UNITED STATES OF AMERICA

Government	✔
Plaintiff	
Defendant	
Joint	
Court	

VS.

Criminal No. 25-cr-76 (JMC)

CORTNEY MERRITTS

EXHIBIT NUMBER	DESCRIPTION OF EXHIBIT	BATES NUMBER	MARKED FOR I.D.	RECEIVED IN EVIDENCE	WITNESS
001	April 2020 EIDL App - Vetted	USAO-002776			
002	EIDL 1 Intake App	USAO-009635			
003	July 2020 EIDL App - Merritts	USAO-002780			
004	EIDL 2 Intake App	USAO-009610			
005	*Intentionally Left Blank*	*Intentionally Left Blank*			
006	*Intentionally Left Blank*	*Intentionally Left Blank*			
007	July 2022 PPP Forgiveness App	USAO-002765			
008	PPP App	USAO-009565			
009	PPP - SBA Confirmation of Forgiveness	USAO-002632			

EXHIBIT NUMBER	DESCRIPTION OF EXHIBIT	BATES NUMBER	MARKED FOR I.D.	RECEIVED IN EVIDENCE	WITNESS
010	PPP - Schedule C	USAO-009554			
011	*Intentionally Left Blank*	*Intentionally Left Blank*			
012	PPP Application - Blank	USAO-010738			
013	Onfido - Application Check	USAO-009556			
014	Onfido - Bank Statement	USAO-009549			
015	*Intentionally Left Blank*	*Intentionally Left Blank*			
016	Onfido - SBA 1149	USAO-009561			
017	*Intentionally Left Blank*	*Intentionally Left Blank*			
018	Onfido - SBA 2484	USAO-009571			
019	Onfido Signature Package - Prestamos_PPP_Loan_Documents	USAO-009574			
020	020_Onfido Signature Package - Prestamos_Proof_of_Funds_Letter	USAO-009585			

EXHIBIT NUMBER	DESCRIPTION OF EXHIBIT	BATES NUMBER	MARKED FOR I.D.	RECEIVED IN EVIDENCE	WITNESS
021	Onfido Signature Package - Prestamos_SBA_Form_147_Note	USAO-009577			
022	Onfido Signature Package - Prestamos_Written_Consent_for_PPP	USAO-009583			
023	Onfido Signature Package - Summary	USAO-009586			
024	Onfido Signature Package- W-9	USAO-009591			
025	Onfido - Photo	USAO-009560			
026	Onfido – Driver's License - Front	USAO-009559			
027	Onfido – Driver's License - Back	USAO-009558			
028	Vetted Production - Text Messages	USAO-005229			
029	Vetted Production - Emails	USAO-005444			
030	2019 Tax Form 1040	USAO-002774			
031	IRS - Vetted Response	USAO-009711			

EXHIBIT NUMBER	DESCRIPTION OF EXHIBIT	BATES NUMBER	MARKED FOR I.D.	RECEIVED IN EVIDENCE	WITNESS
032	IRS - Merritts Response	USAO-009690			
033	IRS - Merritts - Response Documents	USAO-010721			
034	IRS - Vetted Form 3050	USAO-009715			
035	*Intentionally Left Blank*	*Intentionally Left Blank*			
036	Summary Exhibit - NFCU 2019 Activity	USAO-002773			
037	Summary Exhibit - NFCU 2020 Activity	USAO-002792			
038	Summary Exhibit - Merritts Expense Breakdown	USAO-010744			
039	Summary Exhibit - Daily Balance	USAO-010745			
040	Summary Exhibit - Transactions	USAO-010746			
041	Vetted SBA Application	USAO-002520			
042	*Intentionally Left Blank*	*Intentionally Left Blank*			

EXHIBIT NUMBER	DESCRIPTION OF EXHIBIT	BATES NUMBER	MARKED FOR I.D.	RECEIVED IN EVIDENCE	WITNESS
043	Merritts SBA Application	USAO-002508			
044	DocuSign Subpoena Response and Certification	USAO-001744			
045	DocuSign Subpoena Response	USAO-001825			
046	*Intentionally Left Blank*	*Intentionally Left Blank*			
047	DocuSign Subpoena Response	USAO-001811			
048	DocuSign Subpoena Response	USAO-001815			
049	DocuSign Subpoena Response	USAO-001829			
050	DocuSign Subpoena Response	USAO-001751			
051	NFCU Subpoena Response and Declaration	USAO-000893			
052	NFCU Statement	USAO-009549			
053	NFCU Overdraft Notification	USAO-002476			

EXHIBIT NUMBER	DESCRIPTION OF EXHIBIT	BATES NUMBER	MARKED FOR I.D.	RECEIVED IN EVIDENCE	WITNESS
054	NFCU Overdraft Notification	USAO-002479			
055	NFCU Overdraft Notification	USAO-002477			
056	NFCU Past Due Notification	USAO-002475			
057	NFCU Overdraft Notification	USAO-002478			
058	*Intentionally Left Blank*	*Intentionally Left Blank*			
059	Thumbtack Subpoena Response	USAO-002415			
060	Thumbtack Certification	USAO-002416			
061	Yelp Subpoena Response and Certification	USAO-002448			
062	Vetted Movers and Couriers – Yelp	USAO-002532			
063	Vetted Movers and Couriers – Yelp	USAO-002542			
064	Task Rabbit Subpoena Response	USAO-002429			

EXHIBIT NUMBER	DESCRIPTION OF EXHIBIT	BATES NUMBER	MARKED FOR I.D.	RECEIVED IN EVIDENCE	WITNESS
065	Pack & Load Invoice	USAO-002681			
066	Pack & Load Service Provider Application	USAO-002679			
067	Cash App Transactions	USAO-002665			
068	Cash App Transactions	USAO-002666			
069	Cash App Transactions	USAO-002667			
070	Cash App Transactions	USAO-002668			
071	Cash App Transactions	USAO-002669			
072	Cash App Transactions	USAO-002670			
073	Cash App Transactions	USAO-002671			
074	Cash App Transactions	USAO-002672			
075	Cash App Transactions	USAO-002673			

EXHIBIT NUMBER	DESCRIPTION OF EXHIBIT	BATES NUMBER	MARKED FOR I.D.	RECEIVED IN EVIDENCE	WITNESS
076	Cash App Transactions	USAO-002674			
077	Cash App Transactions	USAO-002675			
078	Paul Brown Lofts Payment Receipt	USAO-002482			
079	Paul Brown Lofts Payment Receipt	USAO-002485			
080	Paul Brown Lofts Payment Receipt	USAO-002484			
081	Paul Brown Lofts Payment Receipt	USAO-002492			
082	Paul Brown Lofts Payment Receipt	USAO-002488			
083	Paul Brown Lofts Payment Receipt	USAO-002491			
084	Paul Brown Lofts Payment Receipt	USAO-002490			
085	Paul Brown Lofts Payment Receipt	USAO-002486			
086	Paul Brown Lofts Payment Receipt	USAO-002489			

EXHIBIT NUMBER	DESCRIPTION OF EXHIBIT	BATES NUMBER	MARKED FOR I.D.	RECEIVED IN EVIDENCE	WITNESS
087	Paul Brown Lofts Payment Receipt	USAO-002483			
088	Paul Brown Lofts Payment Receipt	USAO-002487			
089	Paul Brown Lofts Payment Receipt	USAO-002473			
090	Paul Brown Lofts Payment Receipt	USAO-002466			
091	Paul Brown Lofts Payment Receipt	USAO-002461			
092	Paul Brown Lofts Payment Receipt	USAO-002460			
093	Paul Brown Lofts Payment Receipt	USAO-002467			
094	*Intentionally Left Blank*	*Intentionally Left Blank*			
095	Text Message – Paul Brown Lofts	USAO-002480			
096	Text Message – Paul Brown Lofts	USAO-002481			
097	Text Message – Advance Financial	USAO-002501			

EXHIBIT NUMBER	DESCRIPTION OF EXHIBIT	BATES NUMBER	MARKED FOR I.D.	RECEIVED IN EVIDENCE	WITNESS
098	Text Message – Aspen Financial	USAO-002498			
099	Text Message – CashNetUSA	USAO-002499			
100	Text Message – OppLoans	USAO-002496			
101	Text Message – Integra Credit	USAO-002500			
102	Text Message – Aspen Financial	USAO-002495			
103	Text Message – CashNetUSA	USAO-002494			
104	Text Message – CashNetUSA	USAO-002497			
105	Text Message – OppLoans	USAO-002493			
106	Text Messages	USAO-002227			
107	Text Messages	USAO-002221			
108	Text Messages	USAO-002223			

EXHIBIT NUMBER	DESCRIPTION OF EXHIBIT	BATES NUMBER	MARKED FOR I.D.	RECEIVED IN EVIDENCE	WITNESS
109	Text Messages	USAO-002217			
110	Text Messages	USAO-002226			
111	Text Messages	USAO-002191			
112	Text Messages	USAO-002203			
113	Text Messages	USAO-002224			
114	Text Messages	USAO-002210			
115	Text Messages	USAO-002196			
116	Text Messages	USAO-002749			
117	Text Messages	USAO-002750			
118	Text Messages	USAO-002218			
119	Text Messages	USAO-002761			

EXHIBIT NUMBER	DESCRIPTION OF EXHIBIT	BATES NUMBER	MARKED FOR I.D.	RECEIVED IN EVIDENCE	WITNESS
120	Text Messages	USAO-002748			
121	Text Messages	USAO-002759			
122	Text Messages	USAO-002752			
123	Text Messages	USAO-002760			
124	Text Messages	USAO-002757			
125	Text Messages	USAO-002755			
126	Text Messages	USAO-002746			
127	Text Messages	USAO-002199			
128	Text Messages	USAO-002219			
129	Text Messages	USAO-002256			
130	Text Messages	USAO-002260			

EXHIBIT NUMBER	DESCRIPTION OF EXHIBIT	BATES NUMBER	MARKED FOR I.D.	RECEIVED IN EVIDENCE	WITNESS
131	Text Messages	USAO-002261			
132	Text Messages	USAO-002265			
133	Text Messages	USAO-002266			
134	Text Messages	USAO-002204			
135	Text Messages	USAO-002209			
136	Text Messages	USAO-002202			
137	Text Messages	USAO-002206			
138	Text Messages	USAO-002197			
139	*Intentionally Left Blank*	*Intentionally Left Blank*			
140	Text Messages	USAO-002230			
141	Text Messages	USAO-002248			

EXHIBIT NUMBER	DESCRIPTION OF EXHIBIT	BATES NUMBER	MARKED FOR I.D.	RECEIVED IN EVIDENCE	WITNESS
142	Text Messages	USAO-002253			
143	Text Messages	USAO-002742			
144	Text Messages	USAO-002739			
145	Text Messages	USAO-002738			
146	Text Messages	USAO-002736			
147	Text Messages	USAO-002743			
148	Text Messages	USAO-002734			
149	Text Messages	USAO-002740			
150	Text Messages	USAO-002733			
151	Text Messages	USAO-002730			
152	Text Messages	USAO-002194			

EXHIBIT NUMBER	DESCRIPTION OF EXHIBIT	BATES NUMBER	MARKED FOR I.D.	RECEIVED IN EVIDENCE	WITNESS
153	Text Messages	USAO-002207			
154	Text Messages	USAO-002258			

DEFENSE OBJECTIONS TO THE GOVERNMENT'S EXHIBITS
AND GOVERNMENT RESPONSES

Exhibits 31, 32, 34

- Defense objection: These exhibits from the Internal Revenue Service are negative record returns and admission, without sufficient foundation, would violate the Confrontation Clause of the Sixth Amendment.

- Government response: The Government does not intend to admit Exhibits 31 and 32 at trial and will remove these documents from the Exhibit List. The tax-related documents that the Government does intend to introduce are: (1) the Defendant's Form 1040 income tax return filed for tax year 2019, certified as a true copy by the IRS (Exhibit 30), (2) a Form 3050 certification of lack of record showing that the Defendant made no other tax filings in his name during the relevant time period (exhibit to be provided after it is obtained), and (3) a Form 3050 certification of lack of record showing that the Defendant made no tax filings in the name of his moving company (Vetted) during the relevant time period (Exhibit 34).

  The certified copy of the Defendant's Form 1040 income tax return (Exhibit 30) is self-authenticating pursuant to Federal Rule of Evidence 902(4). It does not constitute hearsay because it is not being offered for the truth of the matter asserted. *See* Fed. R. Evid. 801(c). This evidence is being offered for the purpose of establishing that the Defendant's statements about his business's income on his loan applications were fabricated because they differed from the tax return actually filed with the IRS. The tax return is "true" in the sense that it was the return that was filed with the IRS, but there is a distinct and critical difference between the "true returns" and the borrower's "true income." Non-hearsay use of evidence as a means of demonstrating a discrepancy does not implicate the Confrontation Clause. *United States v. Jiminez*, 513 F.3d 62, 79-81 (3d Cir. 2008); *see also United States v. Austin,* 774 F.2d 99, 101–02 (5th Cir.1985) (false tax returns were not hearsay because they were not admitted for the truth of what they asserted).

  The certified tax return is also admissible under exceptions to the hearsay rules including Federal Rules of Evidence 803(6) (business records) and 803(8) (public records) and is self-authenticating pursuant to Federal Rule of Evidence 1005. Such a record is admissible over Confrontation Clause objections, even if it is foreseeable that the document could be used in a later criminal proceeding, because such use is not the primary purpose of the document. *See Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 324 (2009) ("Business and public records are generally admissible absent confrontation not because they qualify under an exception to the hearsay rules, but because—having been created for the administration of an entity's affairs and not for the purpose of establishing or proving some fact at trial—they are not testimonial.").

  With respect to the Form 3050 certifications, in 2013, Rule 803(10) was amended in response to *Melendez-Diaz*, in which the Court declared that a testimonial certificate could be admitted if the accused is given advance notice and does not timely demand the presence of the official who prepared the certificate. *Id.* at 325-327. The amendment incorporates, with minor variations, a "notice-and-demand" procedure that was approved by the *Melendez-Diaz* court. *See* Fed. R. Evid. 803(10) advisory committee's note (2013). Pursuant to the revised rule, a certification under Rule 902 that a diligent search failed to disclose a public record, such as the Form 3050 certification described above, is admissible under the exceptions to hearsay provided that the "prosecutor intending to offer a certification provides written notice of that intent at least 14 days before trial," which the Government does by virtue of this response, and "the defendant does not object in writing within 7 days of receiving notice – unless the court sets a different time for the notice or the objection." If the Defendant does not timely stipulate to the admissibility of such records, the Government will call a witness who has performed the requisite searches.

Exhibits 38, 40

- Defense objection: These summaries include accounting and characterizations that imply expert testimony or opinion is involved; the Government has not provided notice of an expert witness pursuant to the court's deadline and therefore they are improper.

- Government response: For the reasons identified in the Government's Motion In Limine to Admit Certain Evidence (ECF No. 23), these exhibits are admissible under Federal Rule of Evidence 1006. Moreover, for the reasons explained in the Government's Opposition (ECF No. 30) to Defendant's Motion in Limine to preclude expert testimony (ECF No. 22), these exhibits in no way implicate or require expert analysis or testimony.

Exhibits 41, 43

- Defense objection: These are unsigned documents purporting to be reports of the previously exhibited applications. Without more foundation, we would object to authentication and possible hearsay.

- Government response: The Government anticipates laying sufficient foundation for these exhibits through its witnesses at the trial. This objection is therefore premature.

Exhibit 51

- Defense objection: This exhibit consists of voluminous bank records for Mr. Merritts. The Government has specific months pulled out as other exhibits, so we are questioning the purpose of this exhibit and do not know yet if we would object.

- Government response: To the extent the defense objects to the introduction of bank statements from irrelevant time periods, for example from 2017 to 2018, the Government can excise those statements from the exhibit. However, the Defendant's bank statements showing his account balances, expenses, and deposits during the relevant time periods are directly relevant to show, *inter alia*, that the income and revenue figures reported in the Defendant's loan applications were false, and that the Defendant had few, if any, expenses related to his purported moving business(es).

Exhibits 53-57

- Defense objection: These are screenshots regarding accounts of Ms. Turner and do not mention Mr. Merritts. We would object on authentication, hearsay, and relevance/403.

- Government response: These records were obtained from Lisa Turner, one of the Government's anticipated witnesses. Ms. Turner and the Defendant were in a romantic relationship and shared an apartment during the relevant time period, including when the two charged fraudulent loan applications were filed. Ms. Turner is expected to testify about, *inter alia*, how much work the Defendant did or did not do during that time in relation to his moving business, and the Defendant's income, general financial situation, and financial constraints, including his ability to pay his share of rent, bills, and other living expenses. These exhibits show that Ms. Turner's bank accounts were regularly overdrawn at least in part as a result of her having to pay rent for the apartment she shared with the Defendant. They are therefore relevant.

  As to the Defendant's other objections, Ms. Turner can authenticate these records herself. The Government does not expect to introduce these records for the truth of the matter asserted, but they may be needed for other non-hearsay purposes, such as to either refresh Ms. Turner's recollection or for impeachment.

Exhibits 67-77

- Defense objection: These are screenshots regarding payments from Ms. Turner to Mr. Merritts. We would object on authentication, hearsay, and relevance/403.

- Government response: These records were also obtained from Ms. Turner who can authenticate them. They are relevant for the reasons stated above, to the extent they demonstrate the Defendant's general financial condition during the relevant time period. The Government does not expect to introduce these records for the truth of the matter asserted, but they may be needed for other non-hearsay purposes, such as to either refresh Ms. Turner's recollection or for impeachment.

Exhibits 78-93

- Defense objection: These are screenshots of Ms. Turner paying the rent for her apartment. We would object on authentication, hearsay, and relevance/403.

- Government response: These records were also obtained from Ms. Turner who can authenticate them. They are relevant for the reasons stated above, to the extent they demonstrate that Ms. Turner was paying the rent for the apartment she shared with the Defendant. The Government does not expect to introduce these records for the truth of the matter asserted, but they may be needed for other non-hearsay purposes, such as to either refresh Ms. Turner's recollection or for impeachment.

Exhibits 95-105

- Defense objection: These are screenshots regarding the financial situation and accounts of Ms. Turner. We would object on authentication, hearsay, and relevance/403.

- Government response: These records were also obtained from Ms. Turner who can authenticate them. They are relevant for the reasons stated above, insofar as they are probative of Ms. Turner's financial condition during the relevant time period, during which she was in a romantic relationship and cohabitated with the Defendant. The Government does not expect to introduce these records for the truth of the matter asserted, but they may be needed for other non-hearsay purposes, such as to either refresh Ms. Turner's recollection or for impeachment.

Exhibits 106-154

- Defense objection: These are screenshots of text messages/app messages involving unknown people and dates outside the time period of this case. As a blanket, we would object on authentication, hearsay, and relevance/403, but recognize that some messages (if authenticated) do refer to the moving business.

- Government response: These records were also obtained from Ms. Turner who can authenticate them.

  These exhibits primarily consist of communications between Ms. Turner and the Defendant, most of which relate to his moving business and financial condition in 2019 and 2020.[1] They are probative of the lack of accuracy of the information that the Defendant reported on his EIDL and PPP loan applications. The statements by the Defendant are not hearsay because they are statements by a party-opponent and are being offered against him by the Government. Fed R. Evid. 801(d)(2). Ms. Turner's (and occasionally other individuals') portions of those conversations do not constitute hearsay under a plethora of exceptions. First, in many instances, they do not constitute "statements" under Federal Rule of Evidence 801(a). *See United States v. Moore*, No. CR 18-198 (JEB), 2021 WL 1966570, at *5 (D.D.C. May 17, 2021) ("A statement is an oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion, not a question, command, greeting, or other nonassertive communication where any conveyed messages were merely incidental and not intentional." (citations omitted)). Second, many of them would be offered not for the truth of the matter asserted but rather to provide important context to understand the Defendant's statements, or to show the effect of the Defendant's statements on Ms. Turner (*i.e.*, effect on the listener). *See United States v. Safavian*, 435 F. Supp. 2d 36, 45 (D.D.C. 2006) (statements are not hearsay if they "go to the defendant's intent,

[1]At the very least, the following exhibits consist of text message exchanges involving the Defendant and Ms. Turner or another individual: 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 118, 119, 120, 121, 123, 124, 125, 126, 128, 129, 130, 131, 132, 133, 134, 135, 137, 138, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, and 154.

motive, or state of mind, help to explain his future conduct, [or] serve to refute any possibility of mistake or misunderstanding”).

Finally, to the extent Ms. Turner’s portions of conversations with the Defendant could be considered hearsay, they are typically admissible under one or more exceptions to the rule against hearsay, including, *inter alia*, Rule 803(1) (because they are statements she made describing contemporaneous events) and 803(3) (because they are statements of her mental and emotional condition).

To the extent this set of exhibits does not involve statements by the Defendant, the Government does not expect to introduce them for the truth of the matter asserted, but they may be needed for other non-hearsay purposes, such as to either refresh Ms. Turner’s recollection or for impeachment.