

To: Inspection
Re: 263-HQ-0, 12/2/2024

Precedence: ROUTINE

Date: 12/2/2024

To: Inspection

Attn: Initial Processing Unit (IPU),
Room 3041

From: Outside Counsel

Contact: Paul E. Pelletier, Esq. (202) 617-9151

Case ID #: 263-HQ-0 (Pending)

Title: ELLIOT MCGINNIS ET AL
SPECIAL AGENT
NEW YORK DIVISION
INFORMATION CONCERNING ALLEGATIONS OF ABUSE OF POSITION

Synopsis: To provide information regarding alleged abuse of position by FBI Special Agent Elliot McGinnis, New York Division, and other FBI personnel.

Details: Writer is a former Assistant United States Attorney and Trial Attorney in DOJ's Criminal Division and currently outside legal counsel representing a company, OneTaste, which has been the subject of an investigation by the FBI New York Field Office (Case #50E-NY-2954840) since at least 2018. During the course of the government's investigation, OneTaste outside counsel has determined through the discovery process in a related criminal case, its own investigation, and the discovery process in a related civil case, that the FBI Special Agent (SA) investigating OneTaste, SA Elliot McGinnis, and others, have engaged in several instances of improper conduct which violated the Due Process rights of the company, current and former officers of the company, violated U.S. criminal laws, violated the policies of the FBI and the U.S. Department of Justice (DOJ), violated government *Brady* disclosure obligations, and invoked government disclosure requirements for misconduct as delineated by *Giglio v. U.S.* This improper conduct calls into question the integrity of the FBI investigation, including the integrity of FBI official records created by SA McGinnis and others. In addition, the conduct by SA McGinnis, and others, discredits the FBI and DOJ, calling into question the actions and integrity of each agency.

A summary of the improper conduct by FBI SA Elliot McGinnis, and others, include the following:

SUMMARY OF FINDINGS

-Misuse of and Failure to Properly Handle Stolen Privileged Attorney Client Documents

During the interview of a former company information technology (IT) contractor, SA McGinnis and SA Colleen Sheehan obtained an Attorney Client Privileged document drafted by the defendants on behalf of and at the request of the company's

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outside counsel. As the IT contractor confirmed to SA McGinnis and SA Sheehan, to obtain the document the IT contractor had illegally accessed the company's computer systems after he no longer was employed there. Furthermore, although the agent's notes of the FBI interview documented that the IT contractor informed the FBI agents the hacked document was a "copy" of an "attorney client privilege[d]" document taken from a company employee's laptop, the FBI agents omitted any reference to the document being "attorney client privilege[d]" in the FBI FD-302, thus deliberately omitting and concealing a material fact.

Further, the FBI agents omitted in the FD-302 that they received from the IT contractor during the interview the stolen attorney client privileged document which was saved with the file name "attorney client privilege" on a thumb drive provided by SA McGinnis.

As a result of these violations of FBI policy by SA McGinnis and SA Sheehan, the FD-302 was materially misstated, and the stolen attorney client privileged document were never referenced in the FD-302 as having been received by the FBI on a thumb drive, nor were they entered into the FBI official record-keeping system as evidence. No receipt was provided to the IT contractor for the "attorney client privilege" material on a thumb drive.

Further, even though the IT contractor had put the FBI agents on notice that the pilfered document was "attorney client privilege[d]" and the document was saved on the thumb drive with the file name "attorney client privilege," SA McGinnis and SA Sheehan never quarantined the stolen attorney client privileged document for review by a privilege review team as mandated by DOJ policy. Also, according to the United States Attorney's Office – Eastern District of New York (USAO), SA McGinnis and SA Sheehan did not directly share that they had received the stolen attorney client privileged document with any of the assigned Assistant United States Attorneys (AUSAs). As a result, the Prosecution Team never notified the company and two defendants (former company officers) that the government had retrieved the stolen attorney client privileged document, nor did they produce the Aidelbaum privileged/ document to the defendants as part of Rule 16 discovery.

Based upon this articulated misconduct, SA McGinnis and SA Sheehan caused the Prosecution Team to fail to segregate the attorney client privileged information during their investigation, to fail to provide the attorney client privileged information in discovery, and to file false and misleading filings with the Court, which included initially falsely denying they possessed any attorney client privileged document received from the IT contractor. Only after the IT contractor provided a Declaration to the company and defendants stating that he indeed had provided the stolen attorney client privileged document to SA McGinnis and SA Sheehan on an FBI provided thumb drive did the government conduct a search for the documents, ultimately finding them in the possession of one of the FBI agents (whose identity was not disclosed by the government) and in the USAO "casefile." In a September 20, 2024, filing with the Court, the government disclosed the following:

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*Based upon an interview by the USAO Filter Team, SA McGinnis and SA Sheehan stated they **did not specifically recall** viewing or receiving any documents from the IT contractor during their interview. **Nor did they recall** discussing and disclosing any documents referenced or provided by the IT contractor with members of the USAO, other than the materials on the two hard drives [not the thumb drive] provided by the IT contractor. However, based on an initial review of one of the SA's emails, which included an email from approximately five days after the interview **containing a bullet point list of information** in a section associated with the [IT contractor], one of the interviewing SAs [undisclosed by the government] informed the government that he/she believed it was likely that he/she viewed or possessed a copy of the Word Documents in January 2021.*

Further, according to the government letter, the stolen attorney client privileged documents were not sent to the USAO until they were provided to a member of the Privilege Review Team in September 2024--this too was false. They further asserted that no member of the prosecution team at the USAO had opened or accessed the [stolen attorney client privileged] documents.¹

In addition to the previously described misconduct by SA McGinnis and SA Sheehan, it appears from the bullet points in the email referenced above and other material in possession of the company that SA McGinnis utilized the stolen and concealed privileged attorney client document to create an investigative work plan and strategy, which included identifying previously unknown potential witnesses and events, and implemented the plan to conduct the government investigation, violating the company's and the defendants' Due Process rights guaranteed by the U.S. Constitution.²

Further, SA McGinnis and SA Sheehan violated a federal criminal law, specifically "misprision of a felony" (18 USC 4), by not investigating or reporting the illegal intrusion into the company computer systems and the theft of the privileged attorney client document by the IT contractor once they learned of his conduct.

See **Section "1. Misuse of and Failure to Properly Handle Stolen Privileged Attorney Client Documents,"** below, for details of the improper conduct.

¹ On October 7, 2024, the government subsequently admitted that their filing to the court on September 20, 2024, was false because on October 1, 2024, the government revealed that it located copies of the stolen attorney client privileged documents saved to the USAO case file.

² As revealed in Section 1 *infra*, SA McGinnis' actions and lack of action when he received a second version of the privileged document from Kara Cooper 10 months later confirm his knowledge that it was improper to even possess the privileged documents.

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-Interviewing the Former Company In-House Counsel Discussing Privileged Issues

SA McGinnis interviewed the former OneTaste company counsel under the guise of interviewing him as a former customer of OneTaste and not as the former company counsel. Only after the company identified this potential privilege intrusion on the part of the FBI agents, however, did the government utilize a privilege review “taint” team to review the FBI form FD-302 of the interview. The privilege review team identified potentially privileged communications documented in the FD-302 and subsequently redacted portions of it.

See **Section “2. Interview of the Former Company In-House Counsel Discussing Privileged Issues,”** below, for details of the improper conduct.

-Providing Inaccurate and Misleading Information in a Sworn Affidavit in Support of a Seizure Warrant which Caused the Warrant to be Vacated

SA McGinnis swore to an affidavit in support of an application for a seizure warrant to a U.S. Magistrate Judge targeting funds in a trust account set up by one of the defendants for her mother. As part of the affidavit, however, SA McGinnis provided inaccurate and misleading information which resulted in the government subsequently vacating the warrant. SA McGinnis failed to obtain and/or document relevant information from a financial institution to ensure the affidavit in support of the seizure warrant was accurate and complete.

See **Section “3. Providing Inaccurate and Misleading Information in a Sworn Affidavit in Support of a Seizure Warrant which Caused the Warrant to be Vacated,”** below, for details of the improper conduct.

-Providing Improper Legal Advice Which Enticed a Witness in a State Civil Case to Violate Their Legal Obligation Under a Subpoena by Secreting Responsive Evidence with the FBI

Based upon the sworn deposition testimony of a government witness, SA McGinnis agreed with the witness to subvert a California state court authorized subpoena by having her secret responsive documents and materials shifted to the FBI. Further, as a result of SA McGinnis’ improper conduct, a California state judge issued an order to the FBI to produce the improperly sequestered evidence.

See **Section “4. Providing Improper Legal Advice Which Enticed a Witness in a State Civil Case to Violate Their Legal Obligation Under a Subpoena by Secreting Responsive Evidence with the FBI,”** below, for details of the improper conduct.

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-Providing Improper Legal Advice to a Witness Resulting in the Destruction of Relevant (and Potentially Exculpatory) Evidence in the Form of Emails

According to a civil court filing by a key government witness, the witness defended her deletion of an email account that was utilized during the relevant time period of alleged conduct, stating “the FBI [SA McGinnis]... advised the [witness] to ‘cancel’ the e-mail account, noting that the e-mails from OneTaste associates were designed to make her ‘feel uneasy.’ [The witness], unrepresented at that time, followed the FBI’s guidance.”

SA McGinnis contributed to the destruction of pertinent evidence in the civil case and FBI investigation by providing improper legal advice to a government witness with the advice directly leading to the destruction relevant data and documents.

See **Section “5. Providing Improper Legal Advice to a Witness Resulting in the Destruction of Relevant (and Potentially Exculpatory) Evidence in the Form of Emails,”** below, for details of the improper conduct.

Providing Improper Legal Advice to a Witness Causing a Violation of an Executed Legal Settlement Agreement

Based upon an email exchange between SA McGinnis and a civil attorney for a key government witness, SA McGinnis provided improper legal advice requesting the witness not notify the company of a government subpoena, in violation of a valid legal agreement. The violation of the legal agreement resulted in the filing of a civil lawsuit against the witness.

See **Section “6. Providing Improper Legal Advice to a Witness Causing a Violation of an Executed Legal Settlement Agreement,”** below, for details of the improper conduct.

-Causing Inaccurate Information to be Documented in the FBI Record-Keeping System Related to the Interview of Witnesses Classified as “Victims” Contrary to Their Statements

During interviews conducted by SA McGinnis, two separate witnesses stated they did not consider themselves victims, which they confirmed in subsequent Declarations. The information provided by the two witnesses, including stating that they did not consider themselves victims, and which included email and text communications, and which should have been documented in the FBI FD-302s of their interviews, should have been provided to the defendants based upon the government’s *Brady* obligation. As a result, it appears that SA McGinnis filed inaccurate reports in the FBI official record-keeping system which resulted in a violation of the government’s *Brady* discovery obligation; or the information was correctly documented in the FD-302s but withheld by the USAO in violation of the government’s *Brady* obligation.

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See **Section “7. Causing Inaccurate Information to be Documented in the FBI Record-Keeping System Related to the Interview of Witnesses Classified as ‘Victims’ Contrary to Their Statements,”** below, for details of the improper conduct.
FBI Victim Specialist Karen Gale Soliciting Witnesses on Behalf of a Private Attorney

FBI Victim Specialist (VS) Karen Gale, working with SA McGinnis, solicited a witness on behalf of a private attorney. In response to an email from the witness, VS Gale responded “couple of things, sorry for the frustration of finding an attorney. I have an attorney that you should call. Her name is Brittany Henderson. She represented Epstein victims and according to my counterpart, VS Angela Jackson in New York City, Brittany is very proactive, well bersed[sic] attorney who takes on clingers such as yourself. Please call her, let her know you got her name and number from Angela. I hope this will be a good option.”

Based upon the email exchange, it appears VS Karen Gale improperly solicited a witness on behalf of a private attorney, Brittany Henderson, in violation of FBI and DOJ policies.

See **Section “8. FBI Victim Specialist Karen Gale Soliciting Witnesses on Behalf of a Private Attorney,”** below, for details of the improper conduct.

-Conducting an Interview of a Witness While the Witness was Being Filmed for a Netflix Documentary

During a purported Netflix documentary, a scene in the movie purports to be an interview of a government witness speaking via telephone to the FBI. Notes on the table in front of the witness include a reference to SA McGinnis. It is unclear if SA McGinnis conducted the interview knowing that it was being recorded by a Netflix film crew. If he or other FBI personnel were aware, it should be documented in the FBI case file, and in the FD-302 and notes summarizing the interview of the witness. However, it would violate FBI policy to participate in an interview which was being recorded by a video production crew without appropriate FBI and DOJ approvals.

See **Section “9. Conducting an Interview of a Witness While the Witness was Being Filmed for a Netflix Documentary,”** below, for details of the improper conduct.

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DETAILED FINDINGS

1. Misuse of and Failure to Properly Handle Stolen Privileged Attorney Client Documents

On January 26, 2021, FBI SA McGinnis and SA Colleen Sheehan interviewed a former OneTaste information technology (IT) contractor named Mitchell Aidelbaum. During the interview, Aidelbaum told the FBI agents that he possessed a document that he believed “had a lot of bad stuff [OneTaste] did over the years”³ and that it was a “copy” of an “attorney client privilege[d]” document he took from OneTaste employee Yia Vang’s laptop appearing to outline such derogatory acts. To obtain the document, Aidelbaum illegally accessed the company computer systems after he had stopped working at the company. This stolen attorney client privileged document was drafted by the defendants on behalf of and at the request of the company’s law firm.

SA McGinnis and SA Sheehan obtained the stolen attorney client privileged document from Aidelbaum during the interview by providing Aidelbaum a thumb drive on which he downloaded the document. The file name of the document saved to the thumb drive was the original file name “Attorney Client Privilege.” The FBI agents did not provide a property receipt form to Aidelbaum for the thumb drive containing the stolen privileged attorney client document.

Although the agent’s notes⁴ of the FBI interview documented that Aidelbaum told the FBI agents the stolen document was a “copy” of an “attorney client privilege[d]” document taken from a company employee’s laptop (**See Appendix 1A – Redacted FBI Notes of January 26, 2021 Mitchell Aidelbaum Interview**), SA McGinnis and SA Sheehan omitted any reference to the document being “attorney client privilege[d]” in the FBI FD-302, thus deliberately omitting a material fact. **See Appendix 1B – Redacted FBI FD-302 of January 26, 2021, Mitchell Aidelbaum Interview**. Notably, all other unredacted notes were incorporated into the FD-302.

Further, the agents also omitted in the FD-302 that Aidelbaum provided them the stolen attorney client privileged document which was saved with the file name “attorney client privilege” on the thumb drive provided by the agents. They instead described in the FD-302 that Aidelbaum had downloaded from the company various documents, including a document which appeared to outline derogatory acts at

³ Per the defendants’ Joint Motion to Dismiss, pages 4-5 dated August 1, 2024 (**See Appendix 1H – Defendant’s Joint Motion to Dismiss Dated August 1, 2024**), the document was not a list of “bad stuff [OneTaste] did over the years”, but rather a document that legal representatives requested OneTaste executives draft outlining any incidents that could be perceived negatively or mischaracterized and result in a complaint or accusation against OneTaste, regardless of their legitimacy. Legal representatives urged OneTaste to assemble a catalog of all rumors or innuendos that had circulated online or among individuals associated with OneTaste, including those that were patently false. The purpose of this directive was to facilitate the legal representatives’ provision of legal advice.

⁴ It is unclear whether the notes were written by SA McGinnis or SA Sheehan during the interview.

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OneTaste...and that Aidelbaum “believed the document outlining various derogatory acts was authored by company employee, Yia Vang, since it originated from the Yia Vang’s laptop.” However, they did not memorialize in the FD-302 the receipt of the document or the thumb drive from Aidelbaum.

SA McGinnis and SA Sheehan violated FBI policy by materially misstating and omitting information from the FD-302, and by preventing the thumb drive and stolen attorney client privileged document from being entered into the FBI official record-keeping system as evidence. In addition, it appears SA McGinnis utilized the stolen privileged attorney client document to create an investigative work plan and strategy, which included identifying previously unknown potential witnesses and events, and implemented it to conduct the government investigation, violating the company’s and the defendants’ Due Process rights guaranteed by the U.S. Constitution.

Further, SA McGinnis and SA Sheehan violated a federal criminal law, specifically “misprision of a felony” (18 USC 4)⁵, by not investigating or reporting the illegal intrusion into the OneTaste company computer systems and the theft of the privileged attorney client document by Aidelbaum once they learned of his conduct on January 26, 2021.

During the same January 26, 2021 interview, Aidelbaum told the FBI agents that he had other company documents in his possession and if the FBI agents provided hard drives, Aidelbaum would copy the materials and turn them over, as well. Therefore, on February 1, 2021, SA McGinnis obtained and served a Grand Jury subpoena (requested by AUSA Gillian Kassner) commanding Aidelbaum to turn over the remaining company documents in his possession. The FBI also provided hard drives on which Aidelbaum copied the documents. In this instance, unlike with the stolen privileged attorney client document the FBI agents obtained from Aidelbaum on January 26, 2021, the FBI agent (different than SA McGinnis or SA Sheehan) provided a property receipt form to Aidelbaum for the hard drives containing the remaining company documents.

Further to the FBI agents’ misconduct, even though during the January 26, 2021, interview Aidelbaum had put the FBI agents on notice that the document was an “attorney client privilege[d]” document and its file name was “attorney client privilege”, SA McGinnis and SA Sheehan never quarantined the stolen attorney client privileged document for review by a privilege review team. Also, according to the USAO, SA McGinnis and SA Sheehan did not share the stolen attorney client privileged document with any of the assigned AUSAs. As a result, the government never notified the company or the two defendants (former company officers) that the government possessed the stolen attorney client privileged document, nor did they produce the document to the defendants as part of Rule 16 discovery.

⁵ Per 18 USC 4, “Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.”

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Since the stolen attorney client privileged document provided by Aidelbaum was never produced by the government through the discovery process, the company and defendants may have never learned of Aidelbaum's illegal unauthorized access of the company's computer systems and the theft of the privileged attorney client document. Only through the company's and defendants' proactive investigation and inquiries to the government, including the need to file motions in federal court to compel the government to disclose, did the company and defendants determine the existence and source of the document, and the misconduct by the FBI agents.

Identifying the Existence and Source of the Stolen Attorney Client Privileged Document

As part of the Rule 16 discovery process, on September 18, 2023, the government provided to the defendants among approximately 59,000 pages of documents, a 27-page document they labeled as “[s]creenshots of a document provided by Individual-13, whose identity will be disclosed to counsel separately.” **See Appendix 1C – Discovery Letter Dated September 18, 2023.** “Individual-13” was subsequently identified as Kara Cooper, who was not a company employee. Contrary to the government's description, rather than being screenshots from Kara Cooper of a “document”, it would later be determined the “screenshots” were of the same stolen attorney client privileged document which the government had also obtained from Aidelbaum on January 26, 2021, as viewed page by page on a cell phone. These screenshots in the form of JPEG images were then embedded into a PDF document by the government and provided in discovery, obfuscating the metadata pertaining to each JPEG image.

Further, even though Cooper stated in a November 19, 2021 email to SA McGinnis at the time she produced the screenshots that they were “sent from a past [OneTaste] worker (Andrew Cortado) who doesn't know who exactly wrote it but suspects [REDACTED BY THE GOVERNMENT]” and “Cortado has it on iCloud and I don't have iCloud so he screenshot it all to me. He has the doc if you'd like it...” (**See Appendix 1D – Redacted Emails Between Kara Cooper and FBI SA Elliot McGinnis Dated November 19, 2021**), SA McGinnis made no contemporaneous effort to interview Cortado about the related document to determine how Cortado obtained it, who the author was, and whether the information was accurate. Rather, SA McGinnis ignored the “attorney client privilege” labels in the screenshots and treated it generically, as the government wrote in their Rule 16 discovery letter to the defendants, as “Screenshots of a **document** provided by [Kara Cooper]” (emphasis added). Most important, SA McGinnis forwarded Cooper's email to SA Sheehan without comment and without any follow up by either agent.

Since the government embedded the screenshots into a PDF file, the contents of the document could not be OCR scanned. As a result, the contents were unsearchable via text search in the defendant's electronic discovery system. Therefore, even though several instances within the screenshots of the document file name “ATTORNE...ILEGE.docx” (which was the truncated file name as viewed on the cell phone) along with the label on the first page “ATTORNEY-CLIENT PRIVILEGE”, were contained in the screenshots, the defendants could not identify the document via text searches, which

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delayed its discovery. **See Appendix 1E – Government Discovery Document Containing JPEG Images of an Attorney Client Privileged Document Obtained from Kara Cooper.**

Finally, in April 2024, based upon a manual page-by-page review of the approximate 59,000 pages of the Rule 16 discovery, the company and defendants identified the “screenshots” as pictures of their attorney client privileged document. Upon discovering the screenshots were, in fact, an attorney client privileged document, the company notified the government of the attorney client privileged nature of the screenshots of the document and demanded the government implement a Privilege Review Team to determine how the government obtained them. The USAO subsequently assigned a “Filter” AUSA to conduct the privilege review. The Filter AUSA subsequently notified the company that the screenshots of the attorney client privileged document were obtained by SA McGinnis in November 2021 from a non-company employee, Kara Cooper, and that Cooper had obtained the screenshots from an individual named Andrew Cortado.

Curiously, even though SA McGinnis and SA Sheehan were put on notice by Cooper in November 2021 that the screenshots of the attorney client privileged document were received from Andrew Cortado, they did not conduct *any* follow up with Cortado to obtain the document from Cortado or to determine how Cortado obtained the document. This would indicate they already knew the source of the document, namely, the document stolen by Aidelbaum and provided to SA McGinnis and SA Sheehan on January 26, 2021.

Further, the fact that SA McGinnis and SA Sheehan provided the screenshots of the attorney client privileged document to the USAO, which were then turned over in Rule 16 discovery, but the stolen attorney client privileged document received from Aidelbaum was not, further demonstrates SA McGinnis and SA Sheehan intentionally withheld the document, hiding the fact that the document was stolen by Mitchell Aidelbaum, and that it was clearly labeled as an “attorney client privileged” document.

In May 2024, based upon the disclosure by the Filter AUSA, the company contacted Cortado to demand the return of the attorney client privileged document and determine how he obtained the document. As a result of the contact, Cortado called SA McGinnis and told him, according to a redacted FD-302 of the call, that an attorney for OneTaste contacted him threatening legal action and looking for what he believed was the document listing things that OneTaste did that were perhaps wrong. **See Appendix 1F – Redacted FD-302 of Interview of Andrew Cortado Dated May 02, 2024.** In addition, Cortado stated he received the document from Mitchell Aidelbaum. It appears, however, once again much like in the Aidelbaum FD-302, that SA McGinnis did not document in the FD-302 the likely statement by Cortado that the company was looking for an “attorney client privileged” document. It was also notable that Kara Cooper notified SA McGinnis in November 2021 that she received the screenshots of the attorney client privileged document from Cortado, but until **Cortado** contacted SA McGinnis in May 2024 (two and half years later) SA McGinnis, despite having interviewed Cortado twice in the interim, had not questioned Cortado about the providence of nor conducted any investigation to determine the source of the attorney client privileged document. Again, this demonstrates, at a minimum, that SA McGinnis was deficient in his investigative duties, but more likely

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demonstrates SA McGinnis already knew the screenshots obtained from Kara Cooper were screenshots of the same stolen attorney client privileged document SA McGinnis and SA Sheehan had received from Aidelbaum 10 months earlier.

The company, on their own initiative, subsequently contacted Mitchell Aidelbaum and demanded the return of the attorney client privileged document. As a result of this contact, Aidelbaum provided the company a signed declaration dated July 31, 2024, stating:

On January 26, 2021, I was visited at my home, without prior notice, by FBI agent Elliot McGinnis and another FBI Agent.

Upon questioning about OneTaste, a company which previously employed me as a contractor, I told the FBI agents I was in possession of a document that I believed "had a lot of bad stuff they did over the years" or words to that effect.

That "bad stuff" document was entitled "Attorney Client Privilege" and the document itself was marked "Attorney Client Privilege" and, to my knowledge, had been created after I had left the company. To my knowledge, OneTaste did not know I was in possession of this document.

One of the FBI Agents gave me a thumb drive at this meeting and I saved the document with "Attorney Client Privilege" markings onto the flash drive and gave it to the agents at this meeting. I copied the document with the original name "Attorney Client Privilege" onto the flash drive with that original name for the document. The document I saved on the thumb drive was a single Word document. I do not recall receiving a property receipt from the FBI agents for this flash drive.

I also informed the agents that I had in my possession other documents from the time period that I was employed at OneTaste and that if they sent me hard drives, I would copy the remaining material onto the hard drives and turn them over to the FBI as well.

On February 1, 2021, I received a grand jury subpoena from Assistant United States Attorney Gillian Kassner seeking the remaining OneTaste documents in my possession, which I then copied onto hard drives provided by the FBI.

See Appendix 1G – Declaration of Mitchell Aidelbaum Dated July 31, 2024.

These statements by Aidelbaum, as memorialized in his Declaration, were the first notifications to the company and defendants that Aidelbaum stole the attorney client privileged document from OneTaste, and that Aidelbaum had provided the stolen attorney client privileged document to FBI SA McGinnis and SA Sheehan in January 2021.

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Based upon Aidelbaum's sworn Declaration, it appears SA McGinnis and SA Sheehan recognized, at the time they received the stolen attorney client privileged document, the impropriety of possessing the document, both because the attorney client privileged document had been illegally obtained by Aidelbaum after he left the company and because the document was in fact an attorney client privileged document. However, apparently because they wanted to view the document as soon as possible, they directed Aidelbaum to separate the stolen attorney client privileged document from the other company related documents in his possession by saving it on a thumb drive which they provided, and then to separately provide the remaining documents possessed by Aidelbaum via hard drives which the FBI would subsequently provide to Aidelbaum in conjunction with a February 1, 2021 subpoena.

Based upon the government not disclosing their receipt of the stolen attorney client privileged document from Aidelbaum and the mishandling of the Cooper screenshots, the defendants filed a Motion to Dismiss the case on August 1, 2024 (**See Appendix 1H – Defendant's Joint Motion to Dismiss Dated August 1, 2024**) due to the government's misconduct.

On August 15, 2024, in the government's response to the Motion to Dismiss (**See Appendix 1I – Government's Response to Defendants' Joint Motion to Dismiss Dated August 15, 2024**), the government again omitted any knowledge of the stolen attorney client privileged document received from Aidelbaum on January 26, 2021. Curiously, however, the government referenced that in response to a grand jury subpoena served on Aidelbaum on February 1, 2024, Aidelbaum provided materials on February 25, 2021, which Aidelbaum "previously stated that he downloaded and retained from OneTaste's cloud services around the time that he left OneTaste, which include a document Aidelbaum stated he believed came from OneTaste employee Yia Vang's laptop appearing to outline derogatory acts at OneTaste. The documents provided by Aidelbaum were later produced to the defendants in discovery in July and August 2023." In a footnote (eight) to the filing, the government stated, "It is unclear if the document [Aidelbaum] described was the Document that is the subject of this motion or a different document."⁶ Because SA McGinnis and SA Sheehan intentionally concealed the existence of this confidential and privileged information by:

1. not referencing in the FD-302 the receipt of the document via thumb drive on January 26, 2021;

⁶ It defies logic that until reviewing the Declaration of Mitchell Aidelbaum on September 7, 2024, the government made no attempt to locate the document which was, as they described in their filing and from the January 26, 2021 Aidelbaum FD-302, a "document Aidelbaum stated he believed came from OneTaste employee Yia Vang's laptop appearing to outline **certain derogatory acts** at OneTaste." (emphasis added). This would be the first document even a mediocre investigator or prosecutor would want to get their hands on to review as part of their case. A document Aidelbaum disclosed to the government in January 2021...two and a half years prior to Aidelbaum's Declaration.

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2. by not submitting it into the FBI official record-keeping system; and
3. by omitting in the FD-302 the fact that Aidelbaum had told them it was an “attorney client privilege” document which one of the FBI agents included in their handwritten notes of the interview.

Because of SA McGinnes’ defalcation, the Prosecution Team filed knowingly false information with the Court in their August 15, 2024, filing.

Notably, the government also argued in their filing that the Court should deny the Motion to Dismiss based on the government’s receipt of the Kara Cooper “screenshots” of the attorney client privileged document, including for the following two reasons:

1. The defendants waived the privilege by not timely filing after having received the document in Rule 16 discovery.

As we now know, however, at the time of the filing, the government had not provided to the defense the prior iteration of the document received from Mitchell Aidelbaum on January 26, 2021.

2. The defendants do not identify how the government’s receipt of the Document from a third-party witness, and subsequent production in discovery, constitutes any intentional intrusion of privilege, much less misconduct warranting drastic relief of dismissal of the indictment.

As we now know, however, the attorney client privileged document was stolen by Aidelbaum and covered up by SA McGinnis and SA Sheehan which constituted an intentional intrusion of the privilege and intentional falsification of and omission from official FBI records, violating the due process rights of the defendants.

Nowhere in their Court filing did the government disclose that SA McGinnis and SA Sheehan had also received the stolen attorney client privileged document on January 26, 2021, from Aidelbaum. And most damning is the fact that the government conducted no follow up regarding the source of the Cooper screenshots, first in November 2021 when Cooper told SA McGinnis that she received the screenshots from Cortado, or on the two occasions in 2023 when they interviewed Cortado. In fact, it took Cortado’s initiative to contact SA McGinnis in May 2024, to notify him that Cortado received the document from Mitchell Aidelbaum. The logical reason for the lack of investigative action is because both SA McGinnis and SA Sheehan knew in November 2021 that the Cooper provided screenshots were portions of the same stolen attorney client privileged document that Aidelbaum had secretly provided to them on January 26, 2021.

The government further misled the Court in their August 19, 2024, response to the company’s June 25, 2024, Rule 41G Motion, stating among other things:

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Approximately seven months after the government's disclosure of the Document in Cherwitz, on April 24, 2024, counsel for OneTaste asserted privilege over the Document for the first time in an email to the government. After receiving the email from OneTaste's counsel, the government immediately restricted access by any member of the prosecution team to the Document and established a separate privilege review team (the "Privilege Review Team") tasked with reviewing the Document so that, upon determination that any materials were in fact privileged, those materials could continue to be segregated from the prosecution team.

The government also promptly answered OneTaste's questions about the timing, manner and format of the government's receipt of the Document, including that Cooper indicated she had received the Document from Cortado, as described above.

Subsequently, in May 2024, Cortado contacted the FBI and advised that a person claiming to be counsel for OneTaste contacted Cortado about documents that Cortado had provided to Cooper, specifically photos Cortado had sent to Cooper. Cortado further informed the FBI at that time that Cortado believed he had received those photos from another individual, Mitchell Aidelbaum. The government is aware that Aidelbaum was at one point employed by OneTaste as an IT contractor and that Aidelbaum also participated in OneTaste courses. In 2021, Aidelbaum informed the FBI that around the time Aidelbaum left OneTaste, Aidelbaum downloaded and retained certain documents from OneTaste's cloud services.

The government included as footnote 5, stating:

These documents were provided to the FBI and later produced to the defendants in discovery in July and August 2023. To date, in the year period that has lapsed since their production to the defendants, neither OneTaste nor the defendants have ever claimed that any of these documents are privileged.

which was again knowingly false information provided to the court. **See Appendix 1J – Government Response to the Company's 41G Motion Dated August 19, 2024.**

Finally, on September 6, 2024, the defendants filed a Reply brief to the government's August 15, 2024 response to the Motion to Dismiss and attached the July 31, 2024 Declaration by Aidelbaum which caused the government to "circle the wagons" and begin disclosing additional information to the Court which confirmed the misconduct by the FBI Special Agents related to the stolen attorney client privileged document that Aidelbaum secretly provided to FBI SA McGinnis and SA Sheehan on a FBI-sourced thumb drive on January 26, 2021. Specifically:

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On September 20, 2024, the government filed a “letter to supplement the factual record” related to the 41G motion filed by OneTaste. **See Appendix 1K – Government Letter to Supplement the Factual Record Dated September 20, 2024.** The letter stated that Aidelbaum’s affidavit was consistent with information he provided during the FBI interview in January 2021. As part of the filing, the government included a substantially redacted FD-302 of the January 26, 2021, interview of Aidelbaum, and substantially redacted notes taken by one of the agents during the interview. The government finally acknowledged that Aidelbaum notified the agents that the document said, “attorney client privilege”, which was only included in the notes and not the FD-302. The letter specifically stated:

The FBI Special Agent [SA McGinnis] leading the interview of Aidelbaum additionally searched all of the thumb drives in his possession and did not identify any documents resembling the one Aidelbaum described. The other FBI Special Agent [SA Sheehan] who attended the interview confirmed that she was likewise not in possession of any flash drives that contained materials from Aidelbaum.

On September 9, 2024, the government conducted an in-person manual search of hard copy and electronic files at the FBI. During a review of an electronic FBI workspace, the government identified a folder with [Aidelbaum’s] name in which were saved two Microsoft Word files containing in their file names the words “Attorney Client Privilege: Confidential and Privileged” (the “Word Documents”).

The government thereafter interviewed the FBI Special Agents who conducted Aidelbaum’s interview and learned the following, in sum and substance and in part. The FBI Special Agents who interviewed [Aidelbaum] do not specifically recall viewing or receiving any documents from [Aidelbaum] during the January 26, 2021 interview. Nor do the FBI Special Agents recall discussing and disclosing any documents referenced or provided by [Aidelbaum] with members of the United States Attorney’s Office, other than the materials on the two hard drives provided by [Aidelbaum] on February 25, 2021. However, based on an initial review of his/her emails, which included an email from approximately five days after the interview containing a bullet point list of information in a section associated with [Aidelbaum], one of the interviewing Special Agents informed the government that he/she believes it is likely that he/she viewed or possessed a copy of the Word Documents in January 2021.

The government footnoted in the letter the following:

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*The Word Documents were not sent to the United States Attorney's Office until they were provided to a member of the Privilege Review Team in September 2024. **No member of the prosecution team at the [USAO] has opened or accessed the Word Documents.***

This statement about the USAO not having received the Aidelbaum "Word Documents" was later determined to be false based upon the government's *additional* "letter to supplement the factual record" filed with the Court on October 7, 2024, in which they finally admitted for the first time that the USAO also possessed the Aidelbaum stolen attorney client privileged documents in their computer systems. The October 7, 2024 letter stated:

In the government's September 20, 2024 letter, the government stated that the Privilege Review Team had searched the [USAO's] internal files and emails relevant to the Cherwitz matter to determine whether the [USAO] had ever received a copy of the Word Documents from [Aidelbaum], but the search did not result in the identification of any relevant documents at that time.

On October 1, 2024, after continuing its search of the electronic case file prior to trial, the government identified copies of the Word Documents that were saved to the [USAO's] Cherwitz case file as part of a collection of materials that had been segregated upon receipt by a paralegal to a separate workspace. Upon locating these copies, their access was restricted to the Privilege Review Team.

See Appendix 1L – Government Letter to Supplement the Factual Record Dated October 7, 2024.

This most recent government disclosure raises additional unanswered questions regarding how and when FBI SA McGinnis or SA Sheehan delivered the stolen attorney client privileged documents to the USAO such that the USAO discovered them in the USAO case file.

Based upon the government's conduct, it appears FBI SA McGinnis and SA Sheehan, in conjunction with the USAO, intentionally hid from the defendants the stolen attorney client privileged documents provided by Mitchell Aidelbaum to SA McGinnis and SA Sheehan on January 26, 2021, in violation of DOJ policy regarding the handling of attorney client privileged documents and in violation of their discovery obligations.

It also appears SA McGinnis utilized the stolen attorney client privileged document to create an investigative work plan, including the identification of potential witnesses to contact. This fact can be discerned by the chronology of individuals contacted immediately after SA McGinnis received the stolen attorney client privileged document on January 26, 2021. This information can be corroborated by reviewing the FBI Sentinel case file and creating a timeline of individuals and dates of contact.

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In addition, it is likely SA McGinnis would have had to discuss the stolen attorney client privileged document with someone who was previously affiliated with the company as many of the names listed in the document were first names only. Therefore, there should be FD-302s or FD-1023s documenting discussion of the document. It is worth noting, however, that since SA McGinnis did not memorialize his receipt of the stolen attorney client privileged document in the January 26, 2021, Aidelbaum FD-302, it is unlikely he would have memorialized any discussions he may have had with other individuals regarding the document.

As a result of FBI SA Elliot McGinnis' improper conduct, and others, as detailed above, he violated the Due Process rights of the defendants as it relates to the stolen attorney client privileged document and its use in conducting the FBI investigation. Further, he engaged in a misprision of a felony (18 USC 4) by not acting upon the illegal intrusion and theft of the privileged attorney client document by Aidelbaum. He, along with SA Sheehan, omitted material information from an FD-302, including statements by Aidelbaum that the document he provided the FBI agents via an FBI-sourced thumb drive was an "attorney client privilege[d]" document, and hid evidence in the form of a thumb drive containing the stolen attorney client privileged document such that it was not submitted into the FBI official record-keeping system. The actions by SA McGinnis, and others, also caused the government to submit false and misleading filings with the Court on numerous occasions.

ACTIONS BY SA MCGINNIS DEMONSTRATING KNOWLEDGE OF AND INTENT TO ENGAGE IN IMPROPER CONDUCT RELATED TO THE ATTORNEY CLIENT PRIVILEGED DOCUMENT

Further to the chronology and conduct outlined above, the following actions by SA McGinnis, and others, demonstrate knowledge and intent to engage in the improper conduct related to the stolen attorney client privileged document obtained from Aidelbaum on January 26, 2021, including:

January 26, 2021

- Separately obtaining the stolen attorney client privileged document from Mitchell Aidelbaum via an FBI-sourced thumb drive on January 26, 2021, and obtaining the remaining documents from Aidelbaum via hard drives provided by the FBI to Aidelbaum pursuant to a February 1, 2021 subpoena.
- Failing to provide an FBI form FD-597 Property Receipt form to Aidelbaum memorializing receipt of the FBI-sourced thumb drive containing the stolen attorney client privileged document on January 26, 2021.

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Note: *When Aidelbaum provided the additional documents pursuant to the February 1, 2021 subpoena via FBI-sourced hard the FBI agent (different than SA McGinnis or SA Sheehan) provided Aidelbaum with an FD-597 Property Receipt form, per FBI Policy.*

- Including in the contemporaneous notes of the interview of Aidelbaum on January 26, 2021, that Aidelbaum described the document as a “copy” of an “attorney client privilege” document, but failing to include this information in the FD-302, thus omitting a material fact. Their intent to omit is further demonstrated in that they documented all of their other unredacted notes in the FD-302.
- Failure to identify in the FD-302 that Aidelbaum provided to SA McGinnis and SA Sheehan the stolen attorney client privileged document via download onto a thumb drive provided by SA McGinnis during the January 26, 2021, interview.
- Failure to submit the thumb drive and stolen attorney client privilege document into evidence in the FBI official record-keeping system.
- Failure to sequester the stolen attorney client privileged document for Privilege Team review.
- Failure to disclose to the USAO the receipt of the stolen attorney client privileged document.
- Violating a federal criminal statute, 18 USC 4 - Misprision of a Felony, by failing to act on the information from Aidelbaum and concealing the fact that he obtained the attorney client privileged document from the laptop of a company employee after he was no longer employed by the company.
- Utilizing the stolen attorney client privileged document to create an investigative work plan, including the identification of potential witnesses to contact.

November 19, 2021

- Failing to sequester for Privilege Team review JPEG images of a document received on November 19, 2021 from Kara Cooper via email which were titled “attorney client privilege.docx” and which also included “attorney client privilege” labels within the images.

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- Failure to investigate the source of the images of the attorney client privileged document based upon information provided by Cooper in her November 19, 2021 email to SA McGinnis where she stated “It’s sent from a past OT worker (Andrew Cortado) who doesn’t know who exactly wrote it but suspects [redacted by the government]. He has it on iCloud and I don’t have iCloud so he screenshot it all to me. He has the doc if you’d like it.”
- The failure of SA McGinnis to follow up with Andrew Cortado to determine the source of the documents during two interviews of Cortado in 2022 indicates SA McGinnis knew the images were a version of the same stolen attorney client privileged document he received from Mitchell Aidelbaum ten months prior on January 26, 2021.

September 18, 2023

- Causing the USAO to provide Rule 16 discovery which obfuscated that the JPEG images were of a stolen attorney client privileged document obtained from Kara Cooper on November 19, 2021. In the September 18, 2023, Rule 16 discovery letter from the government to the defendants, the images were described generically as “Screenshots of a document provided by Individual #13, whose identity will be disclosed to counsel separately (ONETASTE00167250 – ONETASTE00167276).” The images were 27 pages of approximately 59,000 pages provided by the government in their September 18, 2023, Rule 16 discovery production.

Note: *Because Cooper sent the screenshots on November 19, 2021, to SA McGinnis’ official FBI email account, SA McGinnis would be obligated to disclose receipt of the screenshots to the USAO as all relevant FBI agent emails would be reviewed as part of the discovery process. This is not the case with the Aidelbaum stolen attorney client privileged document as there would be no documentation of receipt of the stolen attorney client privileged document unless SA McGinnis or SA Sheehan affirmatively entered the information from the Aidelbaum interview into the FBI official record-keeping system. In this case with Aidelbaum, only because of the Declaration of Aidelbaum filed with the Court in September 2024 was there confirmation of the FBI agents’ misconduct.*

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May 2, 2024

- Based upon contact with Cortado by company counsel demanding return of the stolen attorney client privileged document which was the source of the screenshots provided to Cooper, Cortado called SA McGinnis and notified him of the contact, and that he thought the company “was looking for photos he sent [Kara] Cooper years ago, which were photos of a document listing things that OneTaste did that were perhaps wrong.” Cortado also informed SA McGinnis he received the document from Aidelbaum (per a redacted FD-302 of the telephone call). This contact was approximately two and a half years **after** Cooper’s November 19, 2021, email to SA McGinnis notifying him that she received the photos from Cortado.

***Note:** OneTaste counsel notified Cortado by letter that he was in possession of a stolen “attorney client privileged” document and thus OneTaste was demanding its return. Therefore, it would seem logical that Cortado conveyed this information to SA McGinnis. Like the FD-302 of the Aidelbaum interview on January 26, 2021, However, the FD-302 of the telephone call with Cortado does not reference anywhere that OneTaste had demanded the return of “attorney client privileged” material.*

It is also telling that SA McGinnis did not conduct any subsequent follow up investigation with Aidelbaum regarding Cortado’s receipt of the document from Aidelbaum. This, again, reinforces that SA McGinnis was well aware that the screenshots emailed to him by Cooper on November 19, 2021, were images of the same stolen attorney client privileged document he received from Aidelbaum on January 26, 2021, ten months earlier.

August 15, 2024

- Causing the government to submit a false filing with the Court stating the documents received from Aidelbaum were provided to the defendants in discovery in July and August 2023.

August 19, 2024

- Causing the government to submit another false filing with the Court stating the documents received from Aidelbaum were provided to the defendants in discovery.

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September 20, 2024

- On September 6, 2024, the defendants filed the Declaration of Aidelbaum in which he stated he provided to SA McGinnis an “attorney client privileged” document which he had removed from the company after he no longer worked there, and provided it to the FBI via a FBI-sourced thumb drive on January 26, 2021.

As a result of the Declaration, the government interviewed SA McGinnis and SA Sheehan. Both agents denied possession of a thumb drive containing the stolen attorney client privileged document received from Aidelbaum. Both SAs stated they did not specifically recall viewing or receiving any documents from [Aidelbaum] during the January 26, 2021, interview. Nor did they recall discussing and disclosing any documents referenced or provided by [Aidelbaum] with members of the USAO, other than the materials on the two hard drives provided by [Aidelbaum] on February 25, 2021.

However, based on an initial review of one of the SA’s emails, which included an email from approximately five days⁷ after the interview containing a bullet point list of information in a section associated with [Aidelbaum], one of the interviewing SAs [undisclosed by the government] informed the government that he/she believed it was likely that he/she viewed or possessed a copy of the stolen attorney client document(s) provided by Aidelbaum on January 26, 2021.

The government also acknowledged that according to notes taken by one of the FBI agents, Aidelbaum notified the agents during the January 26, 2021, interview that the document he provided on a thumb drive said “attorney client privilege.” They further disclosed that on September 9, 2024, “during a review of an electronic FBI workspace, the government identified a folder with [Aidelbaum’s] name in which were saved two Microsoft Word files containing in their file names the words “Attorney Client Privilege: Confidential and Privileged.”

Further, according to the government letter, the stolen attorney client privileged document(s) received from Aidelbaum were not sent to the USAO until they were provided to a member of the Privilege Review Team in September 2024. They further asserted that no member of the prosecution team at the USAO had opened or accessed the documents. This would subsequently be determined to be false.

⁷ In a profound coincidence, the email sent by the FBI SA five days later was on or about the same day, February 1, 2021, when AUSA Gillian Kassner issued a Grand Jury subpoena to Mitchell Aidelbaum for all OneTaste related records. It would seem plausible that the email which caused the FBI SA to recall receipt from Aidelbaum of the stolen attorney client privileged document was an email sent to the AUSA.

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Many questions remain from these limited disclosures by the government which can only be answered by interviewing the agents and the AUSAs, reviewing the email which refreshed the memory of one agent, and identifying which agent possessed the stolen attorney client privileged document(s) in his/her FBI “electronic work space”.

ONE LAST GLARING ISSUE is that Cortado notified SA McGinnis in May 2024 that Cortado received the attorney client privileged document (which was the source of the screenshots sent to Cooper) from Mitchell Aidelbaum, but SA McGinnis conducted no follow up investigation with Aidelbaum. And then in September 2024 (four months later) SA McGinnis denied any knowledge or memory of the receipt of the document from Aidelbaum. This lack of investigative follow up based upon the Cortado interview but then lack of any knowledge or memory of receiving the document from Aidelbaum four months later defies logic.

October 7, 2024

- Curiously, the government filed a “Letter to Supplement the Factual Record” on October 7, 2024 admitting that their filing to the court on September 20, 2024 was partly false because on October 1, 2024, the government had identified copies of the stolen attorney client privileged documents received from Aidelbaum that were saved to the USAO’s “Cherwitz” case file as part of a collection of materials that had been segregated upon receipt by a paralegal⁸ to a separate workspace.

This was contrary to their assertion in the September 20, 2024, Letter to the Court where they stated that attorney client privileged document obtained by the FBI agents on January 26, 2021, from Aidelbaum was never sent to the USAO. This is also contrary to the statements by the FBI agents that neither recalled discussing or disclosing any documents referenced or provided by Aidelbaum with members of the USAO.

⁸ The government has yet to explain how a paralegal at the USAO came into possession of the stolen attorney client privileged documents, but it defies logic that none of the AUSAs assigned to the case ever received or reviewed the documents.

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2. Interview of the Former Company In-House Counsel Discussing Privileged Issues

According to a government filing to the Court in the criminal case (**See Appendix 2A – ECF 97 Filed June 12, 2024**), unidentified FBI agent(s) interviewed Adam Jacobowitz, former OneTaste company counsel, under the guise of interviewing him as a former “member” of OneTaste and not as former company counsel. However, only after the company identified this potential privilege intrusion on the part of the FBI agents did the government utilize a privilege review “taint” team to review the FBI form FD-302 of the interview. The privilege review team identified potentially privileged communications documented in the FD-302 and subsequently redacted portions of it.

Although the interviewing FBI agents were not identified by the government, based upon SA McGinnis’ role as the case agent, SA McGinnis was likely one of the interviewing agents who improperly intruded upon privileged communications during the interview, thus violating the Due Process rights of the company and defendants. The government was put on notice as early as 2019 that Adam Jacobowitz was former company counsel and SA McGinnis had been on the case since 2018.

3. Providing Inaccurate and Misleading Information in a Sworn Affidavit in Support of a Seizure Warrant which Caused the Warrant to be Vacated

On March 20, 2024, SA Elliot McGinnis telephonically swore to an Affidavit in support of an application for a Seizure Warrant (Case Number 24-M-240) to a U.S. Magistrate Judge in the Eastern District of New York. **See Appendix 3A – Affidavit in Support of Application for Seizure Warrant.** The target of the seizure was any and all funds formerly on deposit in a Charles Schwab account held in the name of one of the defendants, Nicole Daedone, as trustee for BD Care Irrevocable Trust, in the sum of \$252,607.91.

According to information provided by Daedone, she established the BD Care Irrevocable Trust to pay the rent on the primary residence of her mother, Beverly Daedone. The original trust was established at Neuberger Berman. However, on July 2, 2023, the trust funds were transferred to Charles Schwab due to Neuberger Berman closing the account. On August 30, 2023, Schwab, on its own accord, also closed the trust account and generated a cashier’s check made payable to Nicole Daedone, Trustee for BD Care Irrevocable Trust. Over the next several months, because financial accounts related to Daedone were being canceled by financial institutions, Daedone held the cashier’s check while she determined how to proceed with further trust set up.

In January 2024, based upon inquiry by FBI SA McGinnis, Schwab issued a stop payment on the cashier’s check, and the government subsequently obtained the Seizure Warrant on March 20, 2024. Based upon the affidavit of SA McGinnis, however, he provided inaccurate and misleading information in the following instances:

1. McGinnis stated in ¶34 and ¶35 of the affidavit “On September 18, 2023, the Target Funds in the amount of \$252,607.91...[was] used for the

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purchase of a cashier's check made payable to NICOLE DAEDONE which, according to bank records, was mailed to NICOLDE DAEDONE. On January 11, 2024, Charles Schwab confirmed that the cashier's check purchased with the Target Funds had not been presented for payment and issued a stop payment order for the check due to suspected fraudulent activity."

However, contrary to SA McGinnis' statement, the check was written to "NICOLE DAEDONE TRUSTEE FOR BD CARE IRREVOCABLE TRUST" not "NICOLE DAEDONE" and was not purchased by Daedone, but rather generated by Schwab due to Schwab's decision to close the trust account. In addition, the stop payment by Schwab was generated based upon the inquiry by SA McGinnis.

2. McGinnis stated in ¶36 of the affidavit "Based on my training and experience, the secreting of funds derived from specified unlawful activity in the form of a cashier's check as described above that has not been presented for timely payment is consistent with the laundering of criminal proceeds."

However, as McGinnis should have known if he made inquiries with Charles Schwab, the cashier's check was generated by Schwab based upon Schwab's unilateral closure of the trust account, not based upon a request by Daedone.

As a result of the inaccurate and misleading information in McGinnis' affidavit, which he swore was accurate to the U.S. Magistrate Judge, the government vacated the Seizure Warrant on April 10, 2024. **See Appendix 3B – Order Vacating Seizure Warrant Dated April 10, 2024.**

SA McGinnis failed to obtain and/or document relevant information obtained from a financial institution in support of an Affidavit in support of a Seizure Warrant. He may have omitted or caused inaccurate information to be entered into the FBI official record-keeping system in FD-302(s) or other documentation of interviews with Charles Schwab representatives. He provided inaccurate and misleading information in an affidavit in support of a Seizure Warrant sworn to and signed by a U.S. Magistrate Judge, which ultimately resulted in the government vacating the Seizure Warrant.

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4. Providing Improper Legal Advice Which Enticed a Witness in a State Civil Case to Violate Their Legal Obligation Under a Subpoena by Secreting Responsive Evidence with the FBI

On December 28, 2023, the Plaintiffs in the case of *OneTaste v. Ayries Blanck* in the Superior Court of the State of California (Case Number 22STCV33093) obtained a Subpoena for Business Records which was served upon Autymn Blanck, sister of the defendant in the civil case, and both of whom are alleged to be government witnesses in the criminal investigation. The Subpoena, among a list of 54 requested categories of documents, asked for business records which included:

REQUEST #21

Any and all DOCUMENTS, including, but not limited to, ELECTRONICALLY STORED INFORMATION (including texts), that are, constitute, memorialize, concern, mention, relate to, refer to, or may provide evidence of, BLANCK's experiences with ONETASTE.

See Appendix 4A – Subpoena Served Upon Autymn Blanck Dated December 28, 2023.

According to the sworn deposition of Autymn Blanck on August 20-21, 2024

[REDACTED]

Blanck had possessed approximately six to eight journals which were written by her sister, Ayries Blanck, which purported to document Ayries Blanck's experiences when she was employed by or involved with the plaintiff company, OneTaste. In addition, Autymn Blanck possessed a hard drive given to her by Ayries Blanck which purportedly contained photos and other unknown information related to Ayries Blanck's involvement with OneTaste.

After the subpoena was served on Autymn Blanck, she had a telephone conversation and [REDACTED] with SA McGinnis during which Blanck notified SA McGinnis of her possession of Ayries Blanck's journals and the hard drive. According to Autymn Blanck's sworn deposition transcript, SA McGinnis conveyed to Blanck that if she provided the journals and hard drive to the FBI and did not keep or create any related records, she would not have to provide them in response to the subpoena. As a result, Blanck sent to FBI SA McGinnis the journals and hard drive via United Parcel Service and did not keep or create any records or copies of the records. Blanck confirmed these actions by SA McGinnis in her sworn deposition:

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

As a result of the actions by SA McGinnis, on August 28, 2024, California state court Judge Rupert A. Byrdsong, presiding over the civil case, directed OneTaste to draft an order to the FBI directing them to produce the journals and hard drive which had been provided by Autymn Blanck to the FBI at SA McGinnis' request, and which had prevented Blanck from complying with a lawful subpoena. As the Judge stated during an August 28, 2024, hearing, per the hearing transcript:

JUDGE: [Lawyer for Blanck] prepare the carefully crafted order to the FBI that I'll sign, and [Lawyer for OneTaste] will prepare the order regarding the hard drive. I mean, yeah. Everything else that I'll sign, and then we'll see what happens. They will either tell me to pound sand or maybe they will send some agents to come lock me up. How dare you? I don't know. We'll see what happens. But I think they will cooperate. I mean, this is fair in my mind. This is actually fair in my mind. I don't know what the fact-finder will think of all of these things, but I do know that it's fair that everyone has the chance to see the available information, and you make whatever arguments you wish to make as to the significance of that information, and the fact-finders will agree or disagree, but that is fairness in the presentation (Page 10).

JUDGE: All I care about is that the subpoenas are complied with and that information is turned over in a fair transparent fashion. So however and whatever needs to be done to effectuate that, that is my expectation, and I'm

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prepared to sign off on any order and hold anybody in contempt for violating any order that is not consistent with what I ordered (Page 19).

JUDGE: Somebody on the defense side figure out how and who. Those documents are ordered to be produced to the Plaintiff by September 15th. There will be extremely negative inferences and consequences for this order not being complied with (Page 22 in reference to production by Ayries Blanck of Google Drive metadata).

JUDGE: Proposed order – again, the proposed orders are due by the 3rd of September (Page 49).

See Appendix 4C – Transcript of August 28, 2024 Civil Court Hearing.

The final order was signed on September 9, 2024. **See Appendix 4D – Final Order Dated September 9, 2024.**

Based upon the sworn deposition testimony of Autymn Blanck, SA McGinnis conspired with a witness to subvert a California state court authorized subpoena by secreting responsive documents and materials with the FBI. Further, as a result of SA McGinnis' improper conduct, a California state judge issued an order to the FBI to produce the improperly obtained evidence.

5. Providing Improper Legal Advice to a Witness Resulting in the Destruction of Relevant (and Potentially Exculpatory) Evidence in the Form of Emails

On November 8, 2022, a key witness in the government's case, Ayries Blanck, emailed FBI SA McGinnis informing him about a civil lawsuit OneTaste filed against Blanck alleging she broke a settlement agreement she had with the company. **See Appendix 5A – Email Chain Between SA McGinnis and Ayries Blanck.** In response to several former OneTaste members whom Blanck was close with having contacted her via email, SA McGinnis stated "I recommend blocking Louisa and Summer. Based on their statements in the emails they are still associated with Onetaste and I feel that they are rather manipulative in nature. Talk to you later today, Elliot."

In response to SA McGinnis' email to Blanck, Blanck wrote back later on November 8, 2022, asking SA McGinnis the question "Should I disband and cancel that email? I've been keeping it open for any kind of stuff like this?"

SA McGinnis responded "I would cancel it if it's only bringing emails like the ones attached. It really serves you know [sic] purpose other than making you feel uneasy."

According to a subsequent Position Statement filed by Blanck in the case of *OneTaste v. Ayries Blanck* in the Superior Court of the State of California (Case Number 22STCV33093) defending the deletion of her email account, she stated "...the FBI further

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advised Ms. Blanck to ‘cancel’ the e-mail account, noting that the e-mails from OneTaste associates were designed to make her ‘feel uneasy.’ ...Ms. Blanck, unrepresented at that time, followed the FBI’s guidance...” **See Appendix 5B – “Defendant’s Position Statement” Filed by Ayries Blanck in a Civil Case in Los Angeles County, California.**

In contrast to SA McGinnis’ email to Blanck about canceling the email account, it is notable that a subpoena dated January 25, 2021, served by the federal government on OneTaste, which called for all responsive documents to be provided to SA McGinnis, included the following instructions from the government (**See Appendix 5C – Grand Jury Subpoena Dated January 25, 2021, Served Upon OneTaste**):

*Please note that the United States Attorney’s Office may issue additional subpoenas in connection with this investigation. **The Company should take all actions necessary to preserve data and documents that may [be] relevant to this investigation, and refrain from deleting or destroying any such data or documents, even if you might otherwise take such actions in the ordinary course of your business.** The preservation of data and documents should include preservation of finalized or draft documents that are responsive and that may be located on the Company’s computers or the computers of the Company’s employees, **and all electronic mail (including sent, received and deleted email) of the Company and any employee who may have any information relevant to any of the topics discussed in this subpoena.** (emphasis added)*

If the Company has knowledge of any document that would have been responsive to this subpoena but has been lost, destroyed, discarded, or subject to removal or alteration, it shall identify to the extent possible each such document and provide an explanation of the loss, destruction, discarding, removal or alteration (including identification of each person authorizing or having knowledge of the loss, destruction, discarding, removal or alteration).

The email from SA McGinnis to Blanck regarding canceling her email account is in stark contrast to the federal government’s expectation and instruction to the company against engaging in this type of conduct, namely “canceling” Blanck’s email account.

SA McGinnis contributed to the destruction of pertinent evidence in the civil case and FBI investigation by providing improper legal advice to a government witness with the advice directly leading to the destruction of data and documents relevant to the investigation and court proceedings.

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6. Providing Improper Legal Advice to a Witness Causing a Violation of an Executed Legal Settlement Agreement

On December 16, 2015, OneTaste and Ayries Blanck entered into a legal settlement agreement related to allegations Blanck made against OneTaste. **See Appendix 6A – Legal Settlement Agreement.** As part of the agreement, Clause #7 titled “Confidentiality”, Blanck agreed that “[s]hould Blanck at any time be served with a subpoena under which she would arguably be required to disclose any of the confidential information covered by this Agreement, then Blanck shall immediately contact OneTaste’s President...so that OneTaste shall have adequate time to take those steps necessary to prevent disclosure.”

According to an undated letter from Jonathan J. Delshad, Esq. with attached emails produced to OneTaste pursuant to a Deposition Subpoena issued in the case of *OneTaste v. Avries Blanck* in the Superior Court of the State of California (**See Appendix 6B** - [REDACTED]), on August 22, 2018 [REDACTED], [REDACTED] of the Law Offices of Jonathan J. Delshad, who appeared to represent Ayries Blanck in a 2015 mediation with OneTaste in which the legal settlement was agreed upon, emailed SA Elliot McGinnis in response to a government subpoena served upon Blanck, and stated:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Based upon the email exchange between SA Elliot McGinnis and Blanck’s attorney, [REDACTED], SA McGinnis provided improper legal advice to a witness which resulted in the witness violating a valid legal agreement, and which led to the filing of a civil lawsuit against Blanck for violating the legal agreement.

Mr. McPherson: And if she gets subpoenaed by anyone, the settlement agreement says she has to contact us. It was only through her prior lawyer, Mr. Delshad, that we were put on notice from the documents that he produced that the federal government, in addition to telling her to destroy evidence before, to stop her Google account and to wipe it out so we couldn't get anything, the FBI. Once again told her that she should not tell -- they told her and they told Mr. Delshad that she should not tell us pursuant to the settlement agreement that required her to do so about the subpoena.

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7. Causing Inaccurate Information to be Documented in the FBI Record-Keeping System Related to the Interview of Witnesses Classified as “Victims” Contrary to Their Statements

Two witnesses, Jennifer Slusher and Alisha Price, both of whom were interviewed by SA McGinnis, provided affidavits stating they were inappropriately labeled by SA McGinnis as “victims”.

Regarding Jennifer Slusher, in an affidavit dated June 17, 2024 (**See Appendix 7A – Affidavit of Jennifer Slusher Dated June 17, 2024**), Slusher stated that in an interview with SA McGinnis in late 2018, SA McGinnis told her “...the FBI was investigating ‘human trafficking’ allegations related to OneTaste. ...[Slusher] told him that in [her] extensive experience of OneTaste [she] never saw, heard or suspected any behavior [that] even vaguely resembled human trafficking or any other kind of criminal activity. [She] told Agent McGinnis multiple times that [she] did not consider [herself] a victim of OneTaste in any sense of the word.”

On August 31, 2023, after the defendants were indicted, SA McGinnis called Slusher and notified her that the defendants had been charged with conspiracy for “forced labor”. SA McGinnis told Slusher the purpose of his call was to offer “victim assistance” to her. Slusher told SA McGinnis she was not a victim of anything and did not want or need “victim assistance.” SA McGinnis responded that he thought in their last call that Slusher told him she felt like a victim. This information should have been documented in an FD-302 and provided by the government to the defendants as part of the government’s *Brady* obligation. SA McGinnis did not accurately document the interviews of Slusher which had the effect of withholding *Brady* information from the defendants.

Regarding Alisha Price, in affidavits dated October 10, 2023 (**See Appendix 7B – Affidavit of Alisha Price Dated October 10, 2023**) and June 26, 2024 (**See Appendix 7C – Affidavit of Alisha Price Dated June 26, 2024**), Price stated she was interviewed by SA McGinnis and SA Sheehan in April 2021. During the interview, Price told the agents that she did not consider herself a victim in connection with her experiences at OneTaste. Price subsequently told FBI Victim Specialist (VS) Angela Jackson that she did not see herself as a victim witness and did not want anything to do with the case. Price subsequently sent an email to VS Angela Jackson and Price’s attorney, Neil Glazer, which included writing that she did not believe they could consider her a victim given the way they were treating her. Within a day or two, VS Angela Jackson sent a text to Price stating the FBI would not be contacting her further. **See Appendix 7D – Text Messages Between FBI VS Angela Jackson and Alisha Price.** The FD-302s of the interviews of Price and the emails between Price and VS Angela Jackson were never produced by the government as part of the government’s *Brady* obligation.

The information provided to the FBI by Slusher and Price, including stating that they did not consider themselves victims, and which included emails and texts, and which should have been documented in the FBI FD-302s of their interviews, should have been provided to the defendants based upon the government’s *Brady* obligation. Since

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they were not, it raises the question whether SA McGinnis filed inaccurate official reports in the FBI official record-keeping system.

8. FBI Victim Specialist [REDACTED] Soliciting a [REDACTED] on Behalf of a [REDACTED]

FBI Victim Specialist [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

See Appendix 8A – Email Dated [REDACTED]

Based upon the email exchange. [REDACTED]

[REDACTED] in violation of FBI and DOJ policies.

9. Conducting an Interview of a Witness While the Witness was Being Filmed for a Netflix Documentary

During a purported Netflix documentary called “Orgasm Inc: The Story of OneTaste”, a scene in the movie purports to be an interview of a government witness, Audrey Wright, speaking via telephone to the FBI. Notes on the table in front of the witness include a reference to SA Elliot McGinnis. **See Appendix 9A – Netflix Screenshot of Notes Referencing McGinnis.** It is unclear if SA McGinnis conducted the interview knowing that it was being recorded by a Netflix film crew. If he or other FBI personnel were aware, it should be documented in the FBI case file, and in the FD-302 and notes summarizing the interview of Audrey Wright. However, it would violate FBI policy to participate in an interview which was being recorded by a video production crew without appropriate FBI and DOJ approvals.

Note: Netflix released the film in November 2022, five months before the indictment was filed in April 2023, and seven months before the indictment was unsealed in June 2023.

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CONCLUSION

Based upon the improper conduct of FBI SA Elliot McGinnis and other FBI and DOJ personnel, as summarized in this document, it appears they violated federal criminal statutes, FBI and DOJ policies, and government *Brady* obligations. Their conduct also caused false and misleading government filings to be filed with the Court. Further, it appears their conduct invoked a violation and government disclosure obligation under *Giglio v. U.S.* Their improper conduct calls into question the integrity of the FBI investigation, including the integrity of FBI official records created by SA McGinnis and others. In addition, their conduct portrays the FBI in a most negative light, causing the U.S. public to question the actions and integrity of the FBI.

Violations of FBI Guidelines

Based upon the improper conduct outlined in this referral, which included violations of federal criminal statutes and FBI and DOJ policies, FBI SA McGinnis and others⁹ violated FBI Penalty Guidelines, to include the following:

- **1.6 Investigative Deficiency - Improper Handling of Document(s) or Property in the Care, Custody, or Control of the Government**

Failing to properly seize, identify, package, inventory, verify, record, document, control, store, secure, or safeguard document property under evidence, non-evidentiary items, and seized. Includes the unauthorized or improper use, or loss, to include ELSUR (electronic surveillance) materials.

Mitigated: Reprimand - 3 Days **Penalty:** 5 Days **Aggravated:** 7-30 Days

- **1.7 Investigative Deficiency - Misconduct Related to Judicial Proceedings**

During the investigative or litigative phases of a criminal or civil case, engaging in conduct that dishonors, disgraces, discredits, or otherwise brings the integrity or reliability of the FBI into question. (This does not apply to conduct involving falsification issues covered under 2,1, "Lack of Candor/Lying.")

⁹ In addition to the conduct of FBI SA Elliot McGinnis, other FBI and DOJ employees, including SA Colleen Sheehan and Victim Specialist Karen Gale, are complicit in instances of improper conduct detailed in this referral.

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Mitigated: Censure - 5 Days **Penalty:** 7 Days **Aggravated:** 10 Days –
Dismissal

- **2.3 False/Misleading Information – Investigative**

Knowingly providing false or misleading information in an investigative document; or, signing or attesting to the truthfulness of information provided in an investigative document in reckless disregard of the accuracy or completeness of the pertinent information contained therein. Documents involving investigative activity include, but are not limited to, FD-302s, Inserts, evidence control documents, LHMs, ECs, and documentation of CHS matters.

Mitigation: Censure - 21 Days **Penalty:** 30 Days **Aggravation:** 45 Days –
Dismissal

- **2.5 Lack of Candor/Lying – No Oath**

Knowingly providing false information when making a verbal or written statement, not under oath, to a supervisor, another Bureau employee in an authoritative position, or another governmental agency, when the employee is questioned about his conduct or the conduct of another person. "False information" includes false statements; misrepresentations; the failure to be fully forthright; or the concealment or omission of a material fact/information.

Mitigation: Reprimand - 5 Days **Penalty:** 7 Days **Aggravation:** 10 Days –
Dismissal

- **2.6 Lack of Candor/Lying - Under Oath**

Knowingly providing false information in a verbal or written statement made under oath, "False information" includes false statements, misrepresentations, the failure to be fully forthright; or the concealment or omission of a material fact/information.

Mitigation: N/A **Penalty:** Dismissal **Aggravation:** None

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- **4.10 Unauthorized Disclosure - Sensitive Information**

Without authorization, disclosing or attempting to disclose the FBI's, or another agency's sensitive material.

Mitigated: Censure - 5 Days **Penalty:** 7 Days **Aggravated:** 10 Days – Dismissal

- **5.22 Unprofessional Conduct - On Duty**

Engaging in conduct, while on duty, which dishonors, disgraces, or discredits the FBI; seriously calls into question the judgement or character of the employee; or compromises the standing of the employee among his peers or his community. (This applies to misconduct not delineated in a specific offense code.)

Mitigated: Censure - 5 Days **Penalty:** 7 Days **Aggravated:** 10 Days - Dismissal

Violations of Giglio v. U.S.

It appears the conduct of SA McGinnis, and others, also invoked a violation and government disclosure obligation under *Giglio v. U.S.* (405 U.S. 150 (1972)), and its progeny, which require the government to turn over to the defendants anything known to the government which would adversely impact the outcome of a trial in a material way. USAM 9-5.001 goes beyond *Giglio's* requirements and requires AUSAs to disclose anything that is material to the witness's credibility, or that casts a substantial doubt upon the accuracy of any evidence. . . the prosecutor intends to rely on to prove an element of any crime charged, or might have a significant bearing on the admissibility of prosecution evidence. USAM 9-5.001. The information should be disclosed regardless of whether the information . . . would itself constitute admissible evidence.” USAM 9-5.001.

As part of their *Giglio* disclosure obligation, the government is required to disclose to the defense potential impeachment information on law enforcement witnesses. A guide for law enforcement witnesses which may invoke *Giglio* include answers to the following questions:

- If the witness is aware of any specific instances of misconduct, both within and outside the scope of his or her employment, that may bear on the witness' credibility (including the finding of a lack of candor during any administrative inquiry);

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- If the witness has any pending allegations of misconduct with his or her employing agency;
- If the witness has ever had criminal charges filed against him or her, regardless of the outcome of the charges;
- If the witness is aware of any evidence suggesting his or her bias against the target, subject or defendant;
- If the witness is aware of any findings of misconduct, allegations or pending investigations of misconduct similar to circumstances or potential defenses in the case (such as, coercion, entrapment, mishandling of evidence or use of force);
- If the witness is aware of any prior findings by a court concerning the witness that may impact on the witness' credibility;
- If the witness is aware of any negative allegations or opinions about the witness' reputation or character that have been in media stories or otherwise publicly aired.

Based upon the conduct of SA Elliot McGinnis, and others, as outlined in this document, it appears he and others have engaged in misconduct which would invoke *Giglio* disclosure requirements in this case and all future investigative matters involving them.

The enclosed document is being provided to the FBI Inspection Division Initial Processing Unit, the FBI Office of Professional Responsibility, the DOJ Office of the Inspector General and the DOJ Office of Professional Responsibility for information and action, as deemed appropriate.

