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February 17, 2025

VIA ELECTRONIC FILING

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

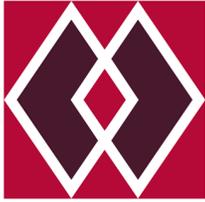
Re: *U.S. v. Cherwitz, et al.*, No. 23-cr-146 (DG)

Dear Judge Gujarati:

Defendant files this letter respectfully asking this Court to issue a ruling as to unresolved issues raised in Defendants' letter motion filed on December 30, 2024 [Dkt. No. 242] As this Court is aware, Defendants filed a letter on December 2, 2024, seeking various forms of relief related to the Ayries Blanck journals evidence. [Dkt. No. 214] Undersigned counsel withdrew the letter filed on December 2, 2024, without prejudice, based on representations from the government that disputes related to Blanck's journals could be resolved with a face-to-face meeting and a visit to the FBI to look at certain evidence.

After the parties met and conferred with no resolution of the issues, undersigned counsel filed a second letter on December 30, 2024. [Dkt. No. 242] The government filed a responsive letter on December 31, 2024. [Dkt. No. 246] Prior to a ruling by this Court, conflict of interest issues developed with Ms. Cherwitz's prior attorneys which ultimately delayed resolution of Defendants' letter requests filed at Dkt. No. 242. At a hearing on January 7, 2025, this Court stated the following:

Turning to the remaining requests for relief by defendants, which appear largely to involve Ms. Blanck and her journals, although not exclusively. I again, am not going to be ruling today because I need a clear item by item articulation of the relief defendants are seeking by way of various filings, to the extent that I've not already addressed the relief sought. And when I say item by item, I need a description, I need to know the timing of when you may have requested certain materials or may have received materials that you believe are not sufficient. I also need to know, of course, the basis, and, you know, if there's a government response, if you made requests and the government has said no. Again, I would be taking all of that up today but I think in light of the submissions I'm going to be getting



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this evening, that that's not the better course now, unless anyone wants to be heard on any of this. [Ex. A – Hrg. Trans. 1-7-25]

Defendant Daedone now seeks a ruling in connection with her motion for an immediate evidentiary hearing to determine whether the Ayries Blanck journals are fabricated and whether this Court must bar Blanck's trial testimony in its entirety. To the extent a hearing demonstrates government misconduct or that Defendants' indictment is premised on fabricated evidence, dismissal is the appropriate remedy. That the government has now represented that it will not use the journals in its case in chief does not resolve the issues raised by this letter.

Defendant has no intention of abandoning, waiving, or forfeiting the requests for relief raised in her December 30, 2024, letter and respectfully asks this Court to rule on the issues. She is entitled to an appealable order on the question of whether Blanck's journals are fabricated and whether the government knows/knew it. To be clear, this Court has *not* ruled on Defendants' request to bar Blanck's testimony which is necessary now that the government has conceded that the type-written journals were created and edited in 2022-2023, and where the evidence shows that the handwritten entries were fabricated *after* the type-written versions were created – not the other way around.

A. The Ayries Blanck Journals Identified on the Government's Exhibit List Are Fabricated.

Defendant Daedone adopts her letters filed at Dkt. Nos. 214, 242 which sets out in detail the pertinent factual history with supporting exhibits. In September 2023, the government produced the Blanck type-written journals that on their face purport to be written in 2015, contemporaneous with Blanck's departure from OneTaste. At no point did the government disclose that the type-written journals were not the original writings. In fact, the government represented to defense counsel that the type-written journals were authored when they were dated in 2015. This was false.

As previously set out, the defense repeatedly asked the government to confirm and disclose meta-data (or any other evidence) supporting its contention that the type-written journals were created in 2015. Even then, the government did *not* indicate that the original writings were handwritten or that handwritten journals existed. Instead, it provided a misleading screenshot showing of meta-data that showed only that the type-written journals came into the possession of the FBI on March 9, 2023. The information shared by the government did not answer the salient question of when the type-written journals were *created*. Although it is unclear when the US attorneys learned of the



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existence of the handwritten journals, Blanck later claimed that she told FBI agent McGinnis about the handwritten journals as early as 2018.

On July 30, 2024, the government produced the Blanck handwritten journals for the first time without explanation for the delay and without disclosing whether they were the original writings or what their relationship was to the type-written versions. After several unfruitful conversations, on September 23, 2024, the defense sent the government a detailed letter asking for specific disclosures related to the journals. [Ex. H to Dkt. No. 242]. Just by way of example, defense counsel requested, “any information you have developed regarding when the handwritten journals were prepared and when the type-written excerpts were first created, and any edits made to those excerpts by whom and when.” The government responded by stating that it had no obligation to produce the requested material. Defendants did literally everything conceivable (including seeking court intervention) to get answers to these questions which, as we now know, called for the disclosure of highly exculpatory material.

Only after the defense filed another letter on December 2, 2024, revealing compelling evidence of fabrication (that the defense uncovered) were the US attorneys forced to address the veracity of the evidence that they had previously identified on their exhibit list. Two days after defense counsel filed their December 2, 2024 letter, the government interviewed Ms. Blanck again. Her story went like this:

Ayries claimed that she “thought” she had sent her unedited journals to Agent McGinnis and “did not remember the details specifically about the different ways she sent the journals.” Ayries claimed that her handwritten journals were her original writings and that when she “finished” a journal she gave it to her younger sister Autymn for storage. Ayries admitted that she colluded with her sister and Sarah Gibson (the Netflix film maker) to have Autymn participate in the movie about OneTaste so that Ayries would not violate her settlement agreement with OneTaste. According to Ayries, in 2022, Autymn “typed out” portions of Ayries’ journals on a google document (for Netflix) copying them from the handwritten versions. Ayries claimed that she would sometimes get on the google document (through her sister’s account even though she had her own access to the document) to make edits to the typed versions for clarity. According to Ayries “she knew the journals were going to be put into the public sphere and she did not want to be misrepresented or misunderstood.”



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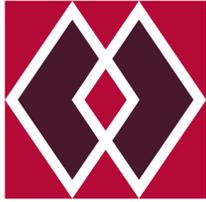
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The government purposefully did not ask Ayries obvious questions about the veracity of her story. That is, if Ayries' sister Autymn transcribed her 2015 handwritten journal entries into a google document on May 4, 2022 [Ex. K to Dkt. No. 242] why doesn't the google document match, or remotely resemble, the handwritten entry? The government also did not ask why the final, highly edited version of the same google document sent to agent McGinnis on March, 9, 2023 *does* match the 2015 handwritten journal. The government also did not ask why the type-written journals were *still* being edited after the Netflix movie aired or what the purpose would have been to further edit the entries prior to sending them to the FBI.

The government had no choice but to concede that the type-written journals sent to agent McGinnis were edited and were not original writings (as the defense suspected all along). Never mind that the government brazenly misrepresented for over a year that the type-written journals were authored in 2015. The government still refuses to concede the obvious, namely that the handwritten entry was written after the final edited version not the other way around.

After new counsel for Ms. Cherwitz filed an appearance in this case, the assigned AUSAs and all defense counsel had a meet and confer discussing, *inter alia*, the question of the fabricated handwritten journals. After that meet and confer, the government represented that it would not introduce any of Ms. Blanck's journals in its case and chief but reserved the right to rehabilitate with the journals or use the journals in rebuttal. As discussed in a letter filed by Ms. Cherwitz's counsel on January 31, 2025 [Dkt. No. 267], the government's representation that it will not rely on the journals in its case in chief does *not* take this issue out of dispute.

Defendants' counsel inspected the handwritten journals at the FBI offices on February 11, 2025. Not surprisingly, a physical review of the handwritten journals bolsters the existing evidence showing fabrication. For starters, the entries are at the end of a journal book rather than somewhere in the middle. After all, it would be impossible to add pages to the middle of an old journal while it is easy to add a false entry at the end of a journal book that has unused pages. The fabricated entries are markedly different in style, convention, and handwriting from Ayries' authentic journal entries. For example, Ayries does not typically use dates when she journals. In contrast, the fake entries are all neatly (and conveniently) dated. Ayries typically writes in pen and routinely crosses out or scribbles over her mistakes. The fakes entries are written in pencil and show that changes or corrections were made by erasing. Ayries' normal style of journaling is a stream of consciousness narrative, filled with half-thoughts, non-sequiturs, and incomplete sentences. The fake entries are written in story-like prose with complete



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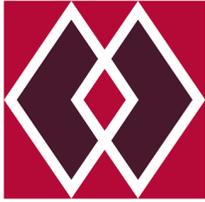
sentences and a well-organized narrative. Visually her style of writing is messy and at times difficult to read. The fake entries are neat and purposeful. In short, the body of evidence that has been amassed and will be presented at an evidentiary hearing leads to the inescapable conclusion that the Blanck journals identified on the government's exhibit list and referenced repeatedly in its Motions *In Limine* were fabricated in 2023.

B. This Court Must Conduct an Evidentiary Hearing to Determine Whether Ms. Blanck's Testimony Should be Barred.

The United States Supreme Court has held that “the deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice.” *Mooney v. Holohan*, 294 U.S. 103, 112 (1935). *See also, Giglio v. United States*, 405 U.S. 150 (1972); *Napue v. Illinois*, 350 U.S. 264, 269 (1959). As with the knowing use of false evidence, the Fourteenth amendment prohibits the government, “although not soliciting false evidence,” from allowing it “to go uncorrected when it appears.” *Id.* This prohibition applies even when the alleged false testimony relates only to a witness's credibility. *Id.*

At an initial matter, the government has reserved the right to use the journals even if not in their case in chief. The government must establish the authenticity of these journals if it intends to use them for *any* reason. Fed. R. Evid. 901. The government cannot rely on evidence it knows to be false to establish that the journals are what they purport to be. On the other hand, the defense will be able to demonstrate that the journals are fabricated and were not contemporaneous writings made in the days following her departure from OneTaste. It hardly makes sense to wait for a trial (and an inevitable mistrial) for the truth about these journals to be revealed.

Even if the government does not use the journals for *any* purpose, Ms. Blanck's testimony should be precluded, because her prior statements to the government reveal that she is poised to give false testimony to the jury, even if that false testimony comes by way of cross examination. Even if the government agrees not to introduce Blanck's journals, Blanck will be crossed extensively about: (1) fabricating the journals to corroborate her false testimony; (2) her motive to fabricate evidence for use in a Netflix movie; (3) her reason for continuing to edit her typed-written journals after the movie aired but before sending them to the FBI; (4) whether the FBI agent acted in concert with developing this fabricated evidence; and (5) her *many* contradictory under oath statements about when and how these journals came into existence.



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Notably, Ayries will have no choice but to either lie or give truthful testimony that could expose to her criminal federal and/or state charges. Indeed, Ms. Blanck will invariably require the appointment of counsel when she takes the stand, because she faces a perjury trap having knowingly made false statements both at her civil deposition, and to the government. That the US attorneys are happy to turn a blind eye to the fact that she knowingly lied to them, does not change that Blanck has criminal exposure that this Court will be forced to address at a hearing and/or at a trial, particularly since the government will have an obligation to correct her false testimony. Blanck should be apprised of her exposure to charges under 18 U.S.C. §1001 and/or perjury charges in federal court or in state court.

At bottom, the question of the authenticity of the journals is not mooted out by the government's representation that it will not use them. An evidentiary hearing must be conducted so that this Court can made a factual finding about the authenticity of the journals. If this Court finds the journals were fabricated long after 2015, it must decide whether to bar Blanck's testimony altogether. A showing that the government, and specifically agent McGinnis was complicit in the creation of this false evidence would not only warrant dismissal of this indictment but a referral the Department of Justice for a criminal investigation. None of these issues can be appropriately decided without an evidentiary hearing.

Respectfully Submitted,

/s/JENNIFER BONJEAN

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