

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**Case No.: 8:19-cr-605-WFJ-CPT**

**MICHAEL J. DACORTA**

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**MOTION TO AUTHORIZE ISSUANCE OF SUBPOENAS  
DUCES TECUM PURSUANT TO RULE 17(C)**

The Defendant, **MICHAEL J. DACORTA**, through undersigned counsel, pursuant to Fed. R. Crim. P. 17(c), moves this Honorable Court for an Order allowing the issuance of a subpoena *duces tecum* to Mark Burling and Burling Consultants LLC for:

- All communications with Michael J. DaCorta, Oasis Management LLC and related entities, including, but not limited to, e-mails with attachments;
- All workpaper documents used and/or collected for tax preparation purposes, including, but not limited to, supporting tax schedules, tax return checklists, general ledgers, receipts, bank statements, QuickBooks and/or other financial information created or used in preparing tax returns for Michael J. DaCorta, Oasis Management LLC and related entities; and
- All documents regarding the retention and/or engagement agreement for services provided by Burling Consultants LLC and/or Mark Burling to Michael J. DaCorta, Oasis Management LLC, and related entities.

(attached hereto as Exhibit 1).

## **I. Relevant Procedural Background**

Mr. DaCorta was indicted on December 17, 2019 of Count One Conspiracy to Commit Wire Fraud and Mail Fraud in violation of 18 U.S.C. §§ 1341 and 1343 and Count Two Illegal Monetary Transaction in violation of 18 U.S.C. § 1957. (Dkt. No. 1). On February 17, 2021, the government filed a superseding indictment to include Count Three False and Fraudulent Statement on Income Tax Return. (Dkt. No. 39).

The government, by superseding indictment, alleges Mr. DaCorta “did willfully make and subscribe, and cause to be made and subscribed, a 2017 U.S. Individual Income Tax Return, IRS Form 1040, which was verified by a written declaration that it was made under the penalties of perjury, and which he did not believe to be true and correct as to every material matter, in that the return reported an amount of total income at line 22, which the defendant then and there knew and believed understated his total income. In violation of 26 U.S.C. § 7206(1), and 18 U.S.C. § 2.”

## **II. Basis for Subpoena Duces Tecum**

Fed. R. Crim. P. 17(c)(1) provides that a court may order production of subpoenaed items prior to trial, and the purpose of Fed. R. Crim. P. 17(c) is to expedite trial. *See United States v. Nixon*, 418 U.S. 683, 698-99 (1974). The production of the requested records prior to trial should be ordered if:

- (1) the documents are evidentiary and relevant;

- (2) the documents are not otherwise procurable reasonably in advance of trial by exercise of due diligence;
- (3) the requesting party cannot properly prepare for trial without such production and inspection in advance of trial and the failure to obtain such inspection may tend unreasonably to delay the trial; and
- (4) the application is made in good faith and is not intended as a general fishing expedition.

*United States v. Nixon*, 418 U.S. 683, 699-700 (1974).

This application meets the four *Nixon* prongs. First, the records of Burling Consultants LLC and Mark Burling are evidentiary and relevant. Mr. Burling is the CPA who, through his company Burling Consultants LLC, prepared the tax return which is charged in Count Three of the Superseding Indictment. The records sought by the subpoena duces tecum to Mr. Burling are relevant to Mr. DaCorta's defense that Mr. DaCorta relied upon the advice of his tax preparer. Further, production of these documents prior to trial will expedite the trial and will provide Defense's expert the opportunity to form an informed opinion regarding the filing of the 2017 tax return and the reasonableness of Mr. DaCorta's reliance upon the advice of the tax preparer, Mr. Burling.

Second, the records are not otherwise procurable in advance of trial. The documents produced by the government do not include the retention and/or engagement agreement, workpapers or attachments to e-mail communications

between Mr. DaCorta, Mark Burling and Burling Consultants LLC. Resort to compulsory process is necessary.

Third, the Defense cannot properly prepare for trial without the records, and a failure to obtain them pretrial could serve to unreasonably delay the trial. If, through witness testimony or otherwise, evidence establishes mid-trial that Mr. Burling has documents that would support Mr. DaCorta's defense to Count Three and would have been responsive to Defense's proposed subpoena duces tecum then the trial would necessarily need to be recessed so that Defense has an opportunity to obtain and review those documents.

Finally, this application is made in good faith and is not a "general fishing expedition." Several factors lead to the Defense's reasonable belief that Mr. Burling has additional documents other than what has been provided to the government by Mr. Burling. For example, the several of the pdfs of the e-mail communications between Mr. Burling, Burling Consultants LLC and Mr. DaCorta indicate a document or spreadsheet was attached to the e-mail communication. The attachments to those e-mail communications were not produced to the government by Mr. Burling. Likewise, Mr. Burling did not produce the retention/engagement agreement to the government which explains the duties of Mr. Burling in preparing Mr. DaCorta's tax returns.

Further, the IRS requires paid tax preparers to perform due diligence in preparation of taxes. Specifically, the IRS requires paid tax preparers (1)

interview the client; (2) ask adequate questions; and (3) obtain appropriate and sufficient information to determine the correct reporting of income, claim of tax benefits (such as deductions and credits) and compliance with tax laws. (IRS Form 8867). Paid tax preparers are likewise required to maintain, either physically or electronically, documents used or relied upon in preparing tax returns. These documents are to be maintained, either physically or electronically, for three years from the later of (a) when the return was due (not including extensions); or (b) when the return was actually filed (if a signing tax preparer and e-filed the return; or (c) when the return was presented to the taxpayer for their signature (if a signing tax return preparer and not e-filing the return); or (d) when the non-signing tax preparer submitted to the signing tax preparer the part of the return for which they were responsible. Here, the tax return in question was filed electronically by Mr. Burling and Burling Consultants LLC on October 8, 2018 along with IRS Form 8867. In the IRS Form 8867, Mr. Burling stated that none of the information provided by the taxpayer, a third party, or reasonably known to you, in connection with preparing the return, appeared to be incorrect, incomplete or inconsistent. Mr. Burling further affirmed that he satisfied the record retention requirement of IRS Form 8867. Specifically, Mr. Burling affirmed he was keeping a copy of his documentation; a copy of IRS Form 8867; a copy of applicable worksheets; a record of how, when and from whom the information

used to prepare IRS Form 8867 and worksheets was obtained; and a copy of any document(s) provided by the taxpayer that he relied on to determine eligibility or to compute the amount for the credit(s). These documents are necessary for Mr. DaCorta's defense to Count Three of the Superseding Indictment.

### III. Conclusion

The Defense's good-faith belief that the requested subpoena will yield relevant evidence is thus specific, and not a general "fishing expedition." Accordingly, this application meets all four *Nixon* prongs, and this Court should issue the requested subpoena.

DATED this 29th day of September 2021.

Respectfully submitted,

A. FITZGERALD HALL, ESQ.  
FEDERAL DEFENDER  
MIDDLE DISTRICT OF FLORIDA

/s/ Adam B. Allen  
Adam B. Allen, Esq.  
Florida Bar No.0998184  
Assistant Federal Defender  
400 North Tampa Street  
Suite 2700  
Tampa, Florida 33602  
Telephone: (813) 228-2715  
Facsimile: (813) 228-2562  
Email: Adam\_Allen@fd.org

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 29th day of September 2021, a true and correct copy of the foregoing was filed with the Clerk of the Court using the CM/ECF system, which will send a notice of the electronic filing to:

AUSA Rachelle DesVaux Bedke

**/s/ Adam B. Allen**  
Adam B. Allen, Esq.  
Assistant Federal Defender

# **EXHIBIT 1**



AO 89B (07/16) Subpoena to Produce Documents, Information, or Objects in a Criminal Case

UNITED STATES DISTRICT COURT

for the

Middle District of Florida

United States of America )

v. )

Michael J. DaCorta )

Case No. 8:19-cr-605-WFJ-CPT

Defendant )

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS IN A CRIMINAL CASE

To: Mark Burling 4505 Baltry Court, Bradenton, Florida 34211

(Name of person to whom this subpoena is directed)

YOU ARE COMMANDED to produce at the time, date, and place set forth below the following books, papers, documents, data, or other objects:

See Exhibit A

Table with 2 columns: Place (Office of Federal Defender for the Middle District of Florida, 400 N. Tampa Street, Suite 2700, Tampa, Florida 33602) and Date and Time (11/01/2021 10:00 am)

Certain provisions of Fed. R. Crim. P. 17 are attached, including Rule 17(c)(2), relating to your ability to file a motion to quash or modify the subpoena; Rule 17(d) and (e), which govern service of subpoenas; and Rule 17(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

(SEAL)

Date: \_\_\_\_\_

CLERK OF COURT

Signature of Clerk or Deputy Clerk

The name, address, e-mail, and telephone number of the attorney representing (name of party) Michael J. DaCorta, who requests this subpoena, are:

Adam B. Allen, Esq., Assistant Federal Defender, 400 N. Tampa Street, Suite 2700, Tampa, Florida 33602, Adam\_Allen@fd.org; (813) 228-2715

Notice to those who use this form to request a subpoena

Before requesting and serving a subpoena pursuant to Fed. R. Crim. P. 17(c), the party seeking the subpoena is advised to consult the rules of practice of the court in which the criminal proceeding is pending to determine whether any local rules or orders establish requirements in connection with the issuance of such a subpoena. If no local rules or orders govern practice under Rule 17(c), counsel should ask the assigned judge whether the court regulates practice under Rule 17(c) to 1) require prior judicial approval for the issuance of the subpoena, either on notice or ex parte; 2) specify where the documents must be returned (e.g., to the court clerk, the chambers of the assigned judge, or counsel's office); and 3) require that counsel who receives produced documents provide them to opposing counsel absent a disclosure obligation under Fed. R. Crim. P. 16.

Please note that Rule 17(c) (attached) provides that a subpoena for the production of certain information about a victim may not be issued unless first approved by separate court order.

Case No. 8:19-cr-605-WFJ-CPT

**PROOF OF SERVICE**

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_ *Server's signature*

\_\_\_\_\_ *Printed name and title*

\_\_\_\_\_ *Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Criminal Procedure 17 (c), (d), (e), and (g) (Effective 12/1/08)**

**(c) Producing Documents and Objects.**

**(1) In General.** A subpoena may order the witness to produce any books, papers, documents, data, or other objects the subpoena designates. The court may direct the witness to produce the designated items in court before trial or before they are to be offered in evidence. When the items arrive, the court may permit the parties and their attorneys to inspect all or part of them.

**(2) Quashing or Modifying the Subpoena.** On motion made promptly, the court may quash or modify the subpoena if compliance would be unreasonable or oppressive.

**(3) Subpoena for Personal or Confidential Information About a Victim.** After a complaint, indictment, or information is filed, a subpoena requiring the production of personal or confidential information about a victim may be served on a third party only by court order. Before entering the order and unless there are exceptional circumstances, the court must require giving notice to the victim so that the victim can move to quash or modify the subpoena or otherwise object.

**(d) Service.** A marshal, a deputy marshal, or any nonparty who is at least 18 years old may serve a subpoena. The server must deliver a copy of the subpoena to the witness and must tender to the witness one day's witness-attendance fee and the legal mileage allowance. The server need not tender the attendance fee or mileage allowance when the United States, a federal officer, or a federal agency has requested the subpoena.

**(e) Place of Service.**

**(1) In the United States.** A subpoena requiring a witness to attend a hearing or trial may be served at any place within the United States.

**(2) In a Foreign Country.** If the witness is in a foreign country, 28 U.S.C. § 1783 governs the subpoena's service.

**(g) Contempt.** The court (other than a magistrate judge) may hold in contempt a witness who, without adequate excuse, disobeys a subpoena issued by a federal court in that district. A magistrate judge may hold in contempt a witness who, without adequate excuse, disobeys a subpoena issued by that magistrate judge as provided in 28 U.S.C. § 636(e).

## **EXHIBIT A**

1. All communications with Michael J. DaCorta, Oasis Management LLC and related entities, including, but not limited to, e-mails with attachments.
2. All workpaper documents used and/or collected for tax preparation purposes, including, but not limited to, supporting tax schedules, tax return checklists, general ledgers, receipts, bank statements, QuickBooks and/or other financial information created or used in preparing tax returns for Michael J. DaCorta, Oasis Management LLC and related entities.
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v. )

Michael J. DaCorta )

Case No. 8:19-cr-605-WFJ-CPT

Defendant )

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OBJECTS IN A CRIMINAL CASE**

To: Burling Consultants LLC, c/o Mark Burling, 4505 Baltry Court, Bradenton, Florida 34211

*(Name of person to whom this subpoena is directed)*

**YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following books, papers, documents, data, or other objects:

See Exhibit A

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*(SEAL)*

Date: \_\_\_\_\_

CLERK OF COURT

*Signature of Clerk or Deputy Clerk*

The name, address, e-mail, and telephone number of the attorney representing *(name of party)* Michael J. DaCorta, who requests this subpoena, are:

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tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
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My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_ .

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\_\_\_\_\_ *Server's signature*

\_\_\_\_\_ *Printed name and title*

\_\_\_\_\_ *Server's address*

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**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**Case No.: 8:19-cr-605-WFJ-CPT**

**MICHAEL J. DACORTA**  
\_\_\_\_\_ /

**PROPOSED ORDER GRANTING DEFENDANT'S  
MOTION TO AUTHORIZE ISSUANCE OF SUBPOENAS  
DUCES TECUM PURSUANT TO RULE 17(C)**

THIS CAUSE having come before the Court upon Defendant's Motion to Authorize Issuance of Subpoenas Duces Tecum Pursuant to Rule 17(c). The Court having considered the motion and being otherwise fully advised, it is

ORDERED AND ADJUDGED that Defendant's Motion to Authorize Issuance of Subpoena Duces Tecum is hereby granted and the Court authorizes the issuance of the Subpoenas Duces Tecum to Mark Burling and Burling Consultants LLC attached to the Motion as Exhibit 1.

DONE AND ORDERED this \_\_ day of September 2021.

\_\_\_\_\_  
Honorable Christopher P. Tuite  
United States Magistrate Judge