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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

UNITED STATES OF AMERICA,

Plaintiff,

v.

KEITH MITSUYOSHI KANESHIRO (1),
DENNIS KUNIYUKI MITSUNAGA (2),
TERRI ANN OTANI (3),
AARON SHUNICHI FUJII (4),
CHAD MICHAEL MCDONALD (5),
SHERI JEAN TANAKA (6),

Defendants.

Case No. CR-22-00048-TMB-NC

**MOTION TO COMPEL
DISCOVERY BY DEFENDANTS
TANAKA, MITSUNAGA, OTANI,
FUJII & MCDONALD;
EXHIBITS 1-4; CERTIFICATE
OF SERVICE**

Judge: Hon. Timothy M. Burgess

By this Motion, and pursuant to the Court’s Order on Government’s Motion *in Limine* No. 12 (ECF 664), defendants Sheri Jean Tanaka, Dennis Kuniyuki Mitsunaga, Terry Ann Otani, Aaron Shunichi Fujii, and Chad McDonald seek an order from this Court compelling the government to produce requested discovery relating principally to government witnesses JoAnn Aurello and Rudy Alivado, but also to other individuals on the government’s witness list.

Over the past two weeks, the defense has sought to obtain from the government discovery that is essential for the cross-examination of Ms. Aurello and Mr. Alivado. Both of these witnesses—several weeks after the start of trial—have suddenly “remembered” certain interactions with Ms. Tanaka that they never mentioned before, despite having testified before the grand jury. These are not run-of-the-mill government witnesses. To the contrary, the government believes that their anticipated (and freshly-minted) testimony will be critical to its case. To that end, it has filed its Motion *in Limine* No. 12 to admit the new Aurello “other act” evidence (ECF 612) and, in its just-filed Emergency Motion for Enforcement of the Protective Order (ECF 662), has promised that Alivado “will be a damaging witness to the defense.” *Id.* at PageID.10662.

Against this backdrop, it is essential that defendants be provided with specific requested discovery materials relating to these witnesses, materials that are likely impeaching and which may even be exculpatory. Defendants have repeatedly requested these materials but the government has refused to provide them. As

detailed below, the defense requests have been very specific and targeted to materials that the government is obligated to disclose under *Brady v. Maryland*, 373 U.S. 83, 87 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), and the Jencks Act, 18 U.S.C. § 3500 *et seq.* The requested discovery is essential for the defense to prepare fulsome and effective cross-examinations of these significant witnesses. The Court should therefore order the government to produce these materials forthwith.

A. Factual Background

On March 28, 2024, the government disclosed FBI 302 reports that documented recent government contacts with JoAnn Aurello in which she, for the first time, claimed that Ms. Tanaka had attempted to influence her testimony. On April 2, 2024, Ms. Tanaka's counsel sent an email to the government requesting "a copy of the grand jury subpoena that was served on witness Joann Aurello" and that the government "identify (1) the date that the FBI first contacted her about it; and (2) the date it was actually served on her, together with any supporting documents." See 4/2/24 email from Andrew Cowan, attached hereto as Exh. 1. This was necessary because the precise timing of Ms. Aurello's contacts with the FBI, and the service of her subpoena were not evident from the produced materials and were relevant to the government's claim that Ms. Tanaka sought to influence her testimony.

The defense received no response from the government until ten days later. On the afternoon of Friday, April 12, 2024, the government partially responded to

the questions raised in Mr. Cowan's email, but provided no discovery. *See* 4/12/24 letter from Special Attorney Michael Wheat, attached hereto as Exh. 2. The letter (1) disclosed a summary chart of telephone calls to and from Ms. Aurello; (2) revealed, for the first time, that on July 22, 2021 the FBI left three grand jury subpoenas in the residential mailbox for JoAnn Aurello, Rodney Aurello, and Jodee Haugh; and (3) revealed, for the first time, that JoAnn and Rodney Aurello were served with grand jury subpoenas via email on July 26, 2021. The government did not produce any of these subpoenas, nor did it produce any supporting documents related to the subpoenas.

The new revelations contained in the government's letter, together with its new summary phone chart, made it clear that the scope of the government's discovery violations were even more extensive than defendants had suspected. The summary phone chart, attached hereto as Exh. 3, revealed at least **eight telephone contacts** between the FBI and Ms. Aurello. *The government has never produced any 302 reports or agent notes for any of these contacts.* The government's letter also revealed that **the FBI communicated with Ms. Aurello via email.** *The government has never produced these email communications.* Moreover, the government's letter does not even identify the names of the FBI Agent(s) who made these contacts, which makes it impossible for the defense to intelligently question Ms. Aurello about these contacts, much less serve a trial subpoena on these agents if needed. Finally, the discovery of these previously undisclosed contacts with witnesses raises the

question of whether the government has also failed to document and produce its contacts with other government witnesses.

Due to the inadequacy of the government's letter response, counsel for defendant Tanaka replied in writing on Saturday, April 13. He demanded the requested discovery and advised that, given the urgency of the request, the defense planned to file a motion to compel discovery if the materials were not produced by 9:00 AM on Monday April 15 (they were not). *See* 4/13/24 Letter of Mark Mermelstein, attached hereto as Exh. 4. In addition to amplifying the need for discovery relating to Ms. Aurello, the letter also asked the government to provide a copy of the sealed hearing transcript concerning the government's motion to compel the grand jury testimony of Rudy Alivado. It appears that Mr. Alivado was not represented by counsel at the time, and it is therefore likely that he made statements to the presiding judge, which are in the possession of the government and which at a minimum constitute *Jencks* material.

B. The Court Should Order the Government to Produce the Requested Discovery at Least Seven Calendar Days before Witnesses Aurello or Alivado Begin Their Testimony.

Ms. Aurello's grand jury subpoenas, the precise timing of their service upon her, and the details of any telephonic or email contacts that she had with the FBI, are critical impeachment materials that the government is required to produce. In *Brady v. Maryland*, 373 U.S. 83, 87 (1963) the Supreme Court held that the Due Process Clause requires the government to disclose upon request "evidence favorable to an

accused” where the evidence is “material either to guilt or punishment.” *Giglio v. United States*, 405 U.S. 150 (1972) extended the government's disclosure obligation to impeachment evidence. *Id.* at 154–55. A witness’ prior statements that are both material and inconsistent with anticipated trial testimony are Brady material. *United States v. Hanna*, 55 F.3d 1456, 1459 (9th Cir. 1995). Evidence impugning the testimony of a witness critical to the prosecution's case “is especially likely to be material” for *Brady* purposes. *United States v. Sedaghaty*, 728 F.3d 885, 902 (9th Cir. 2013).

The government will likely argue, as it already did in its April 12 letter, that the defense has not made a *prima facie* showing of materiality. *See United States v. Mandell*, 914 F.2d 1215, 1219 (9th Cir. 1990). To the contrary, the defense in its letters has asked for specific information and stated that it is relevant to cross-examination. These are not “conclusory allegations of materiality,” as the government will likely contend. However, there are no additional details that the defense can reveal at this juncture, because doing so would provide the government with a roadmap of its anticipated cross-examination of the witnesses. The defense is not obligated to preview its strategy as the price for obtaining discovery to which it is entitled. Undersigned counsel represents that he has a specific, good faith basis for requesting these materials, and would be happy to provide these details to the Court in an *in camera* filing if so requested. In any event, the materiality requirement applies only to grand jury materials, but here the defense has also requested non-

grand jury materials, specifically information relating to the substance of all government telephone and email communications with its witnesses.

The government (as it did in its letter) may even argue against disclosure on the ground that Judge Seabright previously denied a defense request for the grand jury subpoenas in this case. *See* Exh. 2 at 2; ECF 260. But that denial arose in a very different context. At that time, defendants were seeking to establish prosecutorial misconduct by Special Attorney Wheat, and part of that effort involved an inquiry into prosecutor Wheat's improper practice of altering the language on the official court-approved grand jury subpoena forms in order to discourage witnesses from seeking counsel.¹ Defendants now seek the grand jury subpoenas and sealed testimony for a specific and very different purpose: cross-examination of Ms. Aurello, Mr. Alivado, and other witnesses who received grand jury subpoenas.

The missing discovery related to Mr. Alivado is less extensive than the withheld Aurello discovery, but it is similarly critical for an effective cross-examination. The defense does not know what Mr. Alivado said to the Court, but he likely discussed the reasons for his invocation of the Fifth Amendment. These prior

¹ Prosecutor Wheat, on at least 31 occasions, improperly altered the standard federal grand jury subpoena language and structure by adding this language: "This is a continuing investigation. You are requested not to disclose the existence of this Subpoena for an indefinite period of time. Any such disclosure could interfere with the investigation being conducted and thereby impede the enforcement of the law..." *See* Defendant Mitsunaga's Motion to Dismiss the FSI Due to Prosecutorial Misconduct, ECF 222 at PageID.1324-25; Exh. BB.

statements, to the extent they are inconsistent with other statements he made under oath, are impeachment material. The prosecution brought the motion to compel against Mr. Alivado, attended the hearing, and therefore knows exactly what he said. It would be a violation of due process for the government to be privy to this information and call Mr. Alivado as a witness while keeping the defense in the dark about his prior statements to a federal judge. The government has not hesitated to make an issue of the transcripts of the numerous motions to compel that it brought against various MAI witnesses. The Court should not permit the government to hide the ball for the same type of sealed transcript related to its new star witness, Rudy Alivado.

For these reasons, the Court should order the government to produce:

1. All reports relating to any telephonic or email contact the government has had with JoAnn Aurello, Rudy Alivado, and any other government witness;
2. All agent notes relating to any telephonic or email contact the government has had with JoAnn Aurello, Rudy Alivado, and any other government witness;
3. The names of each FBI agent who had telephonic or email contact with these witnesses;
4. Copies of all emails sent to any government witness, or received by the government from any such witness;

5. The transcript of the sealed hearing related to the government's motion to compel the grand jury testimony of Rudy Alivado; and

6. Copies of all grand jury subpoenas served on JoAnn Aurello and any other government witness.

By refusing to turn over these impeachment materials, the government continues to violate its discovery obligations and deprive the defendants of their right to a fair trial. The Court should therefore order the government to produce the requested materials forthwith, and do so at least seven calendar days before it calls witnesses Aurello or Alivado to the stand. The defense needs at least this amount of time to review the materials and prepare corresponding cross-examinations.

Respectfully submitted,

DATED: April 15, 2024

HOLMES, ATHEY,
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EXHIBIT 1

From: Andrew Cowan <acowan@holmesathey.com>

Sent: Tuesday, April 2, 2024 11:02 AM

To: Wheat, Michael (USACAS) <Michael.Wheat@usdoj.gov>; Orabona, Joseph (USACAS) <Joseph.Orabona@usdoj.gov>

Cc: Mark Mermelstein <mmermelstein@holmesathey.com>; Chiang, Andrew (USACAS) <Andrew.Chiang@usdoj.gov>; Chopra, Janaki (USACAS) <Janaki.Chopra@usdoj.gov>

Subject: Urgent Discovery Request

Importance: High

Mr. Wheat & Mr. Orabona:

I am writing to request that the government IMMEDIATELY produce to the defense a copy of the grand jury subpoena that was served on witness Joann Aurello, and identify (1) the date that the FBI first contacted her about it; and (2) the date it was actually served on her, together with any supporting documents.

Based on the recent 302s of Ms. Aurello, the government intends to elicit testimony that Ms. Tanaka called Ms. Aurello after she was served with her grand jury subpoena. The 302, however, does not state the date of service, or whether there were any contacts between the FBI and Ms. Aurello prior to service. The defense requires this information in order to evaluate Ms. Aurello's recent statements and prepare a response to your anticipated Motion in Limine on this issue.

On a related note, it appears that the government has never produced any of the grand jury subpoenas served on witnesses in this case. We believe that the dates of service may be highly relevant to the testimony of these witnesses. I therefore request that these subpoenas be produced forthwith.

Thank you in advance for your prompt attention to this request.

Andrew

Andrew S. Cowan

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Cowan, & Mermelstein LLP

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Direct Dial: 213.516.8055

(PLEASE NOTE NEW FIRM NAME & EMAIL)

EXHIBIT 2



MERRICK B. GARLAND

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April 12, 2024

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Andrew S. Cowan, acowan@holmestaylor.com

Re: *United States v. Kaneshiro, et al.*, CR 22-00048-JMS-WRP (Hawaii)
Re: Discovery Request Regarding JoAnn Aurello

Dear Counsel,

We write to respond to Defendant Tanaka's email request on April 2, 2024 for "a copy of the grand jury subpoena that was served on witness JoAnn Aurello, and identify (1) the date that the FBI first contacted her about it; and (2) the date it was actually served on her, together with any supporting documents." Your discovery request fails to identify any authority supporting production of such information. Moreover, as you know, Judge Seabright rejected a prior motion to compel discovery of grand jury subpoenas in this case. *See* ECF No. 260.

Nonetheless, in response to your discovery request, the United States provides the following information:

- In Round 2 of discovery in this case, on July 28, 2022, the United States produced phone records pertaining to JoAnn Aurello, which included her phone contacts with the FBI and Defendant Tanaka. In today's discovery Round 35, we are producing to you a summary chart (KM-MS-000046) which summarizes communication between Aurello, the FBI, and others in July 2021. As shown in this chart, the FBI contacted Aurello by phone on July 19, 2021; thereafter, Aurello and Defendant Tanaka exchanged multiple phone calls. The United States hereby provides notice of its intent to introduce this summary chart at trial under Fed. R. Evid. 1006.

- On July 22, 2021, the FBI left three grand jury subpoenas in the residential mailbox at the residence of JoAnn and Rodney Aurello's residence for JoAnn Aurello, Rodney Aurello, and Jodee Haugh. The appearance date for the three witnesses was July 29, 2021.
- On July 26, 2021, Jodee Haugh was served with a grand jury subpoena in person by the FBI. The appearance date for Ms. Haugh was July 29, 2021.
- On July 26, 2021, JoAnn and Rodney Aurello were served with grand jury subpoenas by email. The appearance date for both witnesses was August 12, 2021. They ultimately appeared before the grand jury on August 26, 2021. The United States produced their grand jury transcripts to you in the first round of discovery in this case, on July 11, 2022.

Finally, in counsel for Tanaka's email, counsel states that "the government has never produced any of the grand jury subpoenas served on witnesses in this case. We believe that the dates of service may be highly relevant to the testimony of these witnesses." As you know, to obtain discovery under Rule 16, a defendant must make a "prima facie showing of materiality." *United States v. Mandel*, 914 F.2d 1215, 1219 (9th Cir. 1990). "Neither a general description of the information sought nor conclusory allegations of materiality suffice; a defendant must present facts which would tend to show that the Government is in possession of information helpful to the defense." *Id.* (citing sources). You have not provided any basis to believe that "any of the grand jury subpoenas served on witnesses" are material to your defense. Further, as mentioned above, Judge Seabright previously denied a defense request for grand jury subpoenas in this case. See ECF No. 260.

Please let us know if you have any further questions.

Very truly yours,

MERRICK B. GARLAND
Attorney General

TARA K. MCGRATH
United States Attorney

Michael G. Wheat

MICHAEL G. WHEAT
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Special Attorneys to the Attorney General

EXHIBIT 3

Case 1:22-cr-00048-TMB-NC Document 669 Filed 04/15/24 Page 16 of 24 PageID.10733
**Phone Contact Between Sheri Tanaka, Terri Otani, Jodee Haugh, JoAnn Aurello,
SA John Martorell, FBI Honolulu, and FBI Los Angeles
07/01/2021 - 07/31/2021**

KM-MS-000046

	DATE	TIME (HST)	FROM	FROM NAME	TO	TO NAME	DURATION
1	07/01/2021	07:26 AM	[REDACTED]	Tanaka	[REDACTED]	Otani	6:12
2	07/03/2021	08:47 AM	[REDACTED]	Tanaka	[REDACTED]	Otani	1:36
3	07/04/2021	08:00 PM	[REDACTED]	Tanaka	[REDACTED]	Otani	1:30
4	07/06/2021	08:41 AM	[REDACTED]	Aurello	[REDACTED]	Otani	4:33
5	07/08/2021	10:55 AM	[REDACTED]	Tanaka	[REDACTED]	Otani	0:07
6	07/09/2021	02:10 PM	[REDACTED]	Haugh	[REDACTED]	Aurello	16:17
7	07/14/2021	02:28 PM	[REDACTED]	Tanaka	[REDACTED]	Otani	0:07
8	07/15/2021	04:51 PM	[REDACTED]	Tanaka	[REDACTED]	Otani	0:02
9	07/19/2021	12:04 PM	[REDACTED]	FBI Honolulu	[REDACTED]	Aurello	0:09
10	07/19/2021	12:14 PM	[REDACTED]	FBI Honolulu	[REDACTED]	Aurello	4:29
11	07/19/2021	12:24 PM	[REDACTED]	Aurello	[REDACTED]	Otani	0:05
12	07/19/2021	12:26 PM	[REDACTED]	Aurello	[REDACTED]	Tanaka	3:35
13	07/19/2021	01:06 PM	[REDACTED]	Tanaka	[REDACTED]	Aurello	0:17
14	07/19/2021	01:20 PM	[REDACTED]	FBI Honolulu	[REDACTED]	Aurello	0:34
15	07/19/2021	02:40 PM	[REDACTED]	FBI Honolulu	[REDACTED]	Haugh	0:38
16	07/19/2021	02:43 PM	[REDACTED]	Haugh	[REDACTED]	Aurello	0:33
17	07/19/2021	03:30 PM	[REDACTED]	Aurello	[REDACTED]	Tanaka	0:37
18	07/19/2021	03:30 PM	[REDACTED]	Tanaka	[REDACTED]	Aurello	0:03
19	07/19/2021	03:30 PM	[REDACTED]	Tanaka	[REDACTED]	Aurello	0:32
20	07/20/2021	05:47 AM	[REDACTED]	Tanaka	[REDACTED]	Aurello	1:06
21	07/20/2021	10:56 AM	[REDACTED]	Aurello	[REDACTED]	FBI Honolulu	1:23
22	07/20/2021	10:57 AM	[REDACTED]	Aurello	[REDACTED]	FBI Honolulu	1:44
23	07/20/2021	10:59 AM	[REDACTED]	Aurello	[REDACTED]	FBI Honolulu	8:52
24	07/20/2021	01:45 PM	[REDACTED]	Haugh	[REDACTED]	Aurello	0:02

Case 1:22-cr-00048-TMB-NC Document 669 Filed 04/15/24 Page 17 of 24 PageID.10734
**Phone Contact Between Sheri Tanaka, Terri Otani, Jodee Haugh, JoAnn Aurello,
SA John Martorell, FBI Honolulu, and FBI Los Angeles
07/01/2021 - 07/31/2021**

	DATE	TIME (HST)	FROM	FROM NAME	TO	TO NAME	DURATION
25	07/20/2021	01:50 PM	[REDACTED]	Haugh	[REDACTED]	Aurello	0:02
26	07/20/2021	05:28 PM	[REDACTED]	FBI Honolulu	[REDACTED]	Haugh	0:51
27	07/20/2021	05:29 PM	[REDACTED]	FBI Honolulu	[REDACTED]	Haugh	0:04
28	07/21/2021	08:30 AM	[REDACTED]	Aurello	[REDACTED]	Haugh	0:33
29	07/21/2021	10:04 AM	[REDACTED]	FBI Honolulu	[REDACTED]	Haugh	1:00
30	07/21/2021	10:15 AM	[REDACTED]	Otani	[REDACTED]	Aurello	21:35
31	07/21/2021	11:29 AM	[REDACTED]	Otani	[REDACTED]	Aurello	0:07
32	07/21/2021	11:29 AM	[REDACTED]	Otani	[REDACTED]	Aurello	0:03
33	07/21/2021	01:03 PM	[REDACTED]	FBI Honolulu	[REDACTED]	Haugh	0:05
34	07/21/2021	01:39 PM	[REDACTED]	Otani	[REDACTED]	Aurello	1:59
35	07/21/2021	02:52 PM	[REDACTED]	Haugh	[REDACTED]	Aurello	0:08
36	07/21/2021	03:19 PM	[REDACTED]	Otani	[REDACTED]	Aurello	0:04
37	07/21/2021	03:48 PM	[REDACTED]	Otani	[REDACTED]	Aurello	0:02
38	07/21/2021	04:34 PM	[REDACTED]	Otani	[REDACTED]	Aurello	0:05
39	07/22/2021	09:35 AM	[REDACTED]	FBI Honolulu	[REDACTED]	Haugh	0:48
40	07/22/2021	12:18 PM	[REDACTED]	Otani	[REDACTED]	Aurello	1:14
41	07/22/2021	02:25 PM	[REDACTED]	SA Martorell	[REDACTED]	Haugh	0:02
42	07/23/2021	04:10 AM	[REDACTED]	Aurello	[REDACTED]	Haugh	0:27
43	07/23/2021	05:59 AM	[REDACTED]	FBI Los Angeles	[REDACTED]	Haugh	1:09
44	07/23/2021	06:45 AM	[REDACTED]	Haugh	[REDACTED]	FBI Los Angeles	4:19
45	07/23/2021	09:45 AM	[REDACTED]	FBI Honolulu	[REDACTED]	Aurello	0:38
46	07/25/2021	02:47 PM	[REDACTED]	Tanaka	[REDACTED]	Otani	0:05
47	07/26/2021	08:56 AM	[REDACTED]	Otani	[REDACTED]	Haugh	1:11
48	07/26/2021	10:45 AM	[REDACTED]	FBI Honolulu	[REDACTED]	Aurello	5:58

KM-MS-000046.02

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**Phone Contact Between Sheri Tanaka, Terri Otani, Jodee Haugh, JoAnn Aurello,
SA John Martorell, FBI Honolulu, and FBI Los Angeles
07/01/2021 - 07/31/2021**

	DATE	TIME (HST)	FROM	FROM NAME	TO	TO NAME	DURATION
49	07/27/2021	08:53 AM	[REDACTED]	Tanaka	[REDACTED]	Otani	0:02
50	07/28/2021	03:20 PM	[REDACTED]	Haugh	[REDACTED]	Aurello	2:19
51	07/28/2021	10:01 PM	[REDACTED]	Otani	[REDACTED]	Aurello	0:37
52	07/29/2021	05:12 AM	[REDACTED]	Haugh	[REDACTED]	Aurello	9:46
53	07/29/2021	05:26 AM	[REDACTED]	Haugh	[REDACTED]	Aurello	6:18
54	07/29/2021	03:09 PM	[REDACTED]	Aurello	[REDACTED]	Haugh	0:03
55	07/29/2021	03:09 PM	[REDACTED]	Aurello	[REDACTED]	Haugh	0:06
56	07/29/2021	03:30 PM	[REDACTED]	Haugh	[REDACTED]	Aurello	0:02
57	07/29/2021	03:32 PM	[REDACTED]	Haugh	[REDACTED]	Aurello	0:02
58	07/29/2021	06:03 PM	[REDACTED]	Otani	[REDACTED]	Haugh	0:04
59	07/29/2021	06:54 PM	[REDACTED]	Haugh	[REDACTED]	Aurello	11:07
60	07/29/2021	07:51 PM	[REDACTED]	Otani	[REDACTED]	Haugh	0:33
61	07/29/2021	07:52 PM	[REDACTED]	Haugh	[REDACTED]	Aurello	9:36
62	07/29/2021	09:20 PM	[REDACTED]	Haugh	[REDACTED]	Aurello	1:41
63	07/30/2021	05:34 AM	[REDACTED]	Haugh	[REDACTED]	Aurello	3:13
64	07/30/2021	07:38 AM	[REDACTED]	Otani	[REDACTED]	Haugh	0:29
65	07/30/2021	09:27 AM	[REDACTED]	Haugh	[REDACTED]	Aurello	5:59
66	07/30/2021	10:04 AM	[REDACTED]	Otani	[REDACTED]	Haugh	0:36
67	07/30/2021	12:57 PM	[REDACTED]	Haugh	[REDACTED]	Aurello	2:31
68	07/30/2021	01:36 PM	[REDACTED]	Haugh	[REDACTED]	Aurello	6:06
69	07/30/2021	02:47 PM	[REDACTED]	Haugh	[REDACTED]	Aurello	1:53
70	07/30/2021	03:36 PM	[REDACTED]	Haugh	[REDACTED]	Aurello	0:39
71	07/30/2021	04:44 PM	[REDACTED]	Otani	[REDACTED]	Haugh	0:27
72	07/30/2021	05:39 PM	[REDACTED]	Haugh	[REDACTED]	Aurello	0:04

KM-MS-000046.03

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Phone Contact Between Sheri Tanaka, Terri Otani, Jodee Haugh, JoAnn Aurello,
SA John Martorell, FBI Honolulu, and FBI Los Angeles
07/01/2021 - 07/31/2021

	DATE	TIME (HST)	FROM	FROM NAME	TO	TO NAME	DURATION
73	07/30/2021	05:42 PM	[REDACTED]	Aurello	[REDACTED]	Haugh	18:46
74	07/30/2021	06:02 PM	[REDACTED]	Haugh	[REDACTED]	Aurello	8:52
75	07/30/2021	08:35 PM	[REDACTED]	Otani	[REDACTED]	Haugh	0:39
76	07/31/2021	04:57 AM	[REDACTED]	Haugh	[REDACTED]	Aurello	0:07
77	07/31/2021	07:24 AM	[REDACTED]	Otani	[REDACTED]	Aurello	1:15

KM-MS-000046.04

EXHIBIT 4



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VIA EMAIL
URGENT AND TIME-SENSITIVE

April 13, 2024

Michael G. Wheat
Special Attorney of the United States
800 Front Street, Room 6293
San Diego, CA 92101-8893
michael.wheat@usdoj.gov

RE: *Urgent Request for Discovery / USA v. Keith Kaneshiro et al., No.CR- 22-048-JMS-WRP*

Dear Mr. Wheat:

On behalf of our client, Sheri Tanaka, I am responding to your April 12, 2024 letter concerning discovery related to government witness JoAnn Aurello. By this letter I am also requesting discovery related to government witness Rudy Alivado.

As you know, on April 2, 2024 we had sent you and Special Attorney Colin McDonald an email requesting that the government immediately produce to the defense “a copy of the grand jury subpoena that was served on witness JoAnn Aurello, and identify (1) the date that the FBI first contacted her about it; and (2) the date it was actually served on her, together with any supporting documents.”

Despite the urgency of this request, we received no response whatsoever from the government until your letter dated yesterday—ten days later. Given that we are in trial and are entitled to all materials that may be relevant to cross-examining Ms. Aurello, such a lengthy delay is inappropriate and prejudicial to the defense.

The narrative summary you provide in your letter, which discusses various dates and incidents relating to the service of the subpoena, is inadequate and non-responsive. We are entitled to **documents** that relate to these service efforts. If no such documents exist, please state so in writing. If they do exist, please produce them without further delay.

Your letter, as well as the summary chart you produced yesterday concerning Aurello telephone calls, reveal that (1) the FBI had numerous telephone contacts with Ms. Aurello; and (2) also had email contacts with her. We, however, have looked through the discovery and can find no corresponding FBI-302 reports for these contacts. Therefore, please produce these reports **immediately**, together with all agent notes that relate to these reports. Finally, if either JoAnn



Aurello, Rodney Aurello, or Jodee Haugh responded to these emails, or any other emails from the government, these constitute prior witness statements that we are entitled to as Jencks material. These should have been turned over long ago, and the government's failure to do so is a clear violation of its statutory discovery obligations.

These revelations also raise the question of what other telephonic or email contacts the government may have had with other government witnesses. Please produce **immediately** any FBI-302s or agent notes that reflect these contacts, along with all email correspondence with these witnesses or their counsel. Again, if no such telephonic or email contacts occurred, please state so in writing.

You have argued that the government may withhold the JoAnn Aurello subpoenas (as there now appear to be multiple versions of these) because the defense has not made a showing of materiality. To the contrary, as we have already explained, we require this information in order to evaluate Ms. Aurello's recent statements and prepare a response to your anticipated Motion in Limine on this issue. That is a more than adequate showing of materiality. The defense has no obligation to preview our cross-examination of Ms. Aurello in advance, but we will provide *highly* specific information to Judge Burgess *in camera* if it is necessary for us to file a motion to compel discovery.

With respect to Rudy Alivado, it appears that the government has never produced the transcript of the sealed hearing relating to the government's motion to compel his grand jury testimony. The government has produced a copy of its motion to compel (KM-GJ-REPORTS-000045), but the defense has no idea what Mr. Alivado said at that hearing. Again, these are the prior statements of a witness, which the government must produce under the Jencks Act. Moreover, they may contain impeachment and exculpatory information under *Brady* and *Giglio* and must be produced on that basis.

Given that either of these witnesses may be called to testify next week, we demand that these documents be produced no later than 12:00 noon on Monday, April 15, 2024. Absent a satisfactory response by that deadline, we will proceed to file our motion to compel discovery.

Yours Truly,

HOLMES, ATHEY,
COWAN & MERMELSTEIN LLP

MARK MERMELSTEIN

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the following counsel at their last known addresses by the CM/ECF system on the date indicated below:

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DATED: April 15, 2024

Respectfully submitted,

HOLMES, ATHEY,
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By: /s/ Mark Mermelstein
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