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*Attorney for Defendant Terri Ann Otani*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII**

UNITED STATES OF AMERICA,

Plaintiff,

v.

KEITH MITSUYOSHI KANESHIRO (1),  
DENNIS KUNIYUKI MITSUNAGA (2),  
TERRI ANN OTANI (3),  
AARON SHUNICHI FUJII (4),  
CHAD MICHAEL MCDONALD (5),  
SHERI JEAN TANAKA (6),

Defendants.

Case No. CR-22-00048-TMB-WRP

**DEFENDANTS SHERI J. TANAKA  
AND TERRI ANN OTANI'S  
RESPONSE IN OPPOSITION TO  
GOVERNMENT'S MOTION IN  
LIMINE NO. 12; EXHIBITS 1 & 2;  
CERTIFICATE OF SERVICE**

Judge: Hon. Timothy M. Burgess

Defendants Sheri Jean Tanaka and Terry Ann Otani hereby oppose the government's Motion *in Limine* No. 12 to Admit Evidence of Sheri Tanaka's Intimidation of Grand Jury Witness ("Motion") [ECF 612]. They oppose the Motion for the same reasons previously set forth in Defendants' Motion *in Limine* No. 12 to Exclude "Other Act" Evidence Related to Grand Jury Proceedings (ECF 344), and in defendants' related Response to Government's Motion *in Limine* No. 5 (ECF 376). The proffered evidence should be excluded because it is remote in time and fails to satisfy the Ninth Circuit's standard for the admissibility of "other act" evidence under Fed. R. Evid. 404(b), pursuant to *United States v. Bailey*, 696 F.3d 794, 799 (9th Cir. 2012). It is also more prejudicial than probative under Fed. R. Evid. 403. *See* argument at ECF 344, PageID.6890-93; ECF 376 at PageID.7297-99, incorporated here by reference.

Defendants further oppose the government's Motion on the ground that the government is deliberately withholding requested discovery directly relevant to the allegations concerning Aurello, which are essential for any meaningful cross-examination of her. Specifically, the government has refused to provide Ms. Tanaka with a copy of the grand jury subpoena that was served on Ms. Aurello, and has refused to provide relevant information concerning how and when the government served Ms. Aurello with that subpoena.

On Friday, March 29, 2024, Ms. Tanaka's counsel woke to discover that at 11:59 PM the previous night prosecutor Andrew Chiang had provided 404(b) notice of the

alleged Aurello incident via email. *See* copy of March 28, 2024 email, attached hereto as Exhibit 1. That email conveyed the letter now attached to the Motion as government's Exhibit 1, which was authored by prosecutor Chiang and which itself enclosed a copy of an FBI 302 report documenting a recent interview with Ms. Aurello. That FBI report, written by FBI Special Agent Robert Nelson, states in relevant part that Ms. Aurello told the FBI the following:

**After AURELLO received her grand jury subpoena, Sheri Tanaka (TANAKA) called her. AURELLO received the call while she was in Los Angeles staying at the apartment of her daughter, Jodee Haugh (HAUGH). TANAKA asked to meet with AURELLO. TANAKA picked AURELLO up outside of HAUGH's apartment. TANAKA picked AURELLO up in some type of sports car.**

(Emphasis added). The FBI report, however, failed to identify the date(s) on which Aurello received her grand jury subpoena, the date and time on which Tanaka allegedly called her, or the date and time when Tanaka allegedly picked up Aurello.

On April 2, 2024 at 8:02 HST, Ms. Tanaka's counsel sent an email to the prosecution team requesting a copy of the Aurello grand jury subpoena, along with information concerning how and when it was served:

I am writing to request that the government IMMEDIATELY produce to the defense a copy of the grand jury subpoena that was served on witness Joann Aurello, and identify (1) the date that the FBI first contacted her about it; and (2) the date it was actually served on her, together with any supporting documents.

Based on the recent 302s of Ms. Aurello, the government intends to elicit testimony that Ms. Tanaka called Ms. Aurello after she was served with her grand jury subpoena. The 302, however, does not state the date of service, or whether there were any contacts between the FBI and Ms. Aurello prior to service. The defense requires this information in order to evaluate Ms. Aurello's recent statements and prepare a response to your anticipated Motion in Limine on this issue.

See April 2, 2024 email from Andrew Cowan to prosecutors Michael Wheat and Joseph Orabona, copying prosecutor Chiang, attached hereto as Exhibit 2. As of the time of this filing, the government has not provided the requested information nor responded in writing to counsel's request.

Available evidence indicates that Ms. Aurello provided a false statement to the FBI in her recent interview when she stated that Ms. Tanaka had contacted her "after she had received her grand jury subpoena"—and that Special Agent Nelson failed to document this false statement in his report. The government appears well-aware of this false statement and conspicuously avoided incorporating it in its Motion. The government instead represents that Ms. Aurello will give different testimony: that Ms. Tanaka called her "after the FBI *notified her* about the upcoming grand jury appearance." (Emphasis added). **According to the government, Ms. Aurello will now testify that Ms. Tanaka called her *before* she received her grand jury subpoena—which is inconsistent with her earlier statement to the FBI that Ms. Tanaka's call occurred *after* she received the subpoena.** See Motion at 2, 5. At a minimum, this inconsistency undermines the reliability of Ms. Aurello's memory; at worst, it suggests that she deliberately misrepresented the sequence of events to the FBI. Either way, any

evidence that tends to establish this inconsistency, as well as the falsity of her first statement, is important impeachment material that must be disclosed to the defense.

The actual date of Ms. Aurello’s grand jury subpoena, the precise timing of its service upon her, and any contacts that she had with the FBI, are critical impeachment materials that the government is required to produce. In *Brady v. Maryland*, 373 U.S. 83, 87 (1963) the Supreme Court held that the Due Process Clause requires the government to disclose upon request “evidence favorable to an accused” where the evidence is “material either to guilt or punishment.” *Giglio v. United States*, 405 U.S. 150 (1972) extended the government's disclosure obligation to impeachment evidence. *Id.* at 154–55. A witness’ prior statements that are both material and inconsistent with anticipated trial testimony are *Brady* material. *United States v. Hanna*, 55 F.3d 1456, 1459 (9th Cir. 1995). Evidence impugning the testimony of a witness critical to the prosecution's case “is especially likely to be material” for *Brady* purposes. *United States v. Sedaghaty*, 728 F.3d 885, 902 (9th Cir. 2013).

The government is aware of Ms. Aurello’s inconsistent statements, but refuses to produce evidence that would help establish that her prior statement was false. It is extremely troubling that the government, instead of candidly acknowledging these inconsistencies and providing all relevant discovery, has chosen instead to stonewall and conceal evidence that would substantiate Aurello’s prior false statement—in blatant violation of its *Brady* and *Giglio* obligations. A fair trial demands that the defense receive this information without further delay. The Court must not permit the

government to conceal this information and thereby insulate its witness from effective cross-examination. Should the government persist in its unlawful refusal to provide this impeachment information, the Court should preclude the government from eliciting any testimony whatsoever from Ms. Aurello.

For these reasons, government's Motion in Limine No. 12 should be denied.

DATED: April 4, 2024

Respectfully submitted,

HOLMES, ATHEY,  
COWAN & MERMELSTEIN LLP

By: /s/ Mark Mermelstein  
MARK MERMELSTEIN

*Attorneys for Defendant*  
*Sheri Jean Tanaka*

LAW OFFICE OF DORIS LUM, LLLC

By: /s/ Doris Lum  
DORIS LUM

*Attorney for Defendant*  
*Terri Ann Otani*

# EXHIBIT 1



Crystal Glendon <crystalglendonlaw@gmail.com>

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**Notice Under FRE 404(b)(3)**

1 message

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**Chiang, Andrew (USACAS)** <Andrew.Chiang@usdoj.gov>

Thu, Mar 28, 2024 at 11:59 PM

To: Birney Bervar <BBB@bervar-jones.com>, John Schum <john@johnschum.com>, "doris@dorislumlaw.com" <doris@dorislumlaw.com>, "andrew@kona-lawyer.com" <andrew@kona-lawyer.com>, "thomas@otakelaw.com" <thomas@otakelaw.com>, "crystalglendonlaw@gmail.com" <crystalglendonlaw@gmail.com>, Mark Mermelstein <mmermelstein@holmestaylor.com>, Andrew Cowan <acowan@holmestaylor.com>, Jessica Szemkow <ja.szemkow@outlook.com>, "marino\_kaplanmarino.com" <Marino@kaplanmarino.com>, "lieser@kaplanmarino.com" <Lieser@kaplanmarino.com>, Ryan Mitsos <Mitsos@kaplanmarino.com>, Samantha Turner <Turner@kaplanmarino.com>  
Cc: "Wheat, Michael (USACAS)" <Michael.Wheat@usdoj.gov>, "Orabona, Joseph (USACAS)" <Joseph.Orabona@usdoj.gov>, "McDonald, Colin (USACAS)" <Colin.McDonald@usdoj.gov>, "Chopra, Janaki (USACAS)" <Janaki.Chopra@usdoj.gov>

Counsel,

Please find attached the United States' notice of intent to introduce additional evidence under FRE 404(b).

Best,



**Andrew Y. Chiang**

Special Attorney

United States Department of  
Justice

Desk: (619) 546-8756

Cell: (619) 909-9129

Email: Andrew.Chiang@usdoj.gov



"" 3.28.24 404(b) Notice Letter.pdf  
845K

# EXHIBIT 2

**From:** Andrew Cowan <[acowan@holmesathey.com](mailto:acowan@holmesathey.com)>

**Sent:** Tuesday, April 2, 2024 11:02 AM

**To:** Wheat, Michael (USACAS) <[Michael.Wheat@usdoj.gov](mailto:Michael.Wheat@usdoj.gov)>; Orabona, Joseph (USACAS) <[Joseph.Orabona@usdoj.gov](mailto:Joseph.Orabona@usdoj.gov)>

**Cc:** Mark Mermelstein <[mmermelstein@holmesathey.com](mailto:mmermelstein@holmesathey.com)>; Chiang, Andrew (USACAS) <[Andrew.Chiang@usdoj.gov](mailto:Andrew.Chiang@usdoj.gov)>; Chopra, Janaki (USACAS) <[Janaki.Chopra@usdoj.gov](mailto:Janaki.Chopra@usdoj.gov)>

**Subject:** Urgent Discovery Request

**Importance:** High

Mr. Wheat & Mr. Orabona:

I am writing to request that the government IMMEDIATELY produce to the defense a copy of the grand jury subpoena that was served on witness Joann Aurello, and identify (1) the date that the FBI first contacted her about it; and (2) the date it was actually served on her, together with any supporting documents.

Based on the recent 302s of Ms. Aurello, the government intends to elicit testimony that Ms. Tanaka called Ms. Aurello after she was served with her grand jury subpoena. The 302, however, does not state the date of service, or whether there were any contacts between the FBI and Ms. Aurello prior to service. The defense requires this information in order to evaluate Ms. Aurello's recent statements and prepare a response to your anticipated Motion in Limine on this issue.

On a related note, it appears that the government has never produced any of the grand jury subpoenas served on witnesses in this case. We believe that the dates of service may be highly relevant to the testimony of these witnesses. I therefore request that these subpoenas be produced forthwith.

Thank you in advance for your prompt attention to this request.

*Andrew*

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**Andrew S. Cowan**

**Holmes, Athey,**

**Cowan, & Mermelstein LLP**

811 Wilshire Blvd., Suite 1460

Los Angeles, CA 90017

**Direct Dial: 213.516.8055**

***(PLEASE NOTE NEW FIRM NAME & EMAIL)***

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served on the following counsel at their last known addresses by the CM/ECF system on the date indicated below:

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DATED: April 4, 2024

Respectfully submitted,

HOLMES, ATHEY,  
COWAN & MERMELSTEIN LLP

By: /s/ Mark Mermelstein  
MARK MERMELSTEIN

Attorneys for Defendant  
Sheri Jean Tanaka