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6
7 Counsel for Defendant James Parker

8 **IN THE UNITED STATES DISTRICT COURT**
9 **DISTRICT OF ARIZONA**

10 **UNITED STATES OF AMERICA,**
11 Plaintiff,

No. 10-CR-757-PHX-ROS

12 v.

DEFENDANT’S MOTION IN LIMINE

13 **JAMES PARKER,**
14 Defendants.

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16 NOW COMES the Defendant, James Parker, by and through his counsel of record, to
17 Move this Court *in limine* to exclude matters that are irrelevant, prejudicial, or incompetent to
18 the material issues in this case and in support of the Defendant submits the following.

19 **I.**

20 Defendant seeks to exclude the following:

- 21 1. Jacqueline Parker's American Express Statements. (Government Exhibit 372).
22 Government exhibit 372 contains 290 pages of American Express bills; all purchases are
23 Jacqueline Parker’s. Information relating to Jacqueline Parker is unfairly prejudicial and
24 inflammatory. Since these statements relate to charges for Jacqueline Parker only, and she is
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1 being tried separately, any information about Jacqueline Parker's American Express charges are
2 irrelevant to this case.

3 2. Boise City Bank Memo to File dated August 16, 2007 written by Tim Barnes.
4 (Bates 008341, contained within Government Exhibit 76). This is an uncorroborated opinion
5 and prejudicial hearsay. The memo discusses an alleged phone call between Tim Barnes and
6 James Parker.

7 3. Tax Returns for Years 2003, 2004, 2005, 2006, and 2007. (Government Exhibit
8 6, 7, 8, 9, and 10). Introducing information for these tax years is unfairly prejudicial. James
9 Parker is not charged with any crime relating to these years.

10 4. IRS Certificate of Assessments and Payments 1999, 2000, 2003, 2004, 2005,
11 2006, 2007, 2008, and 2009. (Government Exhibits 13, 14, 17, 18, 19, 20, 21, 22, and 23).
12 James Parker is not charged with any criminal violations relating to these tax years. Introducing
13 information regarding these years is unfairly prejudicial.

14 5. IRS Certification for Lack of Record for the following entities:

- 15 a. Sunlight Financial LLP
- 16 b. Cimarron River Ranch LLC
- 17 c. RSJ Investments LLC
- 18 d. Parker Children IRRV
- 19 e. Cornerstone Resource Trust
- 20 f. Sunlight Partners

21 These entities belong to and are controlled by James Parker's children. It is unfairly
22 prejudicial to introduce evidence of his children's failure to file as evidence against Mr. Parker
23 for Tax Evasion.

24 6. Insurance coverage for a Rolls-Royce as pleasure. Defendant is not the owner of
25 the Rolls-Royce and seeks to exclude allegedly listing the purpose of the Rolls-Royce on
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1 insurance forms as "Pleasure" (Bates State Farm Insurance 0001507, Government Exhibit 135).

2 To introduce the purpose of the car as pleasure is unfairly prejudicial.

3 7. Pictures. The Government has listed as exhibits pictures of various properties that
4 show vehicles that do not belong to James or Jacqueline Parker. Bates 16055 Turkey Track,
5 Canyon, TX Property, Government Exhibits 358, 359, 360, and 361).

6 Also, Bates 16074 (Government Exhibit 358) are pictures that show the interior Canyon,
7 TX property that belonged to the Parker children. These photographs were taken after to the
8 Parker children sold the home and are not a fair and accurate depiction of the property as it was
9 prior to the Parker children selling it.

10 8. Defendant seeks to exclude any mention alleging a finding of Breach of Contract
11 against Prather Kalman, PC of any form. A Motion for New Trial has been granted in the suit
12 against Prather Kalman, PC. Information relating to the suit is unfairly prejudicial and
13 inflammatory, and is irrelevant to this case.

14 9. James Parker's Failure to File a Tax Return for Calendar Years 1999 and 2000.
15 James Parker is not charged with any criminal violations relating to tax years 1999 or 2000.
16 Introducing evidence of James Parker's failure to timely file a tax return for 1999 and 2000 is
17 unfairly prejudicial.

18 10. James Parker's alleged failure to pay an alleged outstanding tax liability of
19 \$2,721,166.67 for tax year 1999, and an alleged outstanding tax liability of \$485,951.49 for tax
20 year 2000, is unfairly prejudicial. James Parker has not been through an audit for these years and
21 contests the alleged tax liability.

22 11. James Parker is not charged with any criminal violations relating to tax year 2003,
23 2004, or 2005. Hence, introducing information regarding Defendant's alleged failure to pay an
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1 alleged outstanding tax liability of \$76,861.35 for tax year 2003; an alleged outstanding tax
2 liability of \$9,755.05 for tax year 2004; and, an alleged outstanding tax liability of \$19,496.06
3 for tax year 2005, is unfairly prejudicial.

4 12. Alleged Failure to File a Federal Tax Return for Calendar Years 2008 and 2009.
5 James Parker is not charged with any criminal violations relating to tax years 2008 or 2009.
6 Hence, any mention of failure to file and introducing information regarding these years is
7 irrelevant and unfairly prejudicial.

8 **II.**

9 Evidence is relevant if it has “any tendency to make the existence of any fact that is of
10 consequence to the determination of the action more probable or less probable than it would be
11 without the evidence.” Fed. R. Evid. 401. Here, it is the Government’s burden to show how
12 anything Parker did, unrelated to tax years 1997, 1998, 2000 and 2001, is worth the prejudice it
13 will cause and the court time necessary to explain.

14 **III.**

15 *Even if the Proffered Evidence had a Modicum of Relevance to Parker Guilt or*
16 *Innocence, its Probative Value is Outweighed by its Prejudicial Effect.* Federal Rule of Evidence
17 403 provides, “[a]lthough relevant, evidence may be excluded if its probative value is
18 substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading
19 the jury, or by considerations of undue delay, waste of time, or needless presentation of
20 cumulative evidence.” The Seventh Circuit Court of Appeals has aptly described the Rule 403
21 analysis, “Evidence is considered unfairly prejudicial, not merely because it damages the
22 opposing party's case, but its admission makes it likely that the jury will be induced to decide the
23 case on an improper basis, commonly an emotional one, rather than on the evidence presented on
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1 the crime charged.” *United States v. Connelly*, 874 F.2d 412, 418 (7th Cir. 1989). The Fifth
2 Circuit has described one purpose of Rule 403 is to prevent evidence from inducing decision on a
3 purely emotional basis. *United States v. Fields*, 483 F.3d 313, 354

4 Here, the risk described by the Seventh Circuit will be created in this case, unless the
5 Court prohibits its introduction under Fed. R. Evid. 404(b), the Government will devote time in
6 its case-in-chief to the above, and the defense will need even more time to offer reasonable
7 explanations

8 **CONCLUSION**

9 For the foregoing reasons, the Defendant respectfully asks this Court to grant his Motion
10 in *Limine*.

11 Respectfully submitted on April 20, 2012.

12
13 /s/ Ashley Blair Arnett
14 Michael Minns (pro hac vice)
15 State Bar No. 14184300
16 Ashley Blair Arnett (pro hac vice)
17 State Bar No. 24064833 (Texas)
18 MICHAEL LOUIS MINNS, P.L.C.
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25 - AND -

26
27 /s/ Michael D. Kimerer
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29 Local counsel for Defendant James Parker
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- AND -
/s/ John McBee
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CERTIFICATE OF CONFERNCE

Counsel for the defense and Counsel for the Government conferred after the status conference on April 2, 2012 and followed up in subsequent emails. At this time an agreement cannot be reached concerning any of the limine items. If there is an agreement reached for any of the items the Court will be notified.

s/Ashley Blair Arnett
Ashley Blair Arnett
Attorney for Defendant

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CERTIFICATE OF SERVICE

On April 20, 2012 I, Ashley Blair Arnett, attorney for the Defendant, James Parker, filed the Defendant’s Motions in Limine *via* ECF. Based on my training and experience with electronic filing in the federal courts, it is my understanding that a copy of this request will be electronically served upon opposing counsel, Peter Sexton and Walter Perkel, upon its submission to the Court.

Respectfully submitted this 20th day of April, 2012.

s/Ashley Blair Arnett
Ashley Blair Arnett
Attorney for Defendant

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

UNITED STATES OF AMERICA,
Plaintiff,

v.

JAMES PARKER, et al.
Defendants.

No. 10-CR-757-PHX-ROS

ORDER ON MOTION IN LIMINE

On _____ the Court considered the Motion in Limine of Defendant, James Parker and ORDERS:

1. The motion is GRANTED as to paragraph(s) _____

2. The motion is DENIED as to paragraph(s) _____

SIGNED on _____.

JUDGE PRESIDING