IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	**CASE NO. 23-cr-60170-RNS**
ALEXANDRA ACOSTA,	)	
Defendant.	)	

DEFENDANT'S MOTION IN LIMINE

TO ADMIT HEARSAY AND OTHER EVIDENCE

COMES NOW, the Defendant, ALEXANDRA ACOSTA ("Acosta"), by and through the undersigned attorney, and respectfully motions this Court to permit the admission of 1) hearsay statements made to Acosta by her tax preparer, and 2) evidence that she repaid her PPP loan in full with penalties and interest. In support thereof, Acosta states as follows:

1. Prior to filing the instant motion, the undersigned communicated with AUSA Trevor Jones ("AUSA Jones"), the prosecutor assigned to the instant case, and the parties were unable to resolve this issue and remain in disagreement.

2. Acosta seeks admission of the following items:

i. Hearsay statements made by VILSAINT ST. LOUIS ("St. Louis") to Acosta regarding PPP loans and her PPP loan that she wishes to admit not for the truth of the matter asserted, but to establish her state of mind regarding willfulness, intent, and good faith.

ii. Evidence that Acosta repaid her PPP loan in full with penalties and interest.

RELEVANT FACTS

3. In essence, the government accuses Acosta of PPP loan fraud in the amount of $20,180. Acosta does not deny that a PPP loan application was submitted to the SBA on her behalf nor does she deny that the application contained fraudulent and materially misleading information. She does not deny that the loan was approved and that $20,180 was disbursed to her. She also does not deny spending the $20,180 on non-business related purchases. She does not deny that a PPP loan forgiveness application was submitted to the SBA on her behalf that contained fraudulent and materially misleading statements or that the forgiveness application was later approved. Acosta does not dispute that $20,180 plus interest and penalties are due to the SBA as a result of what happened in this case. In fact, Acosta has already contacted the SBA and has repaid the loan in full plus penalties and interest.

4. However, Acosta strongly denies any knowledge of the fraudulent portions of these applications and denies any participation in the preparation or

submission her loan application or the forgiveness application. Acosta was unaware of the fraud being committed on her behalf.

5. St. Louis is the owner of Victory Taxes, Inc. and prepared Acosta's taxes every tax year between 2014 and 2022. In February 2021, Acosta met with St. Louis at his office to discuss her taxes. During that conversation, St. Louis offered a PPP loan to Acosta. He told her if she has a Form 1099, she could get a PPP loan for approximately $20,000. St. Louis told Acosta the PPP loan goes by income and that $20,000 was the most she could get. He also told Acosta the PPP loan was forgivable. St. Louis explained that the government was giving PPP loans to help the economy recover from Covid-19. St. Louis offered to handle the entire process, just as he always had with Acosta's taxes. Since he already had all of her financial information, St. Louis offered to fill out and submit all the necessary paperwork to obtain the loan.

6. When Acosta asked St. Louis how it was possible for her to qualify for the "Paycheck Protection" loan, because she does not have employees and does not pay any payroll, St. Louis advised Acosta that a borrower may use the funds for other purposes. St. Louis advised Acosta that the loans were intended to help the economy recover from Covid-19.

7. St. Louis also advised Acosta that he would prepare and submit her forgiveness application, which he later did. At the time he prepared and submitted

her forgiveness application, St. Louis made other statements to Acosta conveying that he was preparing and submitting the applications. He also let her know once they were submitted and approved.

8. Acosta denies any knowledge of the fraud or false statements made by St. Louis in her loan applications. She also denies preparing or submitting any application or paperwork. Acosta had no idea that St. Louis was going to lie in her applications to make sure she qualified for the loan. Acosta acted in good faith based on the statements made to her by St. Louis.

Admission of St. Louis Hearsay Statements to Establish Acosta's State of Mind and Good Faith

9. Acosta wishes to admit St. Louis' hearsay statements as described above, **not** for the truth of the matter asserted **but to establish her state of mind** to prove she acted in good faith, was without knowledge, and had no intent to defraud**,** just as a defendant may do when claiming good faith reliance on advice of counsel. Because Acosta will be asking the Court to read the good faith jury instructions to the jury, she needs to admit St. Louis' hearsay statements to establish the basis of her good faith conduct. The government disagrees and objects to the admission of St. Louis' hearsay statements.

Evidence that Acosta Repaid the Loan

10. Acosta wishes to admit **limited evidence** (one or two questions and the admission of one or two documents) that will inform the jury that she repaid the loan in full, plus penalties and interest to the SBA. Acosta does not wish to introduce this evidence as a defense to fraud or to argue for a jury nullification. On the contrary, she wishes to admit this evidence to avoid a question about her **credibility**. This portion of her defense is very brief and limited, albeit essential. While Acosta does not deny that St. Louis committed a fraud on her behalf, Acosta strongly denies any knowledge of or participation in the fraud and states that she acted in good faith based on the hearsay statements St. Louis made to her, such as when he advised her that she qualified for the loan and should therefore apply for it.

11. When this defense is presented to the jury, they will naturally wonder if she kept the money or returned it after learning of St. Louis' fraud. *The jury will naturally wonder if she is telling them one thing while doing another or is her behavior consistent?* A reasonable jury will expect a person in Acosta's position to return the money and would further expect to hear that information during trial. The absence of a clarification will be filled with a negative assumption that impugns her credibility and the believability of her <u>main defense</u>. Thus, evidence limited to one or two questions and one or two documents should be admitted so that Acosta may avoid a question of her credibility and to avoid conferring an unfair advantage on the government.

MEMORANDUM OF LAW

12. In *United States v. Eisenstein*, 731 F.2d 1540 (11th Cir. 1984), the court ruled that hearsay statements made by a co-defendant were "highly relevant" (*id.* at 1543) and admissible to establish an element of the defendant's good faith defense:

> The lawyer's testimony was not offered as proof of the matter asserted -- *i.e.*, that Ghitis and Eisenstein operated a currency exchange -- but as evidence that Ghitis fully disclosed the nature of his business to his attorney. The testimony was admissible to show the attorney's knowledge and to show Ghitis' compliance with the "full disclosure" requirement of his advice of counsel defense.

Id. at 1545

13. In rendering its decision, the court rejected the government's argument that exclusion of the co-defendant's hearsay statement was harmless error. *Id.* at 1546 In fact, it was extremely prejudicial as it undermined the defendant's only defense.

14. Just as the defendants in *Eisenstein* needed to admit hearsay statements to establish an element of their good faith defense, so too Acosta needs to admit the hearsay statements of St. Louis to establish her own good faith defense, such as his statement to her that she qualified for the loan because she had a 1099 in 2019. This statement, for instance, is admissible to establish Acosta's good faith and state of

mind, as opposed to establishing that she actually qualified for the loan. St. Louis' hearsay statements are integral and highly relevant to Acosta's good faith defense.

15. If Acosta is prevented from admitting St. Louis' hearsay statements about the PPP loan, she will be unable to establish her good faith defense because St. Louis' statements are inextricably intertwined with the story of what happened. It will be impossible for Acosta to explain to the jury how and why her conduct was in good faith without first informing them of what St. Louis told her during her conversations with him about the PPP loan.

16. A trial court has great discretion when making evidentiary rulings. *United States v. McLean*, 138 F.3d 1398, 1403 (11th Cir. 1998) ("When an appellant challenges an evidentiary ruling on appeal, we 'will not disturb the [district] court's judgment absent a clear abuse of discretion.'"), *United States v. Green*, No. 22-10785, 2023 U.S. App. LEXIS 8602, at *2 (11th Cir. Apr. 11, 2023)

17. Pursuant to Federal Rule of Evidence 401, evidence is relevant only if "(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." Evidence that falls short of this threshold is irrelevant, and therefore inadmissible. Fed. R. Evid. 402. Both St. Louis statements and Acosta's repayment are relevant to aiding the jury in deciding the facts and rendering a verdict.

WHEREFORE, the Defendant and the undersigned attorney respectfully motion this Court to allow Acosta to admit hearsay statements made by St. Louis about PPP loans and her PPP loan application as well as limited evidence that establishes she repaid the loan with penalties and interest as described above.

Respectfully Submitted,

/s/ *Brian Silber*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this document was served on the following parties via CM/ECF on May 22, 2024.

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