requirements set forth in §8B2.1, including a schedule for the implementation of the compliance and ethics program on or before July 1, 2023.

14. Upon approval by the Court of the compliance and ethics program, the defendant organization shall notify its employees and shareholders of its criminal behavior and of the program.

15. The defendant organization shall make periodic submissions to the Probation Officer, as directed by the Probation Officer, (A) reporting on the organization's financial condition and results of business operations, and accounting for the disposition of all funds received, and (B) reporting on the organization's progress in implementing the compliance and ethics program. Reports shall disclose any criminal prosecution, civil litigation, or administrative proceeding commenced against the organization, or any investigation or formal inquiry by governmental authorities of which the defendant organization learned since its last report.

16. The defendant organization shall submit to: (A) a reasonable number of regular or unannounced examinations of its books and records at

appropriate business premises by the Probation Officer or experts engaged by the Court; and (B) interrogation of knowledgeable individuals within the organization. Compensation to and costs of any experts engaged by the Court shall be paid by the organization.

It is ordered that the defendant organization shall pay to the United States a special assessment of $3,200, which is due immediately.

It is ordered that the defendant organization shall pay to the United States costs of prosecution in the amount of $7,481.06, which is due immediately.

It is ordered that the defendant shall pay to the United States a total fine of $4,000,000. The fine shall be paid in full no later than 60 days after the date of this judgment.

Defendant informed of right to appeal.

In addition to the special conditions of supervision imposed above, it is hereby ordered that the Standard Conditions of Probation and Supervised Release within this judgment be imposed. The Court may change the conditions of supervision, reduce or extend the period of supervision, and at any time during the supervision period or within the maximum period permitted by law, may issue a warrant and revoke supervision for a violation occurring during the supervision period.

May 12, 2023	John F. Walter
Date	U.S. District Judge

It is ordered that the Clerk deliver a copy of this Judgment and Probation/Commitment Order to the U.S. Marshal or other qualified officer.

Clerk, U.S. District Court

May 12, 2023	
Filed Date	Deputy Clerk

The defendant must comply with the standard conditions that have been adopted by this court (set forth below).

STANDARD CONDITIONS OF PROBATION AND SUPERVISED RELEASE

While the defendant is on probation or supervised release pursuant to this judgment:

1. The defendant must not commit another federal, state, or local crime;
2. The defendant must report to the probation office in the federal judicial district of residence within 72 hours of imposition of a sentence of probation or release from imprisonment, unless otherwise directed by the probation officer;
3. The defendant must report to the probation office as instructed by the court or probation officer;
4. The defendant must not knowingly leave the judicial district without first receiving the permission of the court or probation officer;
5. The defendant must answer truthfully the inquiries of the probation officer, unless legitimately asserting his or her Fifth Amendment

right against self-incrimination as to new criminal conduct;

6. The defendant must reside at a location approved by the probation officer and must notify the probation officer at least 10 days before any anticipated change or within 72 hours of an unanticipated change in residence or persons living in defendant's residence;
7. The defendant must permit the probation officer to contact him or her at any time at home or elsewhere and must permit confiscation of any contraband prohibited by law or the terms of supervision and observed in plain view by the probation officer;
8. The defendant must work at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons and must notify the probation officer at least ten days before any change in employment or within 72 hours of an unanticipated change;
9. The defendant must not knowingly associate with any persons engaged in criminal activity and must not knowingly associate with any person convicted of a felony unless granted permission to do so by the probation officer. This condition will not apply to intimate family members, unless the court has completed an individualized review and has determined that the restriction is necessary for protection of the community or rehabilitation;
10. The defendant must refrain from excessive use of alcohol and must not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia

related to such substances, except as prescribed by a physician;

11. The defendant must notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;
12. For felony cases, the defendant must not possess a firearm, ammunition, destructive device, or any other dangerous weapon;
13. The defendant must not act or enter into any agreement with a law enforcement agency to act as an informant or source without the permission of the court;
14. The defendant must follow the instructions of the probation officer to implement the orders of the court, afford adequate deterrence from criminal conduct, protect the public from further crimes of the defendant; and provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

☒ The defendant must also comply with the following special conditions (set forth below).

STATUTORY PROVISIONS PERTAINING TO PAYMENT AND COLLECTION OF FINANCIAL SANCTIONS

The defendant must pay interest on a fine or restitution of more than $2,500, unless the court waives interest or unless the fine or restitution is paid in full before the fifteenth (15th) day after the date of the judgment under 18 U.S.C. § 3612(f)(1). Payments may be subject to penalties for default and

delinquency under 18 U.S.C. § 3612(g). Interest and penalties pertaining to restitution, however, are not applicable for offenses completed before April 24, 1996. Assessments, restitution, fines, penalties, and costs must be paid by certified check or money order made payable to "Clerk, U.S. District Court." Each certified check or money order must include the case name and number. Payments must be delivered to:

> United States District Court, Central District of California
> Attn: Fiscal Department
> 255 East Temple Street, Room 1178
> Los Angeles, CA 90012

or such other address as the Court may in future direct.

If all or any portion of a fine or restitution ordered remains unpaid after the termination of supervision, the defendant must pay the balance as directed by the United States Attorney's Office. 18 U.S.C. § 3613.

The defendant must notify the United States Attorney within thirty (30) days of any change in the defendant's mailing address or residence address until all fines, restitution, costs, and special assessments are paid in full. 18 U.S.C. § 3612(b)(l)(F).

The defendant must notify the Court (through the Probation Office) and the United States Attorney of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay a fine or restitution, as required by 18 U.S.C. § 3664(k). The Court may also accept such notification from the government or the victim, and may, on its own motion or that of a party or the victim, adjust the manner of payment of a fine or restitution under 18

U.S.C. § 3664(k). See also 18 U.S.C. § 3572(d)(3) and for probation 18 U.S.C. § 3563(a)(7).

Payments will be applied in the following order:

1. Special assessments under 18 U.S.C. § 3013;
2. Restitution, in this sequence (under 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid):
   Non-federal victims (individual and corporate),
   Providers of compensation to non-federal victims,
   The United States as victim;
3. Fine;
4. Community restitution, under 18 U.S.C. § 3663(c); and
5. Other penalties and costs.

CONDITIONS OF PROBATION AND SUPERVISED RELEASE PERTAINING TO FINANCIAL SANCTIONS

As directed by the Probation Officer, the defendant must provide to the Probation Officer: (1) a signed release authorizing credit report inquiries; (2) federal and state income tax returns or a signed release authorizing their disclosure and (3) an accurate financial statement, with supporting documentation as to all assets, income and expenses of the defendant. In addition, the defendant must not apply for any loan or open any line of credit without prior approval of the Probation Officer.

When supervision begins, and at any time thereafter upon request of the Probation Officer, the defendant must produce to the Probation and Pretrial

Services Office records of all bank or investments accounts to which the defendant has access, including any business or trust accounts. Thereafter, for the term of supervision, the defendant must notify and receive approval of the Probation Office in advance of opening a new account or modifying or closing an existing one, including adding or deleting signatories; changing the account number or name, address, or other identifying information affiliated with the account; or any other modification. If the Probation Office approves the new account, modification or closing, the defendant must give the Probation Officer all related account records within 10 days of opening, modifying or closing the account. The defendant must not direct or ask anyone else to open or maintain any account on the defendant's behalf.

The defendant must not transfer, sell, give away, or otherwise convey any asset with a fair market value in excess of $500 without approval of the Probation Officer until all financial obligations imposed by the Court have been satisfied in full.

These conditions are in addition to any other conditions imposed by this judgment.

RETURN

I have executed the within Judgment and Commitment as follows:

Defendant delivered on _____ to _____

Defendant noted on appeal on _____

Defendant released on _____

Mandate issued on _____

Defendant's appeal determined on _____

Defendant delivered on _____ to _____

at _____

the institution designated by the Bureau of Prisons, with a certified copy of the within Judgement and Commitment.

United States Marshal

_____ By: _____

Date Deputy Marshal

CERTIFICATE

I hereby attest and certify this date that the foregoing document is a full, true and correct copy of the original on file in my office, and in my legal custody.

Clerk, U.S. District Court

_____ By: _____

Filed Date Deputy Clerk

FOR U.S. PROBATION OFFICE USE ONLY

Upon a finding of violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) _____ _____
Defendant Date

_____ _____
U.S. Probation Officer/ Designated Witness Date

APPENDIX C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES

Case No. **CR 20-326(A)-JFW** Dated: May 10, 2023

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PRESENT: HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE

Shannon Reilly Courtroom Deputy	None Present Court Report	Mack E. Jenkins Susan S. Har Cassie D. Palmer Brian R. Faerstein Asst. U.S. Attorney Not Present

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U.S.A. vs (Dfts listed below) - Not Present	Attorneys for Defendants - Not Present
4) Shen Zhen New World I, LLC	4) Richard M. Steingard, Retained Craig Wilkie, Retained

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PROCEEDINGS (IN CHAMBERS): **ORDER DENYING DEFENDANT SHEN ZHEN NEW WORLD I, LLC'S MOTIONS FOR JUDGMENT OF ACQUITTAL, OR ALTERNATIVELY, A NEW TRIAL [filed 3/13/2023; Docket No. 995]**

On March 13, 2023, Defendant Shen Zhen New World I, LLC ("Defendant" or "SZNW") filed Motions for Judgment of Acquittal, or Alternatively, a New Trial. On April 21, 2023, Plaintiff United States of America (the "Government") filed its Opposition. SZNW did not file a Reply. The Court finds that this matter is appropriate for decision without oral argument. The hearing calendared for May 12, 2023 is hereby vacated and the matter taken off calendar. After considering the moving and opposing papers, and the arguments therein, the Court rules as follows:

I. FACTUAL & PROCEDURAL BACKGROUND

On November 10, 2022, a jury found Defendant SZNW guilty on all eight counts alleged against it in the First Superseding Indictment: three counts of honest services wire fraud in violation of 18 U.S.C. §§ 1343 and 1346 (Counts 2-4); four counts of interstate and foreign travel in aid of bribery in violation of 18 U.S.C. § 1952(a)(3) (Counts 18-21) (the "Travel Act Counts"); and one count of bribery concerning programs receiving federal funds in violation of 18 U.S.C. § 666(a)(2) (Count 23).

On November 10, 2022, after the jury was discharged, SZNW orally moved for a judgment of acquittal on all counts under Federal Rule of Criminal Procedure 29, or in the alternative, a new trial under Federal Rule of Criminal Procedure 33. Trial Tr. 2386-87. The Court denied the motions, but allowed SZNW to file its written motions at a later date. Accordingly, SZNW filed the instant Motions for Judgment of Acquittal, or Alternatively, a New Trial.

II. MOTION FOR JUDGMENT OF ACQUITTAL

A. Legal Standard

Federal Rule of Criminal Procedure 29 provides that "the court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction." Fed. R. Crim P. 29(a). In reviewing a post-conviction challenge to the sufficiency of the evidence, the Court must perform a two-step analysis: "First, a reviewing court must consider the evidence presented at trial in the light most favorable to the prosecution." *United States v. Nevils*, 598 F.3d 1158, 1164 (9th Cir. 2010) (en banc). "Second, after viewing the evidence in the light most favorable to the prosecution, the reviewing court must determine whether this evidence, so viewed, is adequate to allow '*any* rational trier of fact [to find] the essential elements of the crime beyond a reasonable doubt.'" *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

During the first step, the Court "may not usurp the role of the finder of fact by considering how it would have resolved the conflicts, made the inferences, or considered the evidence at trial." *Nevils*, 598 F.3d at

1164. "Rather, when 'faced with a record of historical facts that supports conflicting inferences' a reviewing court 'must presume -- even if it does not affirmatively appear in the record -- that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution.'" *Id.* (quoting *Jackson*, 443 U.S. at 326). During the second step, "a reviewing court may not 'ask itself whether *it* believes that the evidence at trial established guilt beyond a reasonable doubt', only whether '*any*' rational trier of fact could have made that finding." *Nevils*, 598 F.3d at 1164 (quoting *Jackson*, 443 U.S. at 318-19) (internal citations omitted).

B. Discussion

SZNW moves for judgment of acquittal on the following grounds: (1) the evidence was insufficient to establish a quid pro quo as required by the federal bribery statutes; (2) the evidence with respect to Count 2 was insufficient to establish that the claimed violation "affected at least one financial institution; (3) the California bribery statutes at issue cannot serve as predicates for the Travel Act offenses; (4) the Travel Act is unconstitutional; and (5) 18 U.S.C. § 666 is unconstitutional.[1]

The Court rejects each of these arguments and concludes that the Government presented overwhelming evidence at trial that SZNW committed

[1] SZNW also argues, in conclusory fashion, that "[t]he honest-services statute is unconstitutional in all applications, and [*Skilling v. United States*, 561 U.S. 358 (2010)] should be overruled," but recognizes that this Court lacks the authority to overrule *Skilling*. Motion at 5. The Court need not address this argument.

each of the offenses charged against it in the First Superseding Indictment. For example, the Government presented evidence that: (1) in 2010, Chairman Wei Huang, the sole owner of SZNW, purchased the L.A. Grand Hotel intending to redevelop that property, *see*, *e.g.*, Trial Tr. 1503-05; Gov. Exs. 9, 11; (2) as early as 2013, Huang learned and understood that Huizar, the councilmember overseeing the district in which the L.A. Grand Hotel was located and the Chair of the PLUM Committee, had significant power to help or hinder Huang's plans to redevelop the L.A. Grand Hotel, Trial Tr. 496-97, 758-60, 1565-67; (3) with this knowledge, Huang provided Huizar over $200,000 in gambling chips between 2013 and 2017 and provided $600,000 in collateral to East West Bank in 2014 so that Huizar could settle a sexual harassment lawsuit, *see* Trial Tr. 177-81, 763-73, 779-96, 827-832, 1518-1527, 1548-58, 1737-38; Gov. Exs. 241-48, 471; (4) after Huang expressed that the redevelopment of the L.A. Grand Hotel was his biggest priority, Councilman Huizar told Huang that Huang could "go as high as he wants . . . as far as floors" and that if any motions needed to be passed or rezoning needed to occur, Huizar, as the chair of PLUM, "could make that happen," *see* Trial Tr. 869-70; (5) Huang and Huizar used a foreign shell corporation to route the $600,000 to East West Bank in an attempt to hide the transaction, *see* Trial Tr. 834-47, 1548-58; Gov. Ex. 472; and (6) after learning of the FBI's investigation, Huang fled to China, *see* Trial Tr. 1577-80. Viewed in the light most favorable to the prosecution, this evidence, along with all of the other evidence presented at trial, was more than sufficient to permit a rational trier of fact to find the essential

elements of each of the crimes beyond a reasonable doubt as set forth in the Court's Jury Instructions (Docket No. 812).[2]

In essence, rather than challenging the sufficiency of the evidence, SZNW's motion for judgment of acquittal primarily seeks reconsideration of the Court's prior rulings on the jury instructions and the constitutionality of the statutes. These arguments are not properly raised in a Rule 29 motion for judgment of acquittal. *See United States v. Crowe*, 563 F.3d 969, 973 n.5 (9th Cir. 2009) ("A Rule 29 motion for judgment of acquittal, however, is not the proper vehicle for raising an objection to jury instructions."); 2A Charles A. Wright, Federal Practice and Procedure: Criminal § 466, at 299 (3d ed. 2000) ("There is only one ground for a motion for judgment of acquittal. This is that the evidence is insufficient to sustain a conviction.").

In any event, the Court incorporates and adopts its prior rulings on each of the issues raised by SZNW:

(1) With respect to SZNW's argument that "the government must establish a genuine quid pro quo: an agreed upon exchange where a public official provides a specific official act for a private benefit," *see* Motion at 2, the Court incorporates and adopts its ruling on the parties' proposed jury instructions, *see* Trial Tr. 2127-2128, as well as its ruling at the Final Pretrial

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[2] Prior to the jury's deliberations, the Court instructed the jury on the elements of each form of bribery, as set out in Docket No. 812, in Court's Instruction Nos. 19 (honest services wire fraud), 21 (bribery under the Travel Act), and 22 (federal program bribery).

Conference on October 21, 2022, *see* 10/21/22 Hr'g Tr. at 33-41. Based on these rulings, in its final instructions to the jury after closing arguments, the Court correctly instructed the jury that, for honest services wire fraud, the government must prove beyond a reasonable doubt, among other things, that "the scheme or plan consisted of financial benefits that defendant provided intending, at the time, to receive in exchange at least one official act by Jose Huizar in connection with the approval of the redevelopment of the L.A. Grand Hotel." Jury Instructions (Docket No. 812) at Court's Instruction No. 19. The Court correctly did not instruct the jury that the government was required to prove a quid pro quo mutual agreement or identify a specific official act for the honest services wire fraud counts or the other bribery offenses.

(2) With respect to SZNW's argument that the evidence on Count 2 was insufficient to establish that the claimed violation "affected at least one financial institution," Motion at 4-5, the Ninth Circuit has held, and this Court has recognized, that a "new or increased risk of loss to financial institutions" -- even in the absence of actual loss -- is sufficient to establish that the wire fraud affected a financial institution for statute of limitations purposes. *United States v. Stargell*, 738 F.3d 1018, 1022–23 (9th Cir. 2013); 1/7/22 Hr'g Tr. at 33-34; 10/17/22 Hr'g Tr. at 75-78; Trial Tr. at 2133. SZNW contends that the "mere specter of criminal forfeiture of a loan's collateral" is not sufficient to demonstrate a

new or increased risk of loss. Motion at 5. Based on the evidence presented at trial, the Court rejects SZNW's argument. As FBI Special Agent Civetti testified, the FBI in this case considered initiating forfeiture proceedings against the $600,000 in collateral provided to East West Bank (but ultimately decided not to initiate forfeiture proceedings because the loan had already been "collapsed"). Trial Tr. 450-51. In addition, East West Bank representative Peggy O'Donovan testified that, in the event that collateral for a loan becomes subject to either civil or criminal forfeiture proceedings, in-house attorneys or outside counsel hired by the bank assist it in dealing with the forfeiture litigation, including by filing a claim to recoup the collateral. Trial Tr. 1272-74. She testified that those actions require the bank to expend time, effort, and resources that would otherwise be spent on normal day-to-day banking operations. Trial Tr. at 1273. The Court concludes that this evidence was more than sufficient for a rational jury to find that the scheme to defraud affected at least one financial institution, i.e., exposed a financial institution to a new or increased risk of loss.

(3) With respect to SZNW's argument that the California bribery statutes at issue cannot serve as predicates for the Travel Act offenses, the Court incorporates and adopts its ruling on SZNW's motion to dismiss Counts 18-21 of the First Superseding Indictment. *See* 1/7/22 Hr'g Tr. at 59-72. The Court concluded that the California statutes "fall comfortably within the

generic federal definition of bribery as it existed in 1961." *Id.* at 71:6-7.

(4) With respect to SZNW's argument that the Travel Act is unconstitutional, the Court incorporates and adopts its ruling on SZNW's motion to dismiss the Travel Act Counts. *See* 1/7/22 Hr'g Tr. at 67-68, 80. As the Court concluded, "the generic term 'bribery' has had a fairly consistent meaning from the 1960s through today as demonstrated by the unchanged definition in the Model Penal Code since 1962. As such, the Court finds that the term is not unconstitutionally vague and that reference to generic bribery [in] the . . . Travel Act . . . statute does not violate the separation powers or the due process clause." *Id.* at 80:11-18. The Court also rejected SZNW's arguments that the Government's interpretation of the Travel Act implicated the same constitutional concerns raised in *McDonnell v. United States*, 579 U.S. 550, 576-77 (2016). *Id.* at 67:1-68:17.

(5) With respect to SZNW's argument that 18 U.S.C. § 666 is unconstitutional, the Court incorporates and adopts its ruling on SZNW's motion to dismiss, *see* 1/7/22 Hr'g Tr. at 75-80 and its ruling on Defendants 940 Hill, LLC and Dae Yong Lee's Motion to Strike Language From Count 25 filed on December 29, 2021, *see* Docket No. 324.

For the foregoing reasons, and for the reasons stated in the Government's Opposition, SZNW's Motion for Judgment of Acquittal is denied.

III. MOTION FOR NEW TRIAL

A. Legal Standard

Federal Rule of Criminal Procedure 33(a) provides: "Upon the defendant's motion [for a new trial], the court may vacate any judgment and grant a new trial if the interest of justice so requires." Fed. R. Crim. P. 33(a). As the Ninth Circuit has stated:

> A district court's power to grant a motion for a new trial is much broader than its power to grant a motion for judgment of acquittal. The district court need not view the evidence in the light most favorable to the verdict; it may weigh the evidence and in so doing evaluate for itself the credibility of witnesses. If the court concludes that, despite the abstract sufficiency of the evidence to sustain the verdict, the evidence preponderates sufficiently heavily against the verdict that a serious miscarriage of justice may have occurred, it may set aside the verdict, grant a new trial, and submit the issues for determination by another jury.

United States v. A. Lanoy Altson, 974 F.2d 1206, 1211-12 (9th Cir. 1992) (citations and quotations omitted). A motion for a new trial should only be granted in exceptional cases, *see United States v. Pimentel*, 654 F.2d 538, 545 (9th Cir. 1981), and "only when it appears that an injustice has been done," *United States v. Sanchez*, 969 F.2d 14209, 1414 (2nd Cir. 1992).

To determine whether a new trial is warranted because of an alleged error in jury instructions, the Court must decide "whether the instructions—taken as a whole and viewed in the context of the entire trial—were misleading or confusing, or inadequately guided the jury's deliberations, or improperly intruded

on the fact finding process." *United States v. Warren*, 25 F.3d 890, 898 (9th Cir. 1994). Thus, an instructional error does not automatically warrant a new trial; instead, the defendant must show that the error affects substantial rights. *See* Fed. R. Crim. P. 52(a); *United States v. Miller*, 953 F.3d 1095, 1103 (9th Cir. 2020).

B. Discussion

SZNW requests a new trial on all counts pursuant to Federal Rule of Criminal Procedure 33, arguing that: (1) the Court's jury instructions included material errors; (2) the Court erroneously permitted the Government to introduce evidence that was "improper, irrelevant, and highly inflammatory," Motion at 12; and (3) the First Superseding Indictment was improperly amended.

1. *The Court's Jury Instructions did not include material errors.*

Specifically, SZNW argues that: (1) the Court's instructions failed to instruct that each of the federal bribery statutes at issue require an agreed-upon *quid pro quo* that involves a particular official act, *see* Motion at 9; (2) the Court should have included such an instruction as to the Travel Act Counts in this case, based on the language of the First Superseding Indictment and the Government's prior representations, *see* Motion at 10; (3) the Court failed to give the jury sufficient guidance about how to navigate the "amorphous concepts that underly federal bribery law," *see* Motion at 10; and (4) the jury should have been instructed that the 2014 city council resolution honoring Wei Huang cannot constitute an official act, *see* Motion at 12.

As recognized by SZNW, these arguments "were all [previously] raised (and fell) before the Court." Motion at 9. The Court once again rejects each of these arguments and incorporates and adopts its previous rulings. *See* Trial Tr. at 2127-2128 (holding that the Supreme Court's decision in *McDonnell* does not require identification of the specific or particular acts to be performed, but rather an identification of the particular question or matter to be influenced); 10/21/22 Hr'g Tr. at 33-37 (same); 10/21/22 Hr'g Tr. at 37-41 (holding that when the defendant is the alleged briber, an agreement by the public official is not needed); Trial Tr. at 2142 (holding that the California bribery statutes do not require an actual agreement or an actual exchange of bribes for an official act); Trial Tr. at 2145-46 (declining to give SZNW's proposed instruction regarding quid pro quo and "official act"); 1/7/22 Hr'g Tr. at 73:8-12 ("The Court does not believe that the allegations of the First Superseding Indictment are inconsistent with the elements of the California bribery statute or somehow raise the Government's burden with respect to those counts."); 1/7/22 Hr'g Tr. at 31 (holding that a City resolution honoring someone is indisputably an official act); 9/23/22 Hr'g Tr. at 26-27 (same).

Accordingly, based on the Court's prior rulings and for the reasons stated in the Government's Opposition, the Court concludes that the jury instructions did not include material errors.

2. *The Court did not commit evidentiary errors.*

SZNW also contends that the Court: (1) improperly permitted the Government to introduce evidence regarding Huizar's "pay-to-play" scheme and

independent crimes and bad acts (citing SZNW's Motion in Limine Nos. 1, 9, and 10); (2) erroneously denied SZNW's other motions in limine and permitted the government to introduce other inadmissible evidence (citing SZNW's Motion in Limine Nos. 2 through 8; Docket No. 702 re: Wei Huang's fugitive status; Docket No. 793 re: evidence of Henry Yong disbarment; and Trial Tr. 93, 145, 211 re: Agent Civetti's "understandings"); and (3) improperly excluded testimony of Ricky Zheng regarding certain out-of-court statements by Wei Huang (citing Trial Tr. 1586-88).

SZNW concedes that the Court has already rejected these arguments. *See* Motion at 13. The Court once again incorporates and adopts its prior rulings, and concludes that it did not commit evidentiary errors with respect to this evidence. *See* 9/23/22 Hr'g Tr. at 7-118 (rulings on motions in limine); 10/21/22 Hr'g Tr. 44-49 (ruling on reference to Huang as a fugitive and Huang's flight and consciousness of guilt); Trial Tr. 1849-51 (ruling on Henry Yong's disbarment); Trial Tr. 1642-43 (denying SZNW's request for reconsideration of ruling excluding Ricky Zheng's testimony regarding certain out-of-court statements by Wei Huang). *See also United States v. Fontenot*, 14 F.3d 1364, 1371 (9th Cir. 1994) (quotations and citations omitted) ("The state-of-mind exception does not permit the witness to relate any of the declarant's statements as to why he held the particular state of mind, or what he might have believed that would have induced the state of mind."). In any event, even if the Court erroneously admitted or excluded any evidence, SZNW fails to demonstrate that it was "substantially prejudiced" by the allegedly erroneous evidentiary rulings such that

a new trial is warranted. *Ruvalcaba v. City of Los Angeles*, 64 F.3d 1323, 1328 (9th Cir. 1995)

3. *The First Superseding Indictment Was Not Improperly Amended.*

Next, SNZW contends that the Court erred in granting the Government's *Ex Parte* Application for an Order Amending the First Superseding Indictment, in which the Government sought to correct errors that wrongly identified the California bribery statutes that SZNW violated by its conduct. The Court disagrees and incorporates and adopts its detailed Order filed on October 19, 2022 (Docket No. 731).

Finally, SZNW contends that the Government "constructively amended the indictment when it changed its theory of the case at trial." Motion at 15. Specifically, SNZW characterizes Overt Act 68 as the "culminating" "big ask" from Huang to Huizar for the L.A. Grand Hotel redevelopment, and argues that, because the Government did not present evidence of this overt act, it amounted to a constructive amendment of the First Superseding Indictment. For the reasons stated in the Government's Opposition (at 33-35), the Court rejects this argument.

Accordingly, SZNW's Motion for a New Trial is denied.

IV. CONCLUSION

For the foregoing reasons and for the reasons stated in the Government's Opposition, SZNW's Motions for Judgment of Acquittal, or Alternatively, a New Trial are **DENIED**.

APPENDIX D

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18 U.S.C. § 1341

§ 1341. Frauds and swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms

are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

18 U.S.C. § 1343

§ 1343. Fraud by wire, radio, or television

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

18 U.S.C. § 1346

§ 1346. Definition of "scheme or artifice to defraud"

For the purposes of this chapter, the term "scheme or artifice to defraud" includes a scheme or artifice to deprive another of the intangible right of honest services.

18 U.S.C. § 1952

§ 1952. Interstate and foreign travel or transportation in aid of racketeering enterprises

(a) Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to--

(1) distribute the proceeds of any unlawful activity; or

(2) commit any crime of violence to further any unlawful activity; or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

and thereafter performs or attempts to perform--

(A) an act described in paragraph (1) or (3) shall be fined under this title, imprisoned not more than 5 years, or both; or

(B) an act described in paragraph (2) shall be fined under this title, imprisoned for not more than 20 years, or both, and if death results shall be imprisoned for any term of years or for life.

(b) As used in this section (i) "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances (as defined in section 102(6) of the Controlled Substances Act), or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States, or (3) any act which is indictable under

subchapter II of chapter 53 of title 31, United States Code, or under section 1956 or 1957 of this title and (ii) the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(c) Investigations of violations under this section involving liquor shall be conducted under the supervision of the Attorney General.

(d) If the offense under this section involves an act described in paragraph (1) or (3) of subsection (a) and also involves a pre-retail medical product (as defined in section 670), the punishment for the offense shall be the same as the punishment for an offense under section 670 unless the punishment under subsection (a) is greater.

(e)(1) This section shall not apply to a savings promotion raffle conducted by an insured depository institution or an insured credit union.

(2) In this subsection--

(A) the term "insured credit union" shall have the meaning given the term in section 101 of the Federal Credit Union Act (12 U.S.C. 1752);

(B) the term "insured depository institution" shall have the meaning given the term in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813); and

(C) the term "savings promotion raffle" means a contest in which the sole consideration required for a chance of winning designated prizes is obtained by the deposit of a specified amount of money in a savings account or other savings program, where each ticket or entry has an equal chance of being drawn, such contest being subject to regulations that may from

time to time be promulgated by the appropriate prudential regulator (as defined in section 1002 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5481)).

18 U.S.C. § 666

§ 666. Theft or bribery concerning programs receiving Federal funds

(a) Whoever, if the circumstance described in subsection (b) of this section exists--

(1) being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof--

(A) embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts to the use of any person other than the rightful owner or intentionally misapplies, property that--

(i) is valued at $5,000 or more, and

(ii) is owned by, or is under the care, custody, or control of such organization, government, or agency; or

(B) corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such organization, government, or agency involving any thing of value of $5,000 or more; or

(2) corruptly gives, offers, or agrees to give anything of value to any person, with intent to influence or reward an agent of an organization or of a State, local or Indian tribal government, or any agency thereof, in connection with any business, transaction,

or series of transactions of such organization, government, or agency involving anything of value of $5,000 or more;

shall be fined under this title, imprisoned not more than 10 years, or both.

(b) The circumstance referred to in subsection (a) of this section is that the organization, government, or agency receives, in any one year period, benefits in excess of $10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance.

(c) This section does not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business.

(d) As used in this section--

(1) the term "agent" means a person authorized to act on behalf of another person or a government and, in the case of an organization or government, includes a servant or employee, and a partner, director, officer, manager, and representative;

(2) the term "government agency" means a subdivision of the executive, legislative, judicial, or other branch of government, including a department, independent establishment, commission, administration, authority, board, and bureau, and a corporation or other legal entity established, and subject to control, by a government or governments for the execution of a governmental or intergovernmental program;

(3) the term "local" means of or pertaining to a political subdivision within a State;

(4) the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

(5) the term "in any one-year period" means a continuous period that commences no earlier than twelve months before the commission of the offense or that ends no later than twelve months after the commission of the offense. Such period may include time both before and after the commission of the offense.