



U.S. Department of Justice

United States Attorney
Eastern District of New York

KCB/KTF/NCG/SMF
F. #2018R01401

271 Cadman Plaza East
Brooklyn, New York 11201

May 11, 2025

By ECF to the Honorable Diane Gujarati

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

Dear Judge Gujarati:

The government writes (1) to provide an additional case cite in support of the position that it may call a government witness to authenticate documents produced in response to a grand jury subpoena under the “act of production” doctrine, and (2) respond to the Court’s question about where OneTaste attorney Kevin Williams is barred.

As to the first, United States v. Lawrence, 934 F.2d 868 (7th Cir. 1991), provides authority that documents produced in response to a grand jury subpoena may be authenticated by a government witness without the need for testimony of a records custodian from the producing entity. Lawrence in fact went substantially further than what the government has requested here: there, the United States Court of Appeals for the Seventh Circuit affirmed the trial court’s permitting a government witness to testify that documents produced pursuant to a subpoena fulfilled all of the business records criteria under Federal Rule of Evidence 803(6). The government here is merely requesting that a government witness be permitted to authenticate the documents.

As to the second, public records reflect Mr. Williams is licensed to practice law in the state of California.

The Defense Position

Lawrence has no bearing on the issue presented here. That case stands for the proposition that “once a *defendant* voluntarily produces documents and implicitly represents them to be the subpoenaed *corporate records*, he cannot be heard to contend that they are not so.” 934 F.2d at 871 (emphasis added). The defendants did not produce any records here, and the records at issue—text messages from third-party devices—are not corporate records. That is the crux of the authenticity issue, which *Lawrence* does not address. Simply because OneTaste came into possession of third-party documents and then reproduced them to the government does not make them authentic. As the defense has pointed out, the government has proffered no evidence of how those text messages were stored prior to OneTaste’s collection of them, nor who the text messages were collected from. It is the government’s burden under Federal Rule of

