UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	**Case No. 25-cr-00076-JMC**
	:	
CORTNEY MERRITTS,	:	
	:	
Defendant.	:	

UNITED STATES' OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO PROHIBIT THE GOVERNMENT FROM ATTRIBUTING THE ACT OF PRODUCTION OF CORPORATE RECORDS TO MERRITTS

The United States of America respectfully opposes Defendant Cortney Merritts's (the "Defendant") Motion in Limine to Prohibit the Government from Attributing the Act of Production of Corporate Records to Merritts (ECF No. 21). Such records are properly attributable to the Defendant because they were produced by his company in response to a grand jury subpoena, and because he was a sole proprietor, as a legal matter he could not have produced them in a representative capacity. The United States thus requests that the Court deny the Defendant's Motion to preclude the Government from attributing the documents that Vetted produced. As described further below, counsel provided additional similar documents as potential trial exhibits. The United States requests permission to attribute those documents to him as well.

I. Relevant Procedural Background

On March 12, 2024, the United States served two identical subpoenas for records, on one "Vetted Couriers and Logistics," a sole proprietorship owned by the Defendant (Exhibit A), and the other on the Defendant directly (Exhibit B). At no time did the Government make any representations limiting how it would use or attribute the documents produced or seek immunity to compel any act of production.

On May 10, 2024, counsel for the Defendant responded to both subpoenas. In the cover letter to the production (Exhibit C), counsel stated:

> Finally, out of an abundance of caution, please note that the production of the enclosed documents is deemed an act of Vetted—not any individual custodian. Pursuant to *Braswell v. United States* and its progeny, Vetted—and the individuals through which Vetted acts—expressly assert that no protections under this body of law are being waived. *See Braswell v. United States*, 487 U.S. 99, 118 (1988) ("Because the custodian acts as a representative, the act is deemed one of the corporation and not the individual. Therefore, the Government concedes, as it must, that it may make no evidentiary use of the 'individual act' against the individual").
>
> With respect to the subpoena served on Merritts in his individual capacity, the subpoena purports to require an individual to appear before a federal grand jury and to produce certain broad categories of documents after making a determination of what would be responsive to the requests contained within the subpoena. As such, he respectfully asserts his privilege against self-incrimination and his right to remain silent under the Fifth Amendment to the U.S. Constitution. This includes, but is not limited to, an express assertion of his Fifth Amendment privilege with respect to the act of production. *See, e.g., In re Grand Jury Subpoena Duces Tecum Dated Mar. 25, 2011*, 670 F.3d 1335, 1345 (11th Cir. 2012) (citing *Curcio v. United States*, 354 U.S. 118, 128 (1957) ("The touchstone of whether an act of production is testimonial is whether the government compels the individual to use the contents of his own mind to explicitly or implicitly communicate some statement of fact") (internal quotations omitted). That said, we have not identified any documents to date that would be responsive to the subpoena served on Merritts but not responsive to the subpoena served on Vetted.

The enclosed production consisted of 215 pages of text messages and 93 pages of emails.

The United States' proposed exhibit list for trial includes the entirety of that production as two exhibits (Exhibits 028 and 029). The Defendant has not noted any objection to those exhibits.

In the Defendant's proposed exhibit list for trial, he purports to offer a subset of his production as exhibits (Defense Exhibits G, H, K, L, and N). The Defendant's exhibit list also includes additional text messages (Defense Exhibits A-F, I, M, and O) that were not produced in response to the grand jury subpoena (even though they would have been responsive to the subpoena).[1]

On November 7, 2025, the Defendant filed a Motion in Limine to Prohibit the Government from Attributing the Act of Production of Corporate Records to Merritts (ECF No. 21). Relying on *Braswell v. United States*, 487 U.S. 99 (1988), and its progeny, the Defendant asserts that records were provided by a corporate records custodian who could not resist the subpoena and that attributing the production to the Defendant personally would be a violation of his asserted Fifth Amendment right against self-incrimination.

II. The Defendant's Motion Should be Denied.

As the evidence amply demonstrates that at all relevant times, including when Vetted responded to the grand jury subpoena, Vetted was a sole proprietorship and d/b/a name for the Defendant, not a corporate entity, there is no distinction between Vetted and the Defendant, and the documents that were produced may be attributed to the Defendant.

A. Vetted was a d/b/a Name for the Defendant as a Sole Proprietor.

The only tax return the Government was able to locate for the Defendant or Vetted was an individual Form 1040 for the Defendant for tax year 2019 (Exhibits D1 and D2).[2] When Vetted applied for its first Economic Injury Disaster Loan ("EIDL") on April 3, 2020, the Defendant stated, "Applicant is an individual who operates under a sole proprietorship, with or without employees, or as an independent contractor." (Exhibit E). When the Defendant applied for his second EIDL on July 8, 2020, he repeated that assertion (Exhibit F). When the Defendant applied

[1] This opposition does not concede that any of the defense exhibits are admissible when offered by the Defendant.

[2] As Exhibits D1 and D2 were obtained from the IRS pursuant to an *ex parte* order under 26 U.S.C. § 6103(i)(1) and are confidential by default, the United States is simultaneously filing a motion to file these exhibits under seal, and following that motion with a motion to authorize disclosure pursuant to 26 U.S.C. §§ 6103(i)(4)(A)(i) and (D).

for a Paycheck Protection Program ("PPP") loan on April 22, 2021, he identified himself as the "sole proprietor" of a business (Exhibit G). In the draft 2020 Form 1040 Schedule C the Defendant submitted with his PPP loan application, he identified himself as the "proprietor" of a principal business engaged in "All Other Support Activities for Transportation." (Exhibit H).[3] There are no records in the Missouri Secretary of State for Vetted (Exhibit I). There are no records in the Illinois Department of Employment Security for Vetted (Exhibit J).

During the same time period, and as late as mid-2021, the Defendant used "Vetted" as a d/b/a name. *See, e.g.*, Exhibit K (document provided by the Defendant through counsel in response to the subpoena to Vetted); and Exhibits L1, L2, and L3 (Defense trial exhibits A, G, and O, provided by the Defendant through counsel).

B. <u>There is No Legal Distinction Between the Defendant and Vetted</u>.

As the Defendant is a sole proprietor, and not a custodial representative of a separate entity, his reliance on *Braswell* in his cover letter to the subpoena response and again in his motion is wholly misplaced. As the Court in *Braswell* explicitly states:

> Had petitioner conducted his business as a sole proprietorship, *Doe* would require that he be provided the opportunity to show that his act of production would entail testimonial self-incrimination. But petitioner has operated his business through the corporate form, and we have long recognized that, for purposes of the Fifth Amendment, corporations and other collective entities are treated differently from individuals. This doctrine—known as the collective entity rule—has a lengthy and distinguished pedigree.

Braswell, 487 U.S. at 104 (citing *United States v. Doe*, 465 U.S. 605 (1984)). Contrary to the Defendant's assertions, the Court in *Braswell* expressly finds that, "A sole proprietor does not hold

[3] Exhibit H was obtained from Prestamos Community Development Financial Institution, the lender to whom the Defendant submitted his Paycheck Protection Act loan application. It thus does not fall within the default confidentiality provisions of 26 U.S.C. § 6103 and need not be filed under seal. *See* 26 U.S.C. § 6103(b)(1) (The term "return" means, *inter alia*, "supporting schedules" that are "filed with the Secretary.").

records in a representative capacity." *Id.* at 112 n.5. There is no legal distinction between a sole proprietor and the identity of a sole proprietorship. *See, e.g.*, *United States v. Fox*, 721 F.2d 32, 36 (2d Cir. 1983) (a sole proprietorship has no legal existence apart from its owner). The Defendant understands this, as he has never filed a separate tax return for Vetted as a separate entity. To the contrary, he used a draft Form 1040 Schedule C when he submitted his PPP loan application (the effect of which was to pass his business's profits and losses through to his personal income tax return).

As a sole proprietor, in the cover letter to his production, the Defendant could have asserted a Fifth Amendment act-of-production privilege on behalf of Vetted, as he did for himself personally. *See Bellis v. United States*, 417 U.S. 85, 87–88 (1974) (holding that the privilege against compulsory self-incrimination protects the records of a sole proprietor but not the records of a collective entity); *United States v. Doe*, 465 U.S. 605 (1984) (holding that government cannot compel a sole proprietor to produce documents unless it provides a grant of use immunity, which protects the individual from having the act of production used against them in court). The Defendant, however, did not assert such a privilege or demand such immunity, and instead turned over the documents voluntarily.

The Defendant's request not to have those documents attributed to him now smacks of gamesmanship, particularly given that he has placed some of the very same documents on his own exhibit list, presumably in an effort to demonstrate that he was making sufficient money and had sufficient employees—although the records do not actually support that inference—to justify the statements that he made on the loan applications at issue. He is attempting to use the rule against attribution as a sword (to defend himself personally in this matter) and a shield (to prevent the

Government from attributing the same documents against him in this matter). The Defendant simply should not be permitted to have it both ways.

CONCLUSION

For the reasons stated above, the United States requests that the Court deny the Defendant's Motion to preclude the Government from attributing the documents that Vetted provided in response to a grand jury subpoena to the Defendant and permit the Government to attribute the documents provided by his attorneys in response to the grand jury subpoena and as potential trial exhibits directly to him.

Respectfully submitted,

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