

Honorable John Coughenour

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON, SEATTLE

UNITED STATES OF AMERICA,	)	
	)	No. CR20-174 JCC
Plaintiff,	)	
	)	DEFENSE SENTENCING
v.	)	MEMORANDUM - SUPPLEMENT
	)	
ERIC SHIBLEY,	)	
	)	
Defendant.	)	
_____	)	

Defendant Eric Shibley, through undersigned counsel, supplements his Defense Sentencing Memorandum (dkt # 149) with the attached copy of a subpoena *duces tecum* and cover letter, dated June 9, 2020. On or about that date, Mr. Shibley was served with a dozen or more subpoenas *duces tecum*, one for each LLC entity that was believed to be linked to him. The subpoenas were substantially similar, if not identical, in the documentary material they sought. The attached subpoena is a representative sample.

This submission is in aid of the defense argument advanced on page 4 of its sentencing memorandum regarding Mr. Shibley’s grand jury subpoena response.

Respectfully submitted this 3rd day of March, 2022.

/s/ Michael Nance  
Attorney for Eric Shibley

MICHAEL NANCE  
ATTORNEY AT LAW  
P.O. Box 11276  
BAINBRIDGE ISLAND, WA 98110  
(206) 624-3211

### **Certificate of Service**

I hereby certify that on the 3rd day of March, 2022, I electronically filed the foregoing with the clerk of the court using the CM/ECF system. Notice and copies of this filing will be sent electronically to counsel of other parties who are parties to the ECF system.

/s/ Michael Nance, WSBA # 13933  
email: michaelnancelaw@gmail.com

**MICHAEL NANCE  
ATTORNEY AT LAW  
P.O. Box 11276  
BAINBRIDGE ISLAND, WA 98110  
(206) 624-3211**



**U.S. Department of Justice**

Criminal Division

*Fraud Section*

*Washington, D.C. 20530*

June 9, 2020

**Dituri Construction LLC**  
**4700 SW 36th Ave.**  
**Seattle, WA 98126**

Re: Grand Jury Subpoena for Records – #1287

Dear Sir or Madam:

Enclosed, please find a grand jury subpoena *duces tecum* issued on behalf of the United States District Court for the District of Columbia. The enclosed subpoena *duces tecum* directs the production of certain items to the grand jury by **June 16, 2020**.

In lieu of having a representative appear personally before the grand jury to produce the required documents and other materials, you may deliver the required documents and materials to:

Alexandra Flores  
Fraud Section  
U.S. Department of Justice  
1400 New York Avenue, NW.  
Room 3201A  
Washington, D.C. 20530  
Email: [alexandra.flores@usdoj.gov](mailto:alexandra.flores@usdoj.gov)

If you choose this delivery method, please ship the items via hand-delivery courier or overnight express service, not U.S. Mail. We further request that, where possible, items be produced in an electronic format. Also enclosed, please find a blank “Declaration of Custodian of Records” form. It is requested that an appropriate person at your business complete the form and return it with the documents.

Sincerely,

/s

\_\_\_\_\_  
Amanda Vaughn, Trial Attorney  
U.S. Department of Justice

**UNITED STATES DISTRICT COURT**  
for the District of Columbia  
**SUBPOENA TO TESTIFY BEFORE A GRAND JURY**

To: Dituri Construction LLC  
4700 SW 36th Ave.  
Seattle, WA 98126

**YOU ARE COMMANDED** to appear in this United States district court at the time, date, and place shown below to testify before the court's grand jury. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place: U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA U.S. Courthouse, 3 <sup>rd</sup> Floor Grand Jury # 19-2-81 333 Constitution Avenue, N.W. Washington, D.C. 20001	Date and Time: <b>June 16, 2020 at 9:00 AM</b>
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You must also bring with you the following documents, electronically stored information, or objects: *Any and all documents described in the Attachment A to the Grand Jury Subpoena.*

Although you are not required to do so, if it is more convenient for you, you may send the requested records, preferably in non-proprietary electronic format via FedEx, UPS or DHL in lieu of personally appearing before the Grand Jury on the date indicated.

Date: June 9, 2020

ANGELA D. CAESAR, CLERK OF COURT  
  
Signature of Clerk or Deputy Clerk  
DISTRICT OF COLUMBIA

The name, address, telephone number and email of the Attorneys requesting this subpoena:

Amanda Vaughn  
Trial Attorney, Fraud Section  
U.S. Department of Justice, Criminal Division  
1400 New York Avenue, NW  
Washington, DC 20530

**Dituri Construction LLC**  
**4700 SW 36th Ave.**  
**Seattle, WA 98126**

**ATTACHMENT**

(Grand Jury Subpoena Dated June 9, 2020)

**I. INSTRUCTIONS**

- A. In complying with this subpoena, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agent, employee or representative acting on your behalf. You are also required to produce documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody or control of any third party.
- B. No documents called for by this request shall be destroyed, modified, removed, transferred, or otherwise made inaccessible to the grand jury. If you have knowledge that any subpoenaed document has been destroyed, discarded or lost, identify the subpoenaed document and provide an explanation of the destruction, discarding, loss, or disposal, and the date at which the document was destroyed, discarded, or lost.
- C. This subpoena is continuing in nature. Any document not produced because it has not been located or discovered by the return date shall be provided immediately upon location or discovery subsequent thereto with an explanation of why it was not located or discovered until the return date.
- D. If you believe any responsive documents are protected by a privilege, please provide a privilege log which (1) identifies any and all responsive documents to which the privilege is asserted, (2) sets forth the date, type, addressee(s), author(s), general subject matter, and indicated or known circulation of the document, and (3) states the privilege asserted in sufficient detail to ascertain the validity of the claim of privilege.
- E. Production with respect to each document shall include all electronic versions and data files from email applications, as well as from word processing, spreadsheet, database, or other electronic data repositories applicable to any attachments, and shall be provided to the grand jury where possible in its native file format and shall include all original metadata for each electronic documents or data file.

**II. DEFINITIONS**

- A. “**Document**” means any written, recorded or graphic material of any kind that is in your possession, custody or control. The term includes, but is not limited to: contracts; agreements; letters; telegrams; interoffice communications; memoranda; notes; reports; analyses;

worksheets; spreadsheets; notebooks; surveys; lists; outlines; schedules; pamphlets; newsletters; flyers; charts; logbooks; tabulations; compilations; studies; books; records; telephone books or messages; visitor books; calendar or diary entries; desk or appointment calendars; drafts; business cards; minutes or meetings or conferences; notes or memos or other records of telephone or other conversations or communications; electronic transmissions (including emails, text messages, instant messaging, chat rooms, electronic bulletin boards); ledgers; financial statements; bank statements; bills or invoices; purchase orders; receipts; photographs; microfilm; microfiche; audio and video tape or disc recordings; and computer printouts. It also includes electronically stored data and electronic files, stored on file servers, e-mail servers, hard drives, or other electronic storage media within your control from which information can be obtained either directly or by translation through detection devices or readers. Any such document is to be produced in reasonably usable form, electronic and searchable, along with instructions for reading the data. Any such electronically stored information must be preserved in its native format. The term “document” includes the original (or a copy thereof if the original is not available) and all copies that differ in any respect from the original or that bear any notation, marking or information not on the original. "Document" shall also include all documents, materials, transmissions and information, including Electronically Stored Information within the meaning of the Federal Rules of Civil Procedure.

- B. **“Electronically Stored Information”** or **“ESI”** shall mean the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any electronic medium from which information can be obtained either directly or, if necessary, after translation by you into a reasonably usable form. This includes, but is not limited to, electronic mail, instant messaging, videoconferencing, and other electronic correspondence (whether active, archived, or in a deleted items folder), word processing files, spreadsheets, databases, and video and sound recordings, whether stored on: cards; magnetic or electronic tapes; disks; computer hard drives, network shares or servers, or other drives; cloud-based platforms; cell phones, personal digital assistants (“PDAs”), computer tablets, or other mobile devices; or other storage media.
- C. **“Referring to”** or **“relating to”** shall mean discussing, describing, reflecting, regarding, containing, analyzing, studying, reporting, commenting on, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.
- D. The terms **“including”** and **“includes”** shall be construed broadly so that specification of any particular type of document shall not be construed to exclude other types of documents that are nevertheless responsive but not specifically identified.
- E. **“Communications”** refers to exchanges kept in any form, whether written, electronic, e-mail, text, telephone, or other, and is meant to be interpreted broadly in accordance with Federal Law.

- F. Entities identified by name, including **Dituri Construction LLC** shall be construed broadly to include any subsidiary, affiliate, successor-in-interest, or related corporate entity, as well as any employee, representative, contractor, affiliate, or vendor.

### III. REQUEST FOR DOCUMENTS

For the period January 1, 2019, to the present, please provide all of the following documents relating to Dituri Construction LLC:

- A. All books and ledgers of all receipts and expenditures;
- B. All documents identifying any and all bank accounts owned by, associated with, or used by Dituri Construction LLC;
- C. All documents relating to employee information, payroll, and payment records including, but not limited to:
1. Employee personnel files;
  2. All documents listing employee names;
  3. Issued IRS Forms W-2, W-3, W-4, and MISC-1099; wage and tax statements; and supporting schedules;
  4. Payroll journals or ledgers, employee and independent earnings records, and other supporting schedules of computation;
  5. All Employment Eligibility Verification Forms (U.S. Citizenship and Immigration Services Form I-9) and any copies of supporting documents; and
  6. All records of payments, including but not limited to, cash payments, wire transfers, checks, and direct deposit to any and all employees or independent contractors.
- D. All documents relating to any loans applied for, including but not limited to, loans associated with the Paycheck Protection Program under the CARES ACT or the Economic Injury Disaster Loan (EIDL) program, including, but not limited:
1. All correspondence and agreements;
  2. All documents relating to payroll information submitted as part of the loan application including but not limited to payroll information, any underlying documents to support payroll figures, and relevant tax documents including IRS Forms W-2, W-3, W-4, or MISC-1099;
  3. All documents relating to annual revenue submitted as part of any loan applications, including, but not limited to, tax documents, accounting records, and all other supporting documentation regarding revenue;
  4. All documents relating to any information submitted to the U.S. Small Business Administration and banks associated with any loans; and
  5. All documents relating to receipt and use of loan funds.

- E. All documents relating to any accounting or tax professionals hired or used by Dituri Construction LLC to carry out any business operations or tax preparation, including, but not limited to:
1. All correspondence;
  2. All documents relating to agreements and payment information;
  3. All documents provided to any accounting or tax professionals; and
  4. All documents received from or filed by any accounting or tax professionals.

**IN LIEU OF YOUR PERSONAL APPEARANCE BEFORE THE GRAND JURY,**  
*subpoenaed materials may be turned over to:* Alexandra Flores, U.S. Department of Justice,  
1400 New York Avenue NW, Washington, DC 20530, telephone number (202) 316-6726, email  
address [Alexandra.Flores@usdoj.gov](mailto:Alexandra.Flores@usdoj.gov).



**CERTIFICATION OF DOMESTIC RECORDS  
OF REGULARLY CONDUCTED ACTIVITY  
Pursuant to Fed. R. Evidence 902(11)**

The undersigned declarant hereby declares, certifies, verifies, or states the following:

1. The declarant is a records custodian or other qualified person who can provide a written declaration regarding the records of regularly conducted business activity which are the subject of this certification.
2. The records of regularly conducted business activity (hereinafter "records") which are the subject of this certification are identified as: [If this is insufficient room in which to adequately identify the items certified, complete on a separate sheet and refer to that sheet here.]
3. The records are originals or duplicate copies of domestic (United States) business records;
4. The records were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
5. The records were kept in the course of a regularly conducted business activity; and
6. The records were made by the regularly conducted business activity as a regular practice.

***I hereby declare, certify, verify, or state, under penalty of perjury, that the foregoing is true and correct.***

\_\_\_\_\_  
Signature of Declarant

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Date of Declaration/Execution