UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FORIDA

CASE No. 22-20290-CR-BLOOM/OTAZO-REYES

UNITED STATES OF AMERICA

Plaintiff,

v.

ERIC DEAN SHEPPARD,

Defendant.

_______________________________________/

DEFENDANT'S FOURTH AMENDED NOTICE
OF INTENT TO UTILIZE EXPERT TESTIMONY

Defendant, Eric Dean Sheppard, hereby files this Amended Notice of Intent to Utilize Expert Witness Testimony. Pursuant to Rule 16(B) of the Federal Rules of Criminal Procedure, Defendant provides this amended notice that Defendant may call the following expert witness in his case at trial.

The qualifications of the expert witness, Scott Bouchner of Berkowitz Pollack Brant Advisors + CPAs ("BPBA"), are described in his CV, which was provided to counsel for the government via email. An additional copy is also attached to this Notice as **Exhibit A**.

Mr. Bouchner is a partner at BPBA and the Director in Charge of Forensic Advisory Services. His practice areas include bankruptcy, insolvency, litigation support, expert witness testimony, forensic accounting investigations, due diligence investigations, and more.

General Description of Testimony

Mr. Bouchner is expected to testify about the cash flows of HM Management and Development, LLC ("HM Management"), HM-UP Development Alafaya Tails, LLC ("HM UP"), and HM Four, LLC ("HM Four") (collectively, the "**Companies**) for various time periods including May 1, 2020 to December 31, 2021; November 23, 2020 to December 31, 2021; and March 29, 2021 through September 15, 2021 (collectively, the "**Time Periods**"). Mr. Bouchner is expected to testify regarding cash flows in HM Management accounts at: (a) Amerasia Bank (#2063); (b) SunTrust Bank (#7571); and Bank of America (#5176 and #5189). Mr. Bouchner will testify regarding cash flows in HM UP accounts at: (a) Amerasia Bank (#1903); (b) One Florida Bank (#2368); (c) SunTrust Bank (#5973); and Wells Fargo (#5874). Mr. Bouchner is expected to testify regarding cash flows in an HM Four account at SunTrust Bank (#5817). Mr. Bouchner is expected to testify regarding Defendant's account at American Express. Collectively, these accounts are referred to as the "**Accounts**."

Mr. Bouchner is expected to testify regarding sources and uses of funds for the Companies in the Accounts during the Time Periods. Mr. Bouchner is expected to testify regarding use of the Companies and the Accounts to pay personal expenses (as well as the tax and bookkeeping treatment of those expenses) during the Time Periods, as well as payment of personal expenses historically, back to as early as 2014.

Opinions

Mr. Bouchner's opinions include:

(1) That the Companies collectively paid more for workers, mortgage interest, utilities, insurance, and other business expenses than they received in government loans, during the Time Periods.

(2) That there were sufficient non-government loan funds in the Accounts to cover personal expenses during the Time Periods.

(3) That the Companies historically paid Defendant's personal expenses, as far back as 2014.

(4) Personal expenses paid by the Companies during the Time Periods were of the type, nature, and amount that had historically been paid by the Companies in the years preceding the government loans.

(5) That money is fungible and the determination of how the government funds were used during the Time Periods requires a broad analysis of the Companies and the Accounts, rather than a narrow, account-by-account compilation of information.

(6) Mr. Bouchner may also testify regarding other payments made to the Companies, payments made by the Companies, or the cash flows related to other companies owned by Defendant, if necessary given witness testimony at trial and the government's presentation of its case in chief. In that event, Defendant will endeavor to update this disclosure. For example, if a government witness disputes how much he or she was paid the Companies, Mr. Bouchner may be called upon to rebut that. As another example, if there is a dispute regarding the amount tenant

Basis for Opinions

Mr. Bouchner's opinions and anticipated testimony are based on facts and data reasonably relied upon by forensic accountant experts.

Mr. Bouchner's testimony will draw upon his expertise and experience, which is reasonably relied upon by forensic accountant experts.

Mr. Bouchner is relying on bank and credit card documents produced by the Government, QuickBooks records kept as business records by the Companies, QuickBooks maintained in Cupersmith's files and produced by the Government, project reports for the Orlando shopping center kept as business records by the Companies, and American Express credit card statements reconciled by the Companies and maintained as business records. Mr. Bouchner is relying on documents produced to the government by Burlington Coat Factory. All the foregoing documents have been produced *to* the Government or were produced *by* the Government, and all these types of documents are reasonably relied upon by a forensic accountant expert.

As part of the forensic work performed by Mr. Bouchner, his firm created a transactional database of banking activity for the Companies based on data extracted from above-referenced bank and credit card statements from January 2019 through December 2021. To supplement this data, Mr. Bouchner incorporated additional information obtained from above-referenced HM Management and HM Up general ledgers. This included names of payees, account categories, memo items, which in some cases described the nature of the transaction, and the Companies' internal accounting treatment for each transaction. These business records are of the type reasonably relied upon by a forensic accountant expert.

Mr. Bouchner also reviewed the above-referenced a) notations made on bank and credit card statements that were made contemporaneously, identifying whether various purchases were business related or personal in nature, b) reports and documents prepared and sent to Mr. Sheppard by the Burlington project manager, who Mr. Sheppard entrusted to manage the build-out of the Burlington building on the Alafaya Trails property, and c) other documents pertaining to certain cash expenditures. These business records are of the type reasonably relied upon by a forensic accountant expert.

Mr. Bouchner is also relying on conversations with Mr. Sheppard and Ms. Jeanette Gonzalez. These discussions were primarily held in late August and early September 2023 for the purpose of confirming or clarifying observations made by Mr. Bouchner during his review and analysis of the Companies' business records, including bank statements, general ledgers, project manager reports, and other financial related documents produced. The project manager reports required significant forensic analysis.

Specifically, discussions with Mr. Sheppard were primarily for the purpose of confirming whether certain payments were for a business purpose or were personal in nature. This included both banking transactions as well as credit card activity. Additional information or clarification was necessary because it was not always possible, at times, to discern the nature of the expenditure based solely on the business records. In other cases, because the notations made by Ms. Gonzalez were done contemporaneously, monthly, there were occasional discrepancies as to how a given payee or merchant was characterized over the Time Periods.

In addition to providing additional information or clarification as to the business or personal purpose of each expenditure, Mr. Bouchner also discussed with Mr. Sheppard a lease modification made on the Burlington property in which rent concessions were made by HM UP to Burlington, documents contained in the Burlington project reports, and the substance of the work performed by individuals managed by the project manager at the Alafaya shopping center. Mr. Bouchner had to analyze the lease for purposes of determining business expenses during the Time Periods.

Finally, discussions with Mr. Sheppard also include background regarding the shopping center and general understanding of the business. Mr. Bouchner is not relying on those background discussions for any of his opinions in this case, but makes that disclosure, nonetheless.

Discussions with Ms. Gonzalez were more limited in nature and generally consisted of understanding the universe of information that may have been available for Mr. Bouchner to review, discussing the contemporaneous notations made on the bank and credit card statements and general ledgers, and attempting to obtain business record documentation.

There are no interview notes of these conversations. As the discussions were had, the underlying data and the analysis was updated as necessary. The results of these updates are reflected in the various charts that have been produced to counsel and are attached to this amended disclosure as composite **Exhibit B**.

Charts Prepared by Mr. Bouchner

On November 24, 2023, in an abundance of caution and in good faith, defense counsel produced draft charts prepared by Mr. Bouchner to the government, with the caveat that they were still being reviewed and revised. Defense counsel is also producing additional and revised charts prepared by Mr. Bouchner, attached to this amended disclosure as composite Ex. B, which are also still being reviewed and finalized. If additional charts are prepared or finalized, Defendant will produce and file them.

/s/ *Scott Bouchner*
Scott Bouchner
Berkowitz Pollack Brant Advisors + CPAs

Dated: November 27, 2023.

Respectfully submitted,

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By: /s/ Christopher Cavallo
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 27, 2023, a copy of the foregoing was electronically filed using the Court's CM/ECF system and electronic notice was provided to the Office of the United States Attorney.

By: /s/ Christopher Cavallo
Christopher Cavallo