

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO,
Plaintiff,

v.

D-101-CR-2024-00013

ALEC BALDWIN,
Defendant.

**STATE'S MOTION IN 9 LIMINE TO PROHIBIT
DOUBLE HEARSAY CONTAINED IN CAD REPORTS**

COMES NOW, Special prosecutors, Kari T. Morrissey and Erlinda O. Johnson, who respectfully request this court exclude inadmissible narrative portions of the computer aided dispatch reports (CADs) as no hearsay exception applies and as grounds state as follows:

1. It is anticipated that the defendant will attempt to have the CADs admitted into evidence as a business record or a public record pursuant to 11-803(6) and (8).
2. 11-803(6) states "Records of a regularly conducted activity. A record of an act, event, condition, opinion, or diagnosis if (a) the record was made at or near the time by — or from information transmitted by — someone with knowledge, (b) the record was kept in the course of a regularly conducted activity of a business, institution, organization, occupation, or calling, whether or not for profit, (c) making the record was a regular practice of that activity, and (d) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 11-902(11) or (12) NMRA or with a statute permitting certification. This exception does not apply if the opponent shows that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness. *Id.*

3. The public records exception to the prohibition against hearsay allows hearsay only if it A) sets out the office's activities, B) a matter observed under a legal duty to report, but not including, in a criminal case, a matter observed by law enforcement personnel, or C) in a civil case, or against the government in a criminal case, factual findings from a legally authorized investigation. The exception does not apply if the opponent shows that the source of information or other circumstances indicate a lack of trustworthiness. NMRA 11-803(8).
4. Portions of the CADs may be admissible under the business or public records exceptions to the rule against hearsay. However, the CADs contain hearsay within hearsay and as such the CADs and the hearsay statements included in them both must satisfy an exception to the exclusion of hearsay. 11-805 NMRA.
5. The business records exception does not extend to "statement[s] to [a] business by a stranger to it." *United States v. Vigneau*, 187 F.3d 70, 75(1st Cir. 1999). Such "'outsider' information, where offered for its truth [is inadmissible] unless some other hearsay exception applies to the outsider's own statement." *Id.* at 76. Also see, *Loyd v. Salazar*, (finding that portions of an investigative report were inadmissible under 11-803(6) because the report contained a narrative opinion and the witness statements that did not satisfy the hearsay exception.)

See *Loyd*, 2021 U.S. Dist. LEXIS 137623, 5, 2021 WL 3136953. (See also *TK-7 Corp. v. Estate of Barbouti*, 993 F.2d, 722 (10th Cir.1993) finding double hearsay in the context of a business record exists when the record is prepared by an employee with information supplied by another person).

6. Similarly, the prohibition on hearsay within hearsay extends to public records, as well. (See *United States v. DeLeon* 316 F. Supp. 3d 1303, 1306, 2018 U.S. Dist. LEXIS 22264, 6, 2018 WL 840014 hearsay within hearsay extends to public record when investigative reports are based on and contain statements from confidential human sources and information conveyed from one law-enforcement member to another); (See also *Kim v. JP Morgan Chase (In re Kim)*, 809 Fed. Appx. 527 (10th Cir. 2020) finding double hearsay in the context of a business record exists when the record is prepared by an employee with information supplied by another person.)

WHEREFORE, for the above-stated reasons the State respectfully requests the CADs not be admitted as an exhibit or that a redacted portion of the CADs is entered as an exhibit to resolve double hearsay contrary to 11-805 NMRA.

Respectfully submitted,

/s/ Kari T. Morrissey
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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of June 2024, I served the forgoing pleading to all parties or counsel of record through odyssey file and serve and via email:

/s/ Kari T. Morrissey
Kari T. Morrissey