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FILED ELECTRONICALLY

Hon. Diane Gujarati
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: U.S. v. Chervitz, et al., No. 23-cr-146 (DG),
Evidence of FBI Misconduct and Destruction
of Exculpatory Evidence: The FBI has
Instructed a Key Witness to Delete Emails

Dear Judge Gujarati:

We write on behalf of Nicole Daedone and Rachel Chervitz to bring to your immediate attention a serious issue that **has just surfaced yesterday** in the ongoing civil litigation involving OneTaste Inc. (“OneTaste”) in the Los Angeles Superior Court. This matter has significant implications for the related criminal proceedings before Your Honor and further merits immediate dismissal of the indictments against Ms. Daedone and Chervitz.

As set forth herein, we request that the briefing schedule on our pending motion to dismiss related to the government's significant privilege violation be expanded to incorporate a new basis for dismissal related to shocking new evidence of **FBI involvement in instructing a key government witness to delete emails**. This request comes in light of recent evidence, just turned over to One Taste in California yesterday that the **FBI advised Ayries Blanck, a critical witness, to delete her email account**, resulting in the destruction of exculpatory evidence. On November 8, 2022, Ms. Blanck emailed FBI Agent McGinnis, informing him about the lawsuit filed by OneTaste and providing various documents, including emails from Summer Engman and Louisa West. Agent McGinnis replied, suggesting that Ms. Blanck block Ms. Engman and Ms. West, indicating that their emails were “manipulative” and associated with OneTaste. When Ms. Blanck asked Agent McGinnis whether she should “disband and cancel” her email account, he advised her to do so, since it was “making [her] feel uneasy.” Agent's McGinnis's directive resulted in the deletion of extraordinarily relevant evidence.

LEVIN & ASSOCIATES, PLLC

Hon. Diane Gujarati
United States District Court
Re: *U.S. v. Chervitz, et al.*, No. 23-cr-146 (DG)
June 11, 2024

Page 2 of 8

As the email correspondence between McGinnis and Blanck clearly indicates, McGinnis was in extensive contact with the prosecutors on this matter (writing her, “I will be addressing these things with the AUSAs this morning”), and his instruction to her to disband her email account was clearly given with their knowledge and explicit approval.

The government’s conduct, including the misuse of a highly privileged document, has already violated our clients’ Constitutional rights. In our recent letter, as the Court is aware, we detailed how the government obtained and used privileged information in building its case against our clients. This new evidence about the FBI advising a known government witness to delete emails adds another layer of misconduct that fundamentally undermines the fairness of these proceedings and the likelihood of purposeful destruction of exculpatory/impeaching material.

Given the severity of these actions, additional grounds now exist for the dismissal of the indictments against Ms. Daedone and Ms. Chervitz. This additional ground for dismissal should be considered alongside the issues raised in our recent filing. The repeated violations of our clients’ Constitutional rights by the government demand immediate and decisive action.

I. California Litigation Background

By way of background, OneTaste, Inc. filed a lawsuit against former employee Ayries Blanck in the Los Angeles Superior Court in October 2022. The company alleges that Ms. Blanck breached a legal settlement by publicly attacking OneTaste and making defamatory statements, including claims of being coerced into sexual acts by the company’s leadership. This civil litigation is intricately connected to the instant federal criminal case, where Ms. Daedone and Ms. Chervitz face forced labor conspiracy charges and the government has identified Ms. Blanck as a witness in these proceedings. During the civil proceedings, OneTaste accused Ms. Blanck of discovery misconduct and demanded access to her personal devices and data. Ms. Blanck, on the other hand, has defended her actions, claiming that the FBI advised her to delete her old email account due to concerns about harassment from former OneTaste associates.

In May of 2023, the government filed a motion to stay this civil litigation in Los Angeles Superior Court between OneTaste Inc. and Ayries Blanck. What seems clear now is that the government sought to interfere with the civil litigation, not only to preclude the disclosure of exculpatory material in this case, but also to prevent information from coming to light about FBI Agent McGinnis and prosecutors’ role in directing Ms. Blanck to destroy her email communications. The Los Angeles court denied the government’s motion to stay the civil litigation between OneTaste and Ayries Blank in July 2023.

LEVIN & ASSOCIATES, PLLC

Hon. Diane Gujarati
United States District Court
Re: *U.S. v. Chernitz, et al.*, No. 23-cr-146 (DG)
June 11, 2024

Page 3 of 8

II. Issue of FBI Involvement

OneTaste has recently uncovered evidence indicating that the FBI advised Ms. Blanck to delete emails. This evidence is critical, given Ms. Blanck's role as a key government witness in the federal criminal case.

The relevant email correspondence includes the following points:

- November 8, 2022: Ms. Blanck emailed FBI Agent Elliot McGinnis, informing him about the lawsuit filed by OneTaste and providing various documents, including emails from associates Summer Engman and Louisa West.
- November 8, 2022: Agent McGinnis replied, suggesting that Ms. Blanck block Ms. Engman and Ms. West, indicating that their emails were “manipulative” and “associated with OneTaste.”
- November 8, 2022: Ms. Blanck asked Agent McGinnis whether she should “disband and cancel” her email account.
- November 8, 2022: Agent McGinnis responded, advising her to cancel the email account because they “serve[] you know [sic] purpose other than making you feel uneasy,” effectively counseling her to delete extraordinarily relevant evidence.

The correspondence, attached as Exhibit 1, indicates that Agent McGinnis explicitly advised Ms. Blanck to cancel her email account, which resulted in the permanent deletion of potentially crucial evidence.

Agent McGinnis appears to have been intimately involved in the public relations aspect of this case even before an indictment was returned, calling into question both his objectivity and judgment. By way of example, Agent McGinnis was directly involved in the creation of a Netflix film called “Orgasm INC: The Story of OneTaste” during the government's active investigation of OneTaste. The name “McGinnis” is in the screen shot in the film while someone from the film is “on the phone with an FBI agent.” Netflix released the film in November 2022, five months before the indictment was filed in April 2023, and seven months before the indictment was unsealed in June 2023. The emails referenced above between Agent McGinnis and Ms. Blanck were sent just three days after the release of this Netflix film in which both Agent McGinnis and Ayries Blanck participated.

LEVIN & ASSOCIATES, PLLC

Hon. Diane Gujarati
United States District Court
Re: *U.S. v. Chervitz, et al.*, No. 23-cr-146 (DG)
June 11, 2024

Page 4 of 8

III. The Government Had Knowledge of Ayries Blanck Being A Witness in the Criminal Investigation at the Time

The Prosecution Team, including the FBI agents, were well aware that Ms. Blanck was a vital witness in the instant criminal investigation at the time she was participating in various media inquiries. Her allegations against OneTaste were the central focus of prominent stories published by Bloomberg, Playboy, BBC, and Netflix. These publications contained claims from Ms. Blanck that are demonstrably false. Because Ms. Blanck's statements have been fully discredited, and the government knows it, there can be little doubt that her email communications with a vast number of individuals would have included direct admissions or implied admissions that her most damning allegations against OneTaste were fabricated from whole cloth.

When counsel for OneTaste inquired about the factual basis surrounding this investigation back on or about November 29, 2022, AUSA Kassner directed Paul Pelletier to “look at the media on OneTaste,” specifically citing Bloomberg and the BBC. This response indicates that the Prosecution Team was fully cognizant of the breach they were committing when they instructed Ms. Blanck to delete her email.

Furthermore, during a court hearing on July 26, 2023, Ms. Daedone's then-counsel, Reid Weingarten, stated: “And I'm not alleging any misconduct by any AUSA in this courthouse now. All I'm saying is that we have a 'SpideySense' that there's a significant amount of material that is extraordinarily helpful to the defense based upon their investigation interviewing people that have come to us and said wonderful things about us and we want it. So what I would respectfully request is perhaps, when we come to court next, that we actually deal substantively with the Brady issue because I think the sooner, the better.” He was referencing this exact issue. The government was not only withholding *Brady* material from the defendants but also instructing witnesses to destroy it.

On December 13, 2022, defense counsel made a comprehensive, fact-driven presentation to the AUSAs, highlighting that the claims made by or about Ms. Blanck in the media were completely detached from reality. This presentation occurred just over a month after Agent McGinnis instructed Ms. Blanck to delete her emails. Following this presentation, the AUSAs and Agent McGinnis should have reached out to Ms. Blanck to ensure she preserved any relevant material. All of this transpired before the grand jury signed the indictment on April 3, 2023.

IV. A Grave Breach and Miscarriage of Justice

The involvement of the FBI in advising a key witness to delete emails represents a grave breach of protocol and a miscarriage of justice. It is fundamental to the integrity of the judicial process that all relevant evidence is preserved and available for examination. The destruction of evidence, especially when advised by a federal agent, is a direct affront to the principles of fairness and transparency that underpin our legal system.

LEVIN & ASSOCIATES, PLLC

Hon. Diane Gujarati
United States District Court
Re: *U.S. v. Chervitz, et al.*, No. 23-cr-146 (DG)
June 11, 2024

Page 5 of 8

When an email account is canceled, all emails associated with that account are permanently deleted, making them unavailable for discovery or use in any legal proceedings. This action eliminates any possibility for the defense to review potentially exculpatory evidence or to cross-examine the witness on the content of those emails. The advice from the FBI to delete an email account compromises the ability of the defense to access crucial information, thereby undermining the defendants' right to a fair trial.

The FBI's direction to Ms. Blanck to delete emails compromises the ability of the defense to access potentially exculpatory evidence and undermines the defendant's right to a fair trial. Such actions by a federal agency tasked with upholding the law call into question the propriety of the entire investigative and prosecutorial process in this case.

It is imperative to understand the full impact of this directive on the integrity of the evidence. By advising Ms. Blanck to delete her email account, the FBI has not only potentially destroyed critical evidence but also set a dangerous precedent that may influence the behavior of other witnesses. This action casts a shadow over the legitimacy of the government's case and erodes public trust in the judicial process.

The spoliation of evidence by the government constitutes a Sixth Amendment violation sufficient to justify the dismissal of the indictment or other sanctions. The Second Circuit has held that “in the context of a motion to dismiss an indictment for spoliation, we have held that a criminal defendant must show: (1) that the evidence possessed exculpatory value that was apparent before it was destroyed; (2) that the evidence was of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means; and (3) bad faith on the part of the [g]overnment.” *United States v. Walker*, 974 F.3d 193, 208 (2d Cir. 2020) (citation and quotation marks omitted). Sanctions short of dismissal of the indictment may also be appropriate, including to deter the misconduct that took place here in the future, if there is a means to mitigate the prejudice caused to a defendant. *See In re Terrorist Bombings*, 552 F.3d 93 at 149 (2d Cir. 2008).

At the very least, defendants must be given the opportunity to establish a record of what happened with regard to Ms. Blanck's deleted email account, including the role played by the FBI itself in that deletion.

This is not the first instance of overreach and egregious errors committed by Agent McGinnis. Upon information and belief, two witnesses, both of whom were interviewed by Agent McGinnis, have attested that they were coerced and pressured by Agent McGinnis into identifying themselves as “victims” in this case. This manipulation underscores a troubling pattern of misconduct, as Agent McGinnis has not only instructed a key witness to delete her emails but has also engaged in clear acts of witness tampering. His methods include forcefully pressuring and coercing interviewees into adopting a victim narrative that aligns with the prosecution's case.

LEVIN & ASSOCIATES, PLLC

Hon. Diane Gujarati
United States District Court
Re: *U.S. v. Chervitz, et al.*, No. 23-cr-146 (DG)
June 11, 2024

Page 6 of 8

Defense counsel recently learned that government agents have contacted defense witnesses who were affiliated with OneTaste during the relevant timeframe to, among other things, inform the witnesses that they are “victims” of Ms. Chervitz and Ms. Daedone and to ostensibly offer the witnesses access to government-sponsored victim assistance services. At least one of these women, who was recently contacted by FBI Special Agent Elliot McGinnis, previously spoke with Agent McGinnis a couple of years ago before Ms. Chervitz and Ms. Daedone were indicted. In her pre-Indictment conversation with Agent McGinnis, she affirmatively told him that she did not view herself as a victim, nor did she observe or know of any wrongdoing by Ms. Chervitz, Ms. Daedone, or OneTaste leadership. In her most recent communications with the government, she told the agent (again) that she is not a “victim” and, based on her experiences and observations, the allegations against Ms. Chervitz and Ms. Daedone are false.

The above scenario—which we understand was not limited to this individual—raises serious concerns regarding both the government’s pre- and post-Indictment investigative efforts, particularly as those efforts relate to defense witnesses. Identifying a witness as a “victim” and offering free victim services despite her telling the government that she is not a victim suggests a coercive attempt by the government to “victim shop” in an attempt to contrive witness testimony in its favor. The scenario also highlights categories of Brady material that the government possesses and is obligated to disclose (which it has not). Of course, this individual’s two conversations with the agent, presumably memorialized in corresponding FBI 302s, during which she reported that she was not a victim of wrongdoing or criminality and that she did not observe or know of any victimization of anyone affiliated with OneTaste, is squarely Brady. Furthermore, the agent’s conduct during his more recent conversation with her, during which he suggested to her, if not plainly stated to her, that she was a “victim” of a crime also is information to which the defense is entitled pursuant to Brady.

In another alarming instance, Agent McGinnis falsely accused Ms. Daedone of financial misconduct. He alleged that (a) she cut a check to herself from an irrevocable trust set up for her mother, (b) she was attempting to take the money for herself, and (c) these actions were consistent with money laundering. However, the actual facts reveal a different story. The government persuaded the bank to freeze the account without obtaining a subpoena. Subsequently, the bank unilaterally decided to close the account and compelled Ms. Daedone, in her capacity as trustee (not personally), to disburse the funds.

Specifically, pursuant to the Court’s Individual Practice Rules, a schedule was set for the filing of a pre-trial motion by Nicole Daedone in connection with the Seizure Warrant dated March 20, 2024, served on a bank account held in trust for Nicole Daedone’s 81-year-old mother. The affidavit filed in support of the government’s application for the warrant contained materially false and misleading information. The government had previously frozen the account in January 2024 without a warrant, compelling the bank to stop payment on a check made out to “Nicole Daedone Trustee for BD Care.”

LEVIN & ASSOCIATES, PLLC

Hon. Diane Gujarati
United States District Court
Re: *U.S. v. Chervitz, et al.*, No. 23-cr-146 (DG)
June 11, 2024

Page 7 of 8

Agent McGinnis affirmed under penalty of perjury that the check was issued to Nicole Daedone in her individual capacity and suggested it was consistent with money laundering. In reality, the check was issued by the bank without Ms. Daedone's request and was made out to her as trustee, not personally. The affidavit's inaccuracies were demonstrably misleading and omitted crucial details about the government's actions that initially caused the fund's seizure. Most troubling, relying on demonstrably untrue information, Agent McGinnis made the spectacularly false accusation that "activity" in the Trust account was "consistent with the laundering of criminal proceeds." The "activity" that Agent McGinnis relied on, however, was entirely fabricated. Despite documentation that demonstrated the contrary, Agent McGinnis alleged that a "cashier's check made payable to Nicole Daedone" representing the funds in the Trust Account had been "purchased" and mailed to Ms. Daedone in September 2023. This claim was patently false, as the check was not "purchased" nor issued to Ms. Daedone in her individual capacity. The bank issued the check either at the government's direction or on its own accord, and it was made out to Ms. Daedone as trustee.

Following the revelation of Agent McGinnis's perjury, the government claimed he was "mistaken," suggesting that the bank told him that Ms. Daedone purchased the cashier's check and made it payable to herself. This claim is contradicted by readily available bank documents and the fact that no bank could or would be authorized to transfer trust assets to an individual. The idea that a bank told Agent McGinnis that it issued a check from a trust account payable to an individual—or that Agent McGinnis believed the claim—is patently incredible.

While the government has vacated the warrant, the issues surrounding Agent McGinnis's false statements remain troubling. In the interim, the government deprived Ms. Daedone's 81-year-old mother of necessary living expenses for at least three weeks due to its maneuvers with the trust account. (See ECF No. 83 and 84).

In April 2024, correspondence submitted to this Court revealed that Agent McGinnis made false statements under oath regarding money seizures associated with this case. The cumulative effect of these actions by Agent McGinnis—witness tampering, coercion, destruction of potentially exculpatory evidence, and perjury—demonstrates a blatant disregard for legal and ethical standards. Such conduct not only undermines the defendants' right to a fair trial but also erodes public trust in the fairness and impartiality of our judicial system. It is imperative that these actions be scrutinized and addressed to ensure justice is served and to prevent further abuse of power.

LEVIN & ASSOCIATES, PLLC

Hon. Diane Gujarati
United States District Court
Re: *U.S. v. Cherwitz, et al.*, No. 23-cr-146 (DG)
June 11, 2024

Page 8 of 8

CONCLUSION

The government's actions in this case represent a blatant abuse of power and a flagrant violation of legal and ethical standards. The FBI's directive to a key witness to delete critical evidence is not only a severe breach of protocol but also an affront to the principles of justice that underpin our legal system. This misconduct, compounded by other instances of misconduct by this same Agent and the government's misuse of privileged information, demonstrates a clear pattern of behavior designed to undermine the rights of Nicole Daedone and Rachel Cherwitz.

Such egregious actions cannot be tolerated. The integrity of the judicial process and the Constitutional rights of the defendants have been compromised. We respectfully request that the Court expand the briefing schedule on our motion to dismiss to include this new evidence of FBI misconduct. The indictments against Ms. Daedone and Ms. Cherwitz must be dismissed to ensure accountability and to prevent further erosion of public trust in our legal system. Anything less than dismissal would be a gross injustice and a dangerous precedent.

We stand ready to provide any additional information the Court may require and urge immediate action to rectify this grave miscarriage of justice. Thank you for your attention to this urgent matter.

Respectfully submitted,

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