



**U.S. Department of Justice**

*United States Attorney  
Eastern District of New York*

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DGR:KCB/GK/DEL/SF  
F. #2018R01984

*271 Cadman Plaza East  
Brooklyn, New York 11201*

September 20, 2024

**By ECF and Email**

The Honorable Diane Gujarati  
United States District Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: United States v. Cherwitz, et al.  
Criminal Docket No. 23-146 (DG)

In re Petition of OneTaste, Inc.,  
Miscellaneous Docket No. 24-2518 (DG)

Dear Judge Gujarati:

The government respectfully submits this letter to supplement the factual record related to OneTaste Inc.’s (“OneTaste”) motion for the return of property pursuant to Rule 41(g) of the Federal Rules of Criminal Procedure, In re Petition of OneTaste, Inc., 24-MC-2518 (DG) (ECF Dkt. No. 1) (the “Petition” or “Pet.”), and the defendants’ motion to dismiss the indictment in the above-captioned case, see United States v. Cherwitz et al., 23-CR-146 (DG) (ECF Dkt. No. 113) (the “Motion” or “Mot.”). These pending motions relate, principally, to a document voluntarily produced to federal agents investigating the criminal conduct alleged in Cherwitz (the “Document”), which OneTaste and the Cherwitz defendants have claimed is subject to attorney-client privilege and otherwise constitutes attorney work product. As set out below, the government provides additional information the undersigned counsel recently obtained concerning the Document and its receipt by the Federal Bureau of Investigation (the “FBI”) in the course of the investigation.

I. **Background**

As described in the government’s prior filings related to the Motion and the Petition, since OneTaste’s April 2024 privilege assertion, in an abundance of caution, the government (1) restricted access to the Document, limiting its access to the Privilege Review Team and (2) worked to identify the individuals who provided the Document to the FBI in the course of the investigation and when the Document was provided to the FBI. The government previously confirmed that a third-party witness (“Individual-13”) provided a copy of the

Document to the FBI in the course of the investigation. As Individual-13 informed the FBI in November 2021 when s/he first provided the document to the FBI, s/he had received the Document from Witness-1. Witness-1 subsequently told the FBI in May 2024 that he had provided photographs to Individual-13 of the Document, which he had previously received from Witness-2.

Witness-2 is an individual whom the FBI had interviewed on two occasions in January and February 2021. On or about February 1, 2021, the government served a grand jury subpoena on Witness-2. In response to the subpoena, on or about February 25, 2021, Witness-2 provided the FBI with two hard drives containing documents and other materials, which were later produced to the Cherwitz defendants in discovery. See Cherwitz, ECF No. 118, Ex. 5 (FBI report dated February 25, 2021). The government's Privilege Review Team has been reviewing the hard drives provided by Witness-2 in an effort to identify the Document or any related potentially privileged information contained therein. To date, neither the Document nor any potentially privileged information has been identified on the hard drives provided by Witness-2 and neither OneTaste nor the defendants have ever claimed that any of the materials on those hard drives, which were produced in discovery, are privileged.

## II. Subsequent Investigation

On September 6, 2024, the defendants filed a reply brief in support of their motion to dismiss in which they attached a signed affidavit by Witness-2. Cherwitz (ECF Dkt. No. 141, Defense Exhibit A). In the affidavit, Witness-2 stated, in sum and substance, that on January 26, 2021, he met with members of the FBI. The affidavit states that during the meeting, he copied a single word document onto a flash drive, which he gave to FBI agents at the meeting. Id. ¶ 4. Witness-2 indicated that he did not author the document, which was entitled and marked "Attorney Client Privilege," and which, to his knowledge, was created after he left OneTaste. Id. ¶ 3. Witness-2 stated that on February 1, 2021, he received a grand jury subpoena and subsequently copied the remaining documents from the time period that he was employed at OneTaste onto hard drives provided by the FBI. Id. ¶ 6.

Witness-2's affidavit is consistent, at least in part, with information he provided during his FBI interview in January 2021. As reflected in a report and notes concerning the interview, Witness-2 claimed that he had downloaded and retained certain material from OneTaste's cloud services around the time that he left OneTaste, which included a document that appeared to outline "various derogatory acts at OneTaste" that he believed was authored by Yia Vang "since it originated on [her] laptop." See Exhibit A (redacted FBI report dated February 11, 2021, providing a summary of the January 26, 2021 FBI interview of Witness-2) at 3. Also in the January 26, 2021 interview of Witness-2, Witness-2 informed the agents, in sum and substance and in part, that the document said "attorney client privilege." See Exhibit B (redacted notes of the January 26, 2021 FBI interview of Witness-2) at 2.<sup>1</sup>

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<sup>1</sup> The statement "attorney client privilege," in Exhibit B reflects a statement made by Witness-2 when describing materials in his possession and not any independent understanding or assessment by the interviewing FBI agents.

After reviewing Witness-2's September 2024 affidavit, the government continued its review of information related to the FBI's receipt of the Document. The Privilege Review Team again conducted a thorough search of the government's internal files and emails in a good faith effort to determine whether it had ever received a copy of the aforementioned document from Witness-2. The search did not result in the identification of any documents resembling the one Witness-2 described (nor had the Privilege Review Team's prior search for documents constituting or similar to the Document revealed such a document). The FBI Special Agent leading the interview of Witness-2 additionally searched all of the thumb drives in his possession and did not identify any documents resembling the one Witness-2 described. The other FBI Special Agent who attended the interview confirmed that she was likewise not in possession of any flash drives that contained materials from Witness-2.

On September 9, 2024, the government conducted an in-person manual search of hard copy and electronic files at the FBI. During a review of an electronic FBI workspace, the government identified a folder with Witness-2's name in which were saved two Microsoft Word files containing in their file names the words "Attorney Client Privilege: Confidential and Privileged" (the "Word Documents").<sup>2</sup>

The government thereafter interviewed the FBI Special Agents who conducted Witness-2's interview and learned the following, in sum and substance and in part. The FBI Special Agents who interviewed Witness-2 do not specifically recall viewing or receiving any documents from Witness-2 during the January 26, 2021 interview. Nor do the FBI Special Agents recall discussing and disclosing any documents referenced or provided by Witness-2 with members of the United States Attorney's Office, other than the materials on the two hard drives provided by Witness-2 on February 25, 2021. However, based on an initial review of his/her emails, which included an email from approximately five days after the interview containing a bullet point list of information in a section associated with Witness-2, one of the interviewing Special Agents informed the government that he/she believes it is likely that he/she viewed or possessed a copy of the Word Documents in January 2021.

### III. Conclusion

The government provides the aforementioned information to supplement the record in connection with the pending Petition and Motion. The government further respectfully submits that its positions as to the Petition and Motion remain unchanged. In particular, the Court should not order the government to return or destroy the Document and Word Documents during the pendency of litigation regarding such materials in the above-captioned criminal case, which are in the custody of the Privilege Review Team. Furthermore, the defendants' Motion should be denied because well-established case law provides that the defendants lack standing to

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<sup>2</sup> The Word Documents were not sent to the United States Attorney's Office until they were provided to a member of the Privilege Review Team in September 2024. No member of the prosecution team at the United States Attorney's Office has opened or accessed the Word Documents. The Privilege Review Team has indicated that is not readily apparent on the face of the documents provided by Witness-2 that they constitute privileged materials and will address the privileged status of those documents under separate cover.

assert a privilege over the Document and Word Documents held exclusively by OneTaste and, even assuming the Document and Word Documents are privileged—which the government disputes—the proper remedy is exclusion of the Document and Word Documents at the upcoming jury trial, not dismissal of the indictment.

Respectfully submitted,

BREON PEACE  
United States Attorney

By: /s/  
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cc: Clerk of Court (DG) (via ECF and Email)  
Counsel for Cherwitz and Daedone (via ECF and Email)  
Counsel for OneTaste, Inc. (via Email)



**U.S. Department of Justice**

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Criminal Docket No. 23-146 (DG)

In re Petition of OneTaste, Inc.,  
Miscellaneous Docket No. 24-2518 (DG)

Dear Judge Gujarati:

Attached are Exhibits A and B to In re Petition of OneTaste, Inc., 24-MC-2518 (DG) (ECF Dkt. No. 8), and United States v. Cherwitz et al., 23-CR-146 (DG) (ECF Dkt. No. 154), which were inadvertently omitted from those filings.

Respectfully submitted,

BREON PEACE  
United States Attorney

By: /s/  
Gillian Kassner  
Kayla Bensing  
Devon Lash  
Sean Fern  
Assistant U.S. Attorneys  
(718) 254-7000

cc: Clerk of Court (DG) (via ECF and Email)  
Counsel for Cherwitz and Daedone (via ECF and Email)  
Counsel for OneTaste, Inc. (via Email)

# EXHIBIT A

## FEDERAL BUREAU OF INVESTIGATION

Date of entry 02/11/2021

On January 26, 2021, [REDACTED], date of birth [REDACTED], telephone number [REDACTED], e-mail address [REDACTED], residence address [REDACTED], was interviewed at his residence by Federal Bureau of Investigation Special Agent Elliot McGinnis and SA Colleen Sheehan. After being informed of the identities of the interviewing Agents and the nature of the interview, [REDACTED] provided the following:

In 2013, [REDACTED] was introduced to the company called ONETASTE (OT). OT was described as a company specializing in Orgasmic Meditation (OM). [REDACTED] was referred to OT by several friends whom he met in the Burning Man community. [REDACTED] was interested in OT because he wanted to belong to a sexual community. Initially, the OT community kept [REDACTED] feeling connected.

[REDACTED]

[REDACTED]

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Investigation on 01/26/2021 at San Francisco, California, United States (In Person)

File # 50E-NY-2954840

Date drafted 02/03/2021

by MCGINNIS ELLIOT C, SHEEHAN COLLEEN

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50E-NY-2954840

(U) Interview of [REDACTED] on [REDACTED]

Continuation of FD-302 of 1/26/2021 [REDACTED], On 01/26/2021, Page 2 of 3

For the last year of [REDACTED] time at ONETASTE, [REDACTED] was employed as an IT contractor for OT. OT paid [REDACTED] \$70.00 an hour. [REDACTED]

Around the time [REDACTED] was leaving OT, [REDACTED] still had access to OT's online storage. [REDACTED] downloaded a number of documents to include the following: logs of sales calls; 45 minute long video of DAEDONE being stroked; many videos of OT classes including intensives, fear inventories

50E-NY-2954840

(U) Interview of [REDACTED] on

Continuation of FD-302 of 1/26/2021, On 01/26/2021, Page 3 of 3

for YIA VANG and JOANNA VAN VLECK; and a document which appeared to outline various derogatory acts at OT. [REDACTED] believed the document outlining various derogatory acts was authored by VANG since it originated from VANG's laptop. The sales calls [REDACTED] reviewed did not contain references to having sex for sales. The above documents were downloaded by [REDACTED] from OT's cloud services provided by Nozy. [REDACTED] also downloaded a number of documents from OT cloud services. [REDACTED] and [REDACTED] are still friendly. [REDACTED] will provide Agents with all the documents and videos he has in his possession. The above records should fit on a 2TB hard drive.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

# EXHIBIT B

1/26/20

[REDACTED]

IN CONTRACTOR - TO AN HOUR NOT PAID MORE  
LAST YEAR WORKED AT OT.

2013 - INTRO TO OM - REFUSED TO BY PRODUCTS  
OF BURMEER MFG / RETURN TO BE PART OF  
SOMONE COMMUNITY

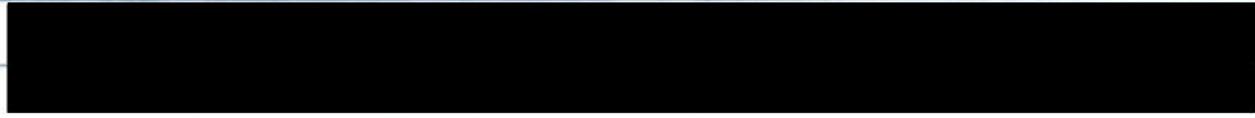
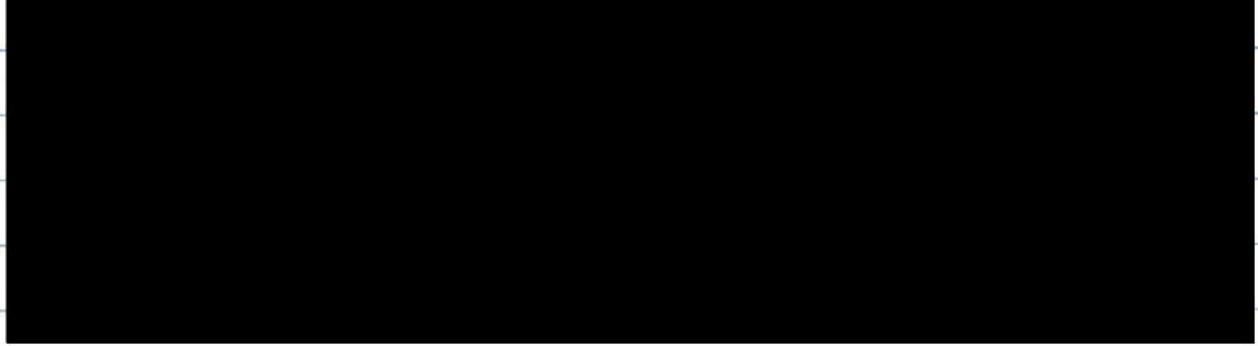
[REDACTED]



Has lots of zeros calls

DOES - no performance TV set and on for

zeros



2 TB - stored for yet, teams for summary

Out of the word -

ATTORNEY, client privately - last our all the  
BAN STUFF WITH AND DADS

LAPTOP - DOCUMENT STORED ON YIA VAME

MOZY - CLOUD SOURCES

ALSO ODD IT - STELLA

PREVIOUS

