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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

v.

No. 5:18-CR-00114-JGB
5:21-CR-00170-JGB
5:24-CV-02550-JGB
5:24-CV-02552-JGB

CARL BRADLEY JOHANSSON,
aka "Brad Johnson,"
aka "Carl Johnson,"
aka "C. Brad Johanson,"
aka "Jay Johnson,"
aka "Keith Golatta,"

Defendant/Petitioner.

GOVERNMENT'S EX PARTE APPLICATION
FOR COURT ORDER (1) AUTHORIZING
DISCLOSURE OF CERTAIN ATTORNEY-
CLIENT COMMUNICATIONS, (2)
ESTABLISHING PROCEDURES FOR
OBTAINING SUCH ATTORNEY-CLIENT
COMMUNICATIONS, AND (3)
IMPLEMENTING PROTECTIVE ORDER FOR
SUCH OBTAINED COMMUNICATIONS

[Proposed] Order file concurrently
herewith

Plaintiff/Respondent United States of America, by and through
its counsel of record, the Acting United States Attorney for the
Central District of California and Assistant United States Attorney
Matthew O'Brien, hereby applies ex parte for an order from this Court
(1) declaring that defendant/petitioner CARL BRADLEY JOHANSSON, also
known as "Brad Johnson," "Carl Johnson," "C. Brad Johanson," "Jay
Johnson," and "Keith Golatta" ("defendant"), has waived his attorney-

1 client privilege with respect to all communications between him and
2 his attorneys Mark Werksman, Edward Robinson, and Rachel Robinson,
3 concerning the events and facts involved in defendant's guilty pleas,
4 sentencing, and appeal in United States v. National Distribution
5 Services, Inc., et al., 5:18-CR-00114(B)-JGB, and United States v.
6 Western Distribution, LLC, et al., 5:21-CR-00170-JGB (collectively,
7 the "Related Cases"); (2) establishing procedures for the government
8 to obtain such attorney-client communications; and (3) implementing a
9 protective order under which information disclosed by defendant's
10 prior attorneys pursuant to the disclosure order will be kept
11 confidential, will be filed with the Court under seal, and will be
12 used only in connection with litigation relating to defendant's
13 ineffective assistance of counsel claims.

14 The government did not contact defendant regarding this ex parte
15 application. Defendant is proceeding pro se. He is currently
16 imprisoned at FCI Lompoc I, where he is serving a 10-year sentence.
17 According to the Bureau of Prisons, defendant's projected release
18 date is August 9, 2029.

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1 This application is based upon the attached memorandum of points
2 and authorities, all files and records in the case, and upon such
3 further evidence or argument as may be requested by the Court.

4 Dated: March 10, 2025

Respectfully submitted,

5 JOSEPH T. MCNALLY
6 Acting United States Attorney

7 LINDSEY GREER DOTSON
8 Assistant United States Attorney
9 Chief, Criminal Division

10 /s/
MATTHEW O'BRIEN
Assistant United States Attorney

11 Attorneys for Plaintiff/Respondent
12 UNITED STATES OF AMERICA
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TABLE OF CONTENTS

<u>DESCRIPTION</u>	<u>PAGE</u>
I. PROCEDURAL BACKGROUND.....	1
II. DEFENDANT HAS WAIVED THE ATTORNEY-CLIENT PRIVILEGE..... Error! Bookmark not defined.	
III. THE GOVERNMENT'S PROPOSED ORDER STRIKES AN EFFECTIVE BALANCE BETWEEN PROTECTING DEFENDANT'S ATTORNEY-CLIENT PRIVILEGE AND ALLOWING THE FAIR RESOLUTION OF THE SECTION 2255 MOTION.....	4
IV. CONCLUSION.....	7

TABLE OF AUTHORITIES

<u>DESCRIPTION</u>	<u>PAGE</u>
<u>Bittaker v. Woodford</u> , 331 F.3d 715 (9th Cir. 2003)	3, 5
<u>Hendricks v. Vasquez</u> , 974 F.2d 1099 (9th Cir. 1992)	3
<u>Tasby v. United States</u> , 504 F.2d 332 (8th Cir. 1974)	4
<u>United States v. Leoni</u> , 326 F.3d 1111 (9th Cir. 2003)	3
<u>United States v. Sanchez-Cervantes</u> , 282 F.3d 664 (9th Cir. 2002)	3
<u>Wharton v. Calderon</u> , 127 F.3d 1201 (9th Cir. 1997)	4

MEMORANDUM OF POINTS AND AUTHORITIES

I. PROCEDURAL BACKGROUND

On September 29, 2021, defendant/petitioner CARL BRADLEY JOHANSSON, also known as "Brad Johnson," "Carl Johnson," "C. Brad Johanson," "Jay Johnson," and "Keith Golatta" ("defendant"), pled guilty to (1) counts one, two, and four of the second superseding indictment in United States v. National Distribution Services, Inc., et al., ED CR No. 5:18-00114(B)-VAP ("the 2018 Case"), which charged defendant with Conspiracy, in violation of 18 U.S.C. § 371, Welding Without Required Certifications, in violation of 49 U.S.C. § 5124 and 49 C.F.R. § 180.413(a)(1), and Tax Evasion, in violation of 26 U.S.C. § 7201; and (2) counts one and three of the indictment in United States v. Western Distribution, LLC, et al., ED CR No. 5:21-00170-VAP (the "2021 Case"), which charged defendant with Conspiracy to Commit Bank Fraud/Committed while on Pre-trial Release, in violation of 18 U.S.C. §§ 1349 and 3147, and Bank Fraud/Committed while on Pre-trial Release, in violation of 18 U.S.C. §§ 1344(2) and 3147.

On November 6, 2022, defendant filed a motion to withdraw his guilty pleas (except as to the tax evasion count in the 2018 Case).

On December 5, 2022, the Honorable Virginia A. Phillips, United States District Judge, denied defendant's motion to withdraw his guilty pleas. Judge Phillips sentenced defendant to 120 months in prison.

On May 10, 2023, defendant filed three consolidated appeals challenging Judge Phillips' denial of his motion to withdraw his guilty pleas.

1 On August 18, 2023, the Ninth Circuit dismissed defendant's
2 three consolidated appeals due to the appellate waiver in his
3 consolidated plea agreement.

4 On November 13, 2024, defendant filed his motion to vacate, set
5 aside, or correct his 120-month sentence under 28 U.S.C. § 2255. In
6 the Section 2255 motion, defendant makes the following claims about
7 three of his attorneys in the Related Cases:

- 8 • Defendant claims that Mark Werksman provided ineffective
9 assistance of counsel in 2021 when he allegedly coerced
10 defendant into pleading guilty in the Related Cases (Motion
11 at 16-23);
- 12 • Defendant claims that, in 2022, Edward Robinson provided
13 ineffective assistance of counsel when he allegedly failed to
14 properly advocate for defendant's unsuccessful motion to
15 withdraw his guilty pleas in the Related Cases (id. at 23-
16 52); and
- 17 • Defendant claims that, in 2023, Rachel Robinson provided
18 ineffective assistance of counsel relating to defendant's
19 unsuccessful appeal of Judge Phillips' denial of defendant's
20 motion to withdraw his guilty pleas (id. at 52-59).

21 **II. DEFENDANT HAS WAIVED THE ATTORNEY-CLIENT PRIVILEGE**

22 Defendant has waived the attorney-client privilege with respect
23 to the issues raised in his Section 2255 motion because defendant
24 relies on communications between himself and his attorneys, as well
25 as an examination of his attorneys' efforts, in support of his
26 ineffective assistance of counsel claims. Consequently, the
27 government requests that the Court declare that such a waiver has
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1 occurred and order defendant's three attorneys - Mr. Werksman, Mr.
2 Robinson, and Ms. Robinson - to disclose to the government
3 communications with defendant concerning the events and facts
4 involved in defendant's guilty pleas, sentencing, and appeal.

5 Defendant claims that advice given by his attorneys, and his
6 attorneys' tactical decisions not to pursue certain avenues of
7 investigation or argument, constituted ineffective assistance of
8 counsel. To make out such a claim, defendant must show that his
9 attorneys' actions were deficient, and resulted in subsequent
10 prejudice. Hendricks v. Vasquez, 974 F.2d 1099, 1109 (9th Cir.
11 1992). To demonstrate deficiency, "the defendant must show that
12 counsel's actions were outside the wide range of professionally
13 competent assistance." Id. (internal quotations omitted). A
14 lawyer's tactical decision to pursue (or not pursue) certain avenues
15 generally does not amount to ineffective assistance. See United
16 States v. Leoni, 326 F.3d 1111, 1120-21 (9th Cir. 2003); United
17 States v. Sanchez-Cervantes, 282 F.3d 664, 672 (9th Cir.) ("It is not
18 the role of courts to second-guess attorney's tactical decisions."),
19 cert. denied, 537 U.S. 939 (2002).

20 In his motion, defendant complains about the three attorneys'
21 conduct with respect to his guilty pleas, sentencing, and appeal.
22 Conversations between defendant and his attorneys regarding these
23 claims, and the attorneys' explanation of their strategy, may be
24 probative of whether standards of professional competence have been
25 met. Accordingly, by claiming ineffective assistance of counsel,
26 defendant has waived the attorney-client privilege. See Bittaker v.
27 Woodford, 331 F.3d 715, 716 (9th Cir. 2003) ("It has long been the
28

rule in the federal courts that, where a habeas petition raises a claim of ineffective assistance of counsel, he waives the attorney-client privilege as to all communications with his allegedly ineffective lawyer."), cert. denied, 124 S. Ct. 536 (2003); see also Wharton v. Calderon, 127 F.3d 1201, 1203 (9th Cir. 1997) (defendant waived attorney-client privilege by raising ineffective assistance of counsel claim in a habeas proceeding); Tasby v. United States, 504 F.2d 332, 336 (8th Cir. 1974) (attorney-client privilege waived when defendant, in a Section 2255 proceeding, attacked his attorney's competence in giving legal advice, and ascribed course of action to his attorney that raised specter of incompetence). The rationale for the rule is explained in Tasby:

A client has a privilege to keep his conversations with his attorney confidential, but that privilege is waived when a client attacks his attorney's competence in giving legal advice, puts in issue that advice and ascribes a course of action to his attorney that raises the specter of ineffectiveness or incompetence. . . . Surely a client is not free to make various allegations of misconduct and incompetence while the attorney's lips are sealed by invocation of the attorney-client privilege. Such an incongruous result would be inconsistent with the object and purpose of the attorney-client privilege and a patent perversion of the rule. When a client calls into public question the competence of his attorney, the privilege is waived.

Tasby, 504 F.2d at 336. The same reasoning applies here.

III. THE GOVERNMENT'S PROPOSED ORDER STRIKES AN EFFECTIVE BALANCE BETWEEN PROTECTING DEFENDANT'S ATTORNEY-CLIENT PRIVILEGE AND ALLOWING THE FAIR RESOLUTION OF THE SECTION 2255 MOTION

As the Ninth Circuit explained in Bittaker, the waiver of the attorney-client privilege created by a defendant's claim of ineffective assistance of counsel is not unlimited. Instead, courts must impose a waiver that is "no broader than needed to ensure the

1 fairness of the proceedings before it.” Bittaker, 331 F.3d at 720.
2 In addition, the defendant must have an opportunity to abandon the
3 claim as an alternative to waiver. Id. at 721. Finally, the court
4 imposing the waiver must be able to bind the party receiving the
5 privileged materials to the court’s limitations and conditions. Id.
6 The government’s proposed order satisfies all three of these
7 objectives.

8 Specifically, the government proposes the following procedures
9 for obtaining information regarding attorney-client communications
10 subject to the waiver resulting from defendant’s ineffective
11 assistance of counsel claims:

- 12 • The government will propound interrogatories to Mr. Werksman,
13 Mr. Robinson, and Ms. Robinson (“Defense Counsel”);
- 14 • Defense Counsel will prepare written answers to the
15 interrogatories, or note objections to particular
16 interrogatories;
- 17 • Defense Counsel will provide the interrogatories and their
18 proposed answers to defendant for defendant’s review;
- 19 • Defendant will have an opportunity to note any objections to
20 interrogatories believed to be beyond the scope of the
21 waiver, providing reasons for such objections;
- 22 • The parties will determine whether to litigate any objections
23 to the interrogatories;
- 24 • Defendant will be provided an opportunity to withdraw his
25 ineffective assistance of counsel claims if he does not want
26 her attorneys’ answers to the interrogatories deemed to be

1 within the scope of the waiver to be disclosed to the
2 government;

- 3 • If defendant elects not to withdraw his ineffective
4 assistance of counsel claims, the answers to the
5 interrogatories deemed to be within the scope of the waiver
6 will be provided to the government in declaration form with a
7 certification that the answers are provided by counsel under
8 penalty of perjury; and
- 9 • The disclosure to the government of Defense Counsel's answers
10 to the interrogatories will be subject to a protective order
11 limiting use of the answers to litigation of defendant's
12 ineffective assistance of counsel claims.

13 The government's proposed order also includes protective
14 provisions specifying that: (a) the information disclosed in response
15 to the government's interrogatories will be considered confidential
16 information and, absent further Court order, will not be disclosed by
17 the USAO to any other law enforcement or prosecuting agency except as
18 necessary to assist in the government's litigation of the ineffective
19 assistance of counsel claims presented in defendant's motion; (b) any
20 pleadings referencing the information disclosed in response to the
21 government's interrogatories will be filed under seal; (c) the
22 information disclosed in response to the government's interrogatories
23 will be used by the government only for the purpose of litigating the
24 claims presented in the motion; (d) the government will provide a
25 copy of the Court's order to any individual who is provided access to
26 the information disclosed in response to the government's
27 interrogatories; and (e) the protections of the protective order
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1 shall remain in place even after litigation of defendant's
2 ineffective assistance of counsel claims is completed.

3 These procedures strike an appropriate balance between the
4 interest of the government in responding to defendant's motion and
5 defendant's interest in protecting his attorney-client privilege.

6 **IV. CONCLUSION**

7 Defendant waived the attorney-client privilege by raising claims
8 of ineffective assistance of counsel, which put at issue the nature
9 of his attorneys' advice and the competency of the legal advice he
10 received. The government respectfully requests that the Court order
11 a partial waiver of the attorney-client privilege and compel
12 disclosure by Defense Counsel of all communications with defendant
13 that relate to the ineffective assistance of counsel claims presented
14 in defendant's § 2255 motion, as well as any facts or events relating
15 to those claims.

16
17 Dated: March 10, 2025

Respectfully submitted,

18 JOSEPH T. MCNALLY
19 Acting United States Attorney

20 LINDSEY GREER DOTSON
21 Assistant United States Attorney
Chief, Criminal Division

22 /s/
23 MATTHEW O'BRIEN
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