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BY ORDER OF THE COURT

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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII
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Lucy H. Carrillo, Clerk of Court

Attorney for Defendant
TERRI ANN OTANI

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TERRI ANN OTANI (3),

Defendant.

CR. NO. 22-00048-TMB-NC

DEFENDANT TERRI ANN OTANI'S
MOTION IN LIMINE NO. 20 TO
ADMIT EVIDENCE THAT
DEFENDANT OTANI PROPERLY
INVOKED HER FIFTH
AMENDMENT PRIVILEGE;
CERTIFICATE OF SERVICE

JUDGE: Hon. Timothy M. Burgess

DEFENDANT TERRI ANN OTANI'S MOTION IN LIMINE NO. 20 TO
ADMIT EVIDENCE THAT DEFENDANT OTANI PROPERLY INVOKED
HER FIFTH AMENDMENT PRIVILEGE

The instant motion in limine seeks to admit evidence that district judges in this Court found that Terri Ann Otani properly asserted her Fifth Amendment privilege before the grand jury.

The United States' Motion *In Limine* No. 5 (ECF No. 349) sought to admit “evidence of a concerted effort to obstruct the grand jury – directed by Defendant Tanaka[.]” ECF No. 349 at 4. Specifically, the government sought to admit evidence that the defendants, “individually and collectively—engaged in a coordinated effort to thwart the investigation into their conduct. That included dodging grand jury subpoenas, giving false testimony to the grand jury, reading prepared speeches, instructing witnesses to not testify, and wrongfully invoking the Fifth Amendment.” U.S. MIL 5 at 1-2 (emphasis added).

The United States doubled down on this argument when it wrote:

Wong, Joann Fujii, Koya, Otani, and others also abused the Fifth Amendment privilege. After answering several questions, Wong consulted with Tanaka and thereafter stated that he would invoke the Fifth Amendment in response to “any question” asked of him. ECF 288 at 12. Joann Fujii, Koya, and Otani, for their parts, effectively made blanket invocations of the Fifth Amendment, asserting the privilege as to every or nearly every question asked, including questions like “Do you have a cell phone?” and “who are you married to?” *Id.* at 13–16.

Subsequently, district judges in this Court confirmed that the Fifth Amendment privilege was being badly abused by Tanaka and MAI. *See* ECF 288 at 16–17. Similar to the prepared speeches discussed above, Tanaka's efforts in wrangling witnesses from MAI into abusing their Fifth Amendment privilege on her advice is evidence of obstruction. Her actions veered far beyond the confines of zealous legal advocacy into an orchestrated effort to prevent the grand jury from penetrating the MAI organization and learning about the charged conspiracy.

U.S. MIL 5 at 10.

In this Honorable Court's Order granting the United States' Motion *In Limine* No. 5, it found that the "evidence of grand jury obstruction would tend to demonstrate a cover-up attempt relevant to establishing consciousness of guilt of the alleged conspiracy." ECF No. 511 at 11 (SEALED). It is axiomatic that, if a district judge's finding that Ms. Otani's abuse of her Fifth Amendment privilege is evidence of grand jury obstruction establishing consciousness of guilt, then a district judge's finding that Ms. Otani properly asserted her Fifth Amendment privilege is evidence that she was not obstructing the grand jury and does not establish consciousness of guilt.

As such, this Honorable Court should grant the instant motion *in limine* to admit evidence not only that a district judge found there was a reasonable basis to assert a Fifth Amendment privilege, but that the government agreed to meeting and conferring as to which questions Ms. Otani properly invoked her Fifth Amendment right. *See* ECF No. 315 at 45-46, 48.

Furthermore, this Honorable Court should admit evidence that, even after the district judge's ruling, the government continued to claim that Ms. Otani improperly asserted her Fifth Amendment privilege as to certain questions, however this Honorable Court found that "certain passages of Otani's disputed grand jury testimony closely relate to the original fifty questions that she was compelled to answer by court order, over her invocation of her Fifth Amendment

privilege.” ECF No. 434 at 6. In other words, a district judge ruled that she properly asserted her right against self-incrimination as to certain questions posed by the government.

To ensure that the government is not prejudiced by the admission of the proffered evidence, the following limiting instruction is proposed:

You are about to hear [OR HAVE HEARD] evidence relating to the conduct of Terri Ann Otani properly invoking her Fifth Amendment right to remain silent in connection with grand jury proceedings. I instruct you that this evidence is admitted only for the limited purpose of deciding that she did not have consciousness of guilt with respect to the specific crimes charged in the First Superseding Indictment. Do not consider this evidence for any other purpose.

Ms. Otani is not charged with committing any crime in connection with the grand jury proceedings. You may not consider the evidence of these other acts as a substitute for proof that Ms. Otani committed the specific crimes charged in the First Superseding Indictment. You may not consider this evidence as proof that the prosecution, in trying to compel her to answer questions for which she properly invoked her Fifth Amendment right to remain silent, are people of bad character or otherwise acted improperly.

DATED: Honolulu, Hawai`i, on April 1, 2024.

/s/ Doris Lum

DORIS LUM

Attorney for Defendant

TERRI ANN OTANI (3)