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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. FONTRELL ANTONIO BAINES, Defendant.	No. CR 20-522-MWF(AFM) GOVERNMENT'S SUPPLEMENTAL BRIEF IN OPPOSITION TO DEFENDANT'S APPLICATION FOR RECONSIDERATION OF RELEASE DUE TO CHANGED CIRCUMSTANCES Hearing Date: Jan. 14, 2021 Hearing Time: 1:30 p.m.

Plaintiff 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 Ranee A. Katzenstein, hereby files this supplemental brief in opposition to defendant's application for reconsideration of release due to changed circumstances. (Dkt. 25.) This brief addresses the issue raised by the Court at the hearing on January 7, 2021, namely, whether defendant can review the discovery in this case in order to prepare for trial while he is subject to the quarantine procedures instituted by the Metropolitan Detention Center (MDC) to address the COVID-19 pandemic. The issue arises because the discovery is subject to a

Protective Order that prohibits defendant from possessing the discovery outside the presence of his counsel in order to protect the unredacted personal identifying information (PII) of third parties that the discovery contains. Defendant is unable to meet with his counsel while the quarantine persists at MDC and, thus, is currently unable to review the discovery.

As discussed below, the government proposes to reconcile the need to protect the PII – which is the purpose of the Protective Order – with defendant's need to prepare for trial by providing defendant with a copy of the discovery in which the PII is redacted. The government will seek an amendment to the protective order to allow defendant to review this redacted discovery outside the presence of his counsel during any period in which quarantine procedures prevent him from being able to meet with his counsel.

I. The Discovery Produced in this Case and the Protective Order

The discovery produced by the government in this case comprises 2715 pages of records. The records fall into the following categories:

- Applications for unemployment insurance (UI) benefits submitted to the California Employment Development Department (EDD) (approximately 438 pages);
- Identification records for the debit cards administered by Bank of America by which EDD disburses the UI benefits (BofA Debit Cards) (approximately 591 pages);
- Transaction records for the BofA Debit Cards (approximately 423 pages);

- ATM photos showing the BofA Debit Cards being used (approximately 491 pages);
- BofA Debit Card account spreadsheets (approximately 120 pages);
- YouTube, Instagram and other provider screen shots (approximately 476 pages);
- Defendant's Bureau of Prisons health records (approximately 129 pages);
- Reports of interviews (approximately 24 pages); and
- Store receipts and surveillance regarding use of the BofA Debit Cards (approximately 11 pages).

The remainder of the records include spreadsheets and other information from EDD, subscriber information from Internet Service Providers, records from the Las Vegas Metropolitan Police Department, and the arrest warrant and other filings in this case.

On November 20, 2020, an order was entered in this case to protect the PII contained in the discovery from unnecessary dissemination and/or misuse. (Dkt. 22.) The Protective Order provides, among other things, that "defendant may review PII Materials only in the presence of a member of the Defense Team, who shall ensure that defendant is never left alone with any PII Materials."

The PII in the discovery is primarily found in the applications for UI benefits, the identification records for the BofA Debit Cards, and the reports of interview. Although there are account numbers in the transaction records for the BofA Debit Cards, these accounts have

been closed and, therefore, the potential for misuse of this information is minimal.

II. Trial

Trial is currently set for February 23, 2021. The government believes that this date will be continued because of the suspension of certain court functions in response to the COVID-19 pandemic. See "Notice from the Clerk: Extension of Continuity of Operations Plan" (Jan. 6, 2021), available at http://www.cacd.uscourts.gov/sites/default/files/documents/2021-01-06%20Notice%20-%20Extension%20of%20COOP%20Plan.pdf Given the continuing suspension of all jury trials under the COOP Plan; the closure of court facilities to the public, except for hearings on certain criminal duty matters, until at least January 29, 2021; the continuing increase in the number of COVID-19 cases, hospitalizations, and test positivity rates in this district, and the time needed to summons jurors for trial once the court facilities reopen, it is unlikely that trial in this matter can commence before April 1, 2021.

III. Conditions at MDC

On October 16, 2020, this Court found that no condition or combination of conditions would reasonably assure the appearance of defendant as required or the safety of the community and ordered defendant detained. (Dkt. 6.) On November 16, 2020, MDC, where defendant is being held, instituted quarantine procedures to address an outbreak of COVID-19. MDC currently has 12 active cases (down from the 99 reported at the beginning of the outbreak), one inmate death, and 326 inmates recovered. BOP, COVID-19 Coronavirus (updated

daily at 12pm Pacific), available at https://www.bop.gov/coronavirus/index.jsp (last visited Jan. 13, 2021). Although the outbreak is being brought under control, defendant is still subject to quarantine procedures that preclude meeting with his counsel in person or by VTC. According to MDC Attorney Advisor JoAnna Wilson, although defendant's housing unit is still considered "exposed quarantine," testing is expected in the next few days and it is hoped that the unit will convert to "recovered" next week.

IV. Government's Proposal to Enable Defendant to Have Access to the Discovery in Order to Prepare for Trial

In order to reconcile the need to protect the PII in the discovery and defendant's need to prepare for trial, the government proposes the following:

The government will prepare a set of the discovery in which the PII is redacted. This redacted set will be prepared in phases. The first phase will include the UI benefits applications, reports of interviews, and debit card identification records (approximately 1050 pages). The second phase of redactions will include the debit card transactions and spreadsheet records (approximately 543 pages) plus spot-checking of the remaining discovery to ensure that no PII is included. The government believes it can complete Phase I by January 22, 2021, and Phase II by January 29, 2021.

The government will also seek entry of a proposed supplement to the Protective Order addressing procedures to enable defendant to have access to this redacted discovery while MDC continues to implement quarantine measures to deal with COVID-19. The proposed procedures will allow defendant to possess the redacted discovery

while the quarantine remains in effect, but require him to return it once the quarantine is lifted and he is able to meet with counsel to review the unredacted discovery. Returning the unredacted discovery when access to it is no longer necessary is appropriate because, for ease of understanding, the redacted discovery will still include the claimants' names and portions of their PII, i.e., the last four digits of their SSN, the year of birth, the city and state of residence, the last four digits of phone numbers and the last four digits of driver's licenses.

Counsel for defendant was informed of this proposal and asked for defendant's position regarding it and any objections to it. As of the filing of this supplemental brief, counsel for defendant has not stated a position regarding this proposal.

Dated: January 13, 2021

Respectfully submitted,

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