IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA *v.* CARL DELANO TORJAGBO A/K/A KARL LUCIUS DELANO	CRIMINAL CASE NUMBER 1:22-CR-171-MLB-RDC

Notice of Intent to Introduce Self-Authenticating Evidence at Trial

The government hereby gives notice of its intent to introduce self-authenticating evidence at trial.

1. Pursuant to Federal Rules of Evidence 902(11) and 803(6), the government gives notice that it intends to rely upon the attached business record certifications to establish the authenticity of the records described therein.

As part of discovery, the government provided Defendant Carl Delano Torjagbo a/k/a Karl Lucius Delano ("Delano") with records from the following institutions:

- Briskin, Cross & Sanford, LLC;
- O'Kelley & Sorohan;
- JPMorgan Chase Bank, N.A.;
- PNC Bank, N.A.;
- Skywest Airlines;
- Ganek PC;

- Global Imports;
- Land Rover Sacramento;
- Southern Truck Sales, LTD;
- Great American Title Company;
- 821 Trucks & More, LLC;
- Bruckner Truck Sales;
- Kimbrough Law, LLC;
- Penske;
- Truck and Van Outlet;
- Atlanta Autos;
- Bank of America, N.A.; and
- Intuit, Inc.

The government also provided Delano with business record certifications prepared by each institution listed above. Copies of those certifications are attached to this Notice.

Federal Rule of Evidence 902(11) provides that certified domestic business records of a regularly conducted activity are self-authenticating and require no extrinsic evidence of authenticity in order to be admitted if the following conditions are met:

> The original or a copy of a domestic record . . . meets the requirements of Rule 803(6)(A)-(C), as shown by a certification of the custodian or another qualified person. . . . Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record—and must make the record and certification available for inspection—so that the party has a fair opportunity to challenge them.

Fed. R. Evid. 902(11).

The business records exception to the hearsay rule is set forth in Federal Rule of Evidence Rule 803(6), which states that records of a regularly conducted activity are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness, if the following conditions are met:

> (A) the record was made at or near the time by—or from information transmitted by—someone with knowledge;
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> (B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;
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> (C) making the record was a regular practice of that activity;
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> (D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and
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> (E) the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

Fed. R. Evid. 803(6).

The Eleventh Circuit has expressly held that "Rule 902(11) permits a party to authenticate business records with a written declaration of a records custodian or other qualified person" where, as here, the party offering the records into evidence provides notice of its intent to rely on Rule 902(11) and "makes the record[s] and declaration[s] available for inspection sufficiently in advance of [offering the records] into evidence." *United States v. Lezcano*, 296 F. App'x 800, 807-08 (11th Cir. 2008) (rejecting defendant's claim that it was improper to admit business records without a live witness to explain their relevance, and calling defendant's argument to the contrary "meritless"); *see also United States v. Wrubleski*, 707 F. App'x 650, 655 (11th Cir. 2017) (affirming district court's decision to permit government to use Rule 902(11) certifications to authenticate business records).

2. Pursuant to Federal Rules of Evidence 803(8), 902(4), and 1005, the government gives notice that it intends to rely upon the attached certified copies of public records from the Federal Deposit Insurance Corporation to establish that the banks named therein were insured by the FDIC at all times relevant to the Indictment.

Count 1 charges Delano with bank fraud, in violation of 18 U.S.C. § 1344; Counts 4 through 6 charge Delano with concealment money laundering, in violation of 18 U.S.C. § 1956(a)(1)(B)(i); and Counts 7 through 10 charge Delano with transactional money laundering, in violation of 18 U.S.C. § 1957. Per the

Eleventh Circuit's Pattern Jury Instruction on these offenses, it will be important for the Government to be able to show that the banks involved in this case were insured by the Federal Deposit Insurance Corporation ("FDIC"). *See* 11th Cir Pattern Instructions Nos. O52 (listing that "the [defrauded] financial institution was federally insured" as an element of bank fraud), O74.2 (stating that the first element of concealment money laundering can be satisfied where the defendant conducted or tried to conduct "a transaction involving the use of a financial institution that is involved in interstate or foreign commerce, or whose activities affect, interstate or foreign commerce in any way or degree" and that "[t]he phrase 'financial institution' includes [a bank insured by the FDIC]"), O74.6 (stating that for transactional money laundering, the defendant must have knowingly engaged or attempted to engage in a monetary transaction, that "[t]he term 'monetary transaction' means the deposit, withdrawal, transfer, exchange of funds or a monetary instrument by, through, or to a financial institution in a way that affects interstate commerce" and that "[a] 'financial institution' means [a bank insured by the FDIC].").

The government asked the FDIC to provide proof that the following banks were insured by the FDIC for at least the time period of January 1, 2020 to January 1, 2024:

- Bank of America, N.A.;
- Truist Bank;
- JPMorgan Chase Bank, N.A.;
- PNC Bank, N.A.;
- Cadence Bank, N.A.;
- Cadence Bank; and
- First-Citizens Bank & Trust Company.

In response, the FDIC provided the Government with the attached official records, that is, Financial Institution Structure Reports, and Certificates of Insurance (collectively "FDIC Records"), which confirm that each of those banks was an insured depository institution on the dates in question.[1] The FDIC

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[1] Cadence Bank, N.A. merged with and became part of BancorpSouth Bank on October 29, 2021. *See* https://banks.data.fdic.gov/bankfind-suite/bankfind/details/4999?bankfindLevelThreeView=History&branchOffices=true&pageNumber=1&resultLimit=25. BancorpSouth Bank, which has been FDIC insured since January 1, 1934, subsequently changed its name to Cadence Bank. *See* https://banks.data.fdic.gov/bankfind-suite/bankfind/details/11813.

Records are identified as official records of the FDIC and were accompanied by certificates of authenticity provided by a person authorized to make such certifications, which are attached to this notice. The FDIC Records therefore comply with the requirements of Federal Rules of Evidence 803(8), 902(4)(A), and 1005.

The FDIC Records are self-authenticating and require no extrinsic evidence of authenticity to be admitted under Rule 902(4). Moreover, even if this Court were to find that the FDIC Records are not self-authenticating under Rule 902(4), they may be authenticated under Rule 902(5) or admitted on other grounds.

A. Evidence of each bank's insured status is available on the FDIC's website, and records from government websites are self-authenticating and admissible under Federal Rule of Evidence 902(5).

"A book, pamphlet, or other publication purporting to be issued by a public authority" is self-authenticating. Fed. R. Evid. 902(5). "Records from government websites fall within the ambit of Rule 902(5)." *United States v. Venture One Mortg. Corp.*, No. 13-CV-1872 W (JLB), 2016 WL 4768875, at *3 (S.D. Cal. June 10, 2016). The FDIC's website shows the following:

- Bank of America, N.A. has been insured since January 1, 1934. https://banks.data.fdic.gov/bankfind-suite/bankfind/details/3510.

- Truist Bank has been insured since January 1, 1934. https://banks.data.fdic.gov/bankfind-suite/bankfind/details/9846.

- JPMorgan Chase Bank, N.A. has been insured since January 1, 1934. https://banks.data.fdic.gov/bankfind-suite/bankfind/details/628.

- PNC Bank, N.A. has been insured since January 1, 1934. https://banks.data.fdic.gov/bankfind-suite/bankfind/details/6384.

- Cadence Bank has been insured since January 1, 1934. https://banks.data.fdic.gov/bankfind-suite/bankfind/details/11813.[2]

- First-Citizens Bank & Trust Company has been insured since January 1, 1934. https://banks.data.fdic.gov/bankfind-suite/bankfind/details/11063.

This information is self-authenticating under Rule 902(5). *See Venture One*, 2016 WL 4768875, at *3 (holding that "a record from the FDIC website . . . is self-authenticating under Rule 902(5)").

[2] As noted above, Cadence Bank, N.A. merged with and became part of BancorpSouth Bank on October 29, 2021. BancorpSouth Bank, which has been FDIC insured since January 1, 1934, subsequently changed its name to Cadence Bank. Per the FDIC Records, Cadence Bank, N.A. was FDIC insured from January 1, 1934 until October 29, 2021.

B. Under Federal Rule of Evidence 201(2), this Court can take judicial notice that each of the banks in question has been insured by the FDIC since January 1, 1934.

Additionally, the Court may take judicial notice of the facts that each of the relevant banks has been FDIC insured since January 1, 1934, as courts may take judicial notice of "a fact that is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). Accordingly, courts may "take judicial notice of information found on government agency websites." *Pradhan v. Citibank, N.A.*, No. 10-CV-03245-LHK, 2011 WL 90235, at *9 n.11 (N.D. Cal. Jan. 10, 2011).

3. Pursuant to Federal Rule of Evidence 902(1), 902(2), 902(4), and 902(11), the government gives notice that it intends to rely upon Sealed and Certified Public Records and Business Records issued by the Georgia Department of Revenue, Georgia Secretary of State, Texas Secretary of State, Texas Comptroller, and IRS.

Federal Rule of Evidence 902(1) provides that domestic public documents that are sealed and signed are self-authenticating; they require no extrinsic evidence of authenticity to be admitted. That includes any document that bears a seal purporting to be that of any state, or department, agency, or officer of any state. Fed. R. Evid. 902(1)(A). In this case, the Georgia Department of Revenue, Georgia Secretary of State, Georgia Department of Labor,[3] Cobb County Superior Court, Texas Secretary of State, Texas Comptroller, and Department of Treasury Internal Revenue Service (IRS) have provided sealed records that satisfy the requirements of Rule 902(1), copies of which have been provided to Delano. In addition to being sealed public records, these public entities provided certifications that meet the requirements of Rule 902(2), signed and certified public records, Rule 902(4), certified copies of public records, and/or Rule 902(11), certified domestic records of a regularly conducted activity. Copies of these certifications are attached to this Notice.[4] Accordingly, the records provided by the agencies are self-authenticating.

The public records exceptions to the hearsay rule are set forth in Federal Rules of Evidence 803(8) and 803(10). Pursuant to Rule 803(8), "[a] record or statement of a public office" is not hearsay if the record or statement sets forth the office's activities or the record or statement concerns "a matter observed while under legal duty to report." Fed. R. Evid. 803(8)(A). Under Rule 803(10), a

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[3] While the certification from the Georgia Department of Labor is not sealed, it is signed. *See* Fed. R. Evid 902(4).

[4] The Cobb County Superior Court provided certified records, but because there is no separate certification page, these documents will be provided directly to Defendant, rather than filed on the docket.

certified lack of records does not constitute hearsay if the certification verifies that following a diligent search, no records were located, and the "certification is admitted to prove that (i) the record or statement does not exist; or (ii) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind . . . ." Fed. R. Evid. 803(10)(A); *see United States v. Johnson*, 577 F.2d 1304, 1312 (5th Cir. 1978) (confirming that testimony concerning lack of tax records does not constitute hearsay and is admissible). The Georgia Department of Revenue, Georgia Secretary of State, Georgia Department of Labor, Texas Secretary of State, Texas Comptroller, and IRS have provided certifications that they lack certain records; and the Georgia Department of Revenue, Georgia Secretary of State, Cobb County Superior Court, and IRS have also provided certified copies of certain records. The Government has provided copies of these to Delano and plans to rely on them at trial.

Respectfully submitted,

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