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Attorney for the Defendant

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

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|---|---|
| **UNITED STATES OF AMERICA**,<br>Plaintiff,<br><br>v.<br><br>**JAMES PARKER, et. al**,<br>Defendants. | **No. 10-CR-757-PHX-ROS**<br><br>**DEFENDANT JACQUELINE PARKER'S MOTION FOR ATTORNEYS FEES AND COSTS PURSUANT TO THE HYDE AMENDMENT** |

NOW COMES Defendant Jacqueline Parker, by and through her counsel of record, and respectfully submits this motion to seek attorneys fees and litigation costs in the amount of $68,689.28 for the frivolous, vexatious and bad faith prosecution of Mrs. Parker for the felonies of making false statements. The motion is filed pursuant to Fed. R. Crim. Pro. 47 and the Hyde Amendment, 18 U.S.C. § 3006A.

From the outset of this case, the Government had no evidence to support the charges against Mrs. Parker. She was prosecuted for one reason only: to coerce her husband to plead guilty to criminal tax evasion charges. Underscoring the weakness of the case against Mr. Parker is the fact that, on June 21, 2012, this Court directed a verdict in Mr. Parker's case. After two years of prosecution, the Government dismissed its case against Mrs. Parker on June 26, 2012 – the eve of her July 17, 2012 trial. (ECF Doc. 192)

## STATEMENT OF FACTS

Mrs. Parker is wife of James Parker, a Phoenix entrepreneur. The couple married in the 1970's and have three children together. Mrs. Parker has not been gainfully employed since her marriage. She did not work with her husband on his business ventures.

At the direction of Mr. Parker's attorney, Mrs. Parker signed two offers in compromise, which were drafted by the attorney, representing to the IRS the couple's income and assets. Mrs. Parker did not personally prepare the tax returns or conduct an inventory or assessment regarding the couple's assets. She reasonably relied on advice of counsel and tax professionals, hired by Mr. Parker. The criminal charges ultimately brought against Mrs. Parker relate to her signature on the asset disclosures, which the Government claimed were willfully false.

However, the evidence regarding the Parker's assets demonstrates that there were no assets belonging to the Parkers that were omitted from the disclosure.

The IRS first audited the Parkers in 2001 for tax years 1997 and 1998. The audit was triggered by the creation of a trust in 1994 for the Parker children for estate planning purposes whereby the Parkers transferred title of their residence to the trust, and commenced paying rent to the trust. Upon creation of the trust, the Parkers no longer owned the residence and it was not their asset. Specifically, the Parkers had no right to sell or transfer that property. In Mr. Parker's trial, IRS revenue agent Paul Wedepohl testified that "the residence wasn't on the financial statement was because the house was owned by a family trust for the benefit of the [Parker] children." (Trial transcript, Day 5, p. 11.) Wedepohl acknowledged that the Parkers paid rent and that the trust paid property taxes on the residence, and despite acknowledging that families may practice estate planning by putting such real property into trusts, claimed that "There's nothing wrong with putting that house in any trust 100 years ago but … when the day comes along that there's a tax liability, then assets exclusively controlled by that individual, and it's only in a nominee's name as a façade, then we'll go after that asset." (*Id*. at p. 65.)

The IRS again targeted Mr. Parker's tax returns, after a Belize business (Belize MacKinnon Land and Development), partially owned[1] by Mr. Parker, made a $6 million loan to another limited liability corporation registered in the name of the Parker's adult son. The U.S. company never repaid the loan, and in 2011 the Belize business received a judgment of default on that loan. The U.S. company was not in Mr. or Mrs. Parker's name, or that none of the monies from the $6 million loan were used to purchase assets owned by the Parkers. Instead, those monies were spent on the business expenses and developing a ranch in Oklahoma. Nonetheless, the IRS continued to allege that the Parkers were under-reporting their assets.

On June 8, 2010, the Government indicted Mr. Parker for eight felony counts of income tax evasion and making false statements to the IRS and Mrs. Parker for two felony counts of making false statements. The indictment of parties, however, contains virtually no allegations of specific conduct by Mrs. Parker. It merely alleged that both Parkers had sole use of the home placed in trust, that Mrs. Parker traveled to Belize, and that she "inspected" and resided in a home in Texas. (ECF Doc. 1.) The gist of the Government's case remained an inference that Mr. Parker sought to hide assets and sources of income. The

[1] In Mr. Parker's trial, no evidence was ever brought forth regarding the portion of Mr. Parker's ownership in the Belize business, or what, if any, distributions from that business he was entitled to.

Government did not allege, nor did it have any evidence to prove, that Mrs. Parker was a knowing and willful participant in these illegal acts. Based on this series of events, it is apparent that Mrs. Parker was indicted not because of her own conduct, but to leverage her husband into pleading guilty to the charges against him.

Pursuant to the Scheduling Order governing the case, Government discovery was to be completed by October 8, 2010. (ECF Doc. 39.) The Government failed to comply with the terms of the Scheduling Order. On December 23, 2010, Defendants moved the Court to compel disclosure or exclude the evidence improperly withheld. (ECF Doc. 44.) In that motion, Defendants drew attention to the absence of the Special Agent Report and *Jencks* material. Nonetheless, as of June 13, 2011, the Government had still failed to disclose material evidence regarding the investigation of the Parkers.

The Special Agent Report proved to be most damning to their case. Agent Giovanelli, based on the evidence she had reviewed, recommended that Mrs. Parker not be charged. As Defendant made clear in her motion to sever, filed on April 22, 2011, the special agent's investigation revealed that "Jacqueline is a homemaker and has no known involvement with [her husband's] business or any other known income producing activity." (ECF Doc. 74, citing Gvt. Bates SAR 15751.) This Report show's the Government's intent to vex Mrs. Parker with

prosecution, because after this notation, the report records a meeting with the U.S. Attorney where the prosecutors decided to charge Mrs. Parker.

The Parkers were originally indicted jointly. On June 13, 2011, this Court granted Mrs. Parker's motion to sever her trial. (ECF Doc. 88.) In deciding this motion, the Court warned the Government that it might now allow Mrs. Parker's case to get to a jury, because the Government seemed unfamiliar with the required standard that Mrs. Parker's conduct be willful and because the Government appeared to lack the evidence supporting that element.

Another year passed and Mr. Parker's case was rapidly approaching trial. Mrs. Parker was incurring substantial attorney fees and expenses in preparing for her then-severed jury trial. In April 2012, for the first time, the Government presented Mr. and Mrs. Parker with informal plea offers. The offer was untenable for the Parkers, who insisted that they had committed no crime. Moreover, it was a contingent plea agreement, even though the cases were severed by the Court. Specifically, the offer was contingent on both of them accepting their respective offers and precluded either from reaching an independent agreement with the Government. The substance of that offer was that Mr. Parker agree to pleading guilty to four counts and face three years of jail time, and Mrs. Parker plead guilty to a misdemeanor and face an undetermined sentencing fate. (ECF Doc. 121, p. 2.)

The Government continued to ignore the weakness of their case against Mrs. Parker and instead maintained its course of pursuing frivolous criminal charges against her. In keeping with its bad faith conduct, the Government disclosed the terms of the tentative plea offer on April 25, thereby improperly seeking the Court's intervention in plea negotiations and interfering in the Parkers' attorney-client relationships. (ECF Doc. 125, pp. 5, 7.) Indeed, in the Defendants' response to the improper disclosure of the plea negotiations, they specifically noted that there was no case against Mrs. Parker and that the Government violated Fed.R.Crim.Pro. 11 and Ninth Circuit's bright-line rule forbidding court involvement in plea discussions. (ECF Doc .125, p. 4, 8.)

The Court issued an order on the same day as the Government's filings regarding plea discussions. (ECF Doc. 122.) The Order stated that "should a plea deal be reached at a later date, sanctions will be imposed due to the parties' delay, excepting extraordinary circumstances." In light of the dismissal of Mr. Parker's actions, it could be inferred that the Court was providing the Government with notice that its cases against both Defendants were untenable. The Government did not heed this guidance, but went ahead with the prosecutions.

Mr. Parker went to trial on May 26, 2012. At the three-week trial, the Government had no evidence against Mr. Parker except for "vendetta witnesses," namely the revenue agents who refused to accept the plethora exculpatory evidence

that (1) the Parkers had paid their taxes, and (2) the Parkers did not own assets against which any further tax liens could be levied. (June 21 Transcript Day 9, p. 12, 15.) The testimony of revenue agent Paul Wedepohl is revealing as to the Government's vexatious decision to prosecute Mr. Parker, not to mention to bring Mr. Parker's wife into the prosecution. The Court noted that Mr. Wedepohl "shouted out" that Mr. Parker was a "nominee" for the residence in trust, but that undefined term did not demonstrate guilt. (*Id*. at 22.) The Court also disagreed with the Government's interpretation of a position as an officer or director of a corporation as being sufficient to demonstrate 100% ownership by Mr. Parker or that existence of promissory notes was evidence that the Parkers had assets. (*Id*. at 20, 22, 32, 33.)

Throughout the trial against Mr. Parker, the Government focused on stipulations that Mr. Parker owed money, but at no point did the Government uncover or produce evidence that Mr. Parker had income or assets that could pay the debts. In the end, the Court stated that to describe the evidence of any crime as circumstantial was "generous," and repeatedly said that, at best, there was an inference that could not reach the reasonable doubt standard for finding guilt. (Transcript Day 9, at 37, 38.)

Mrs. Parker's net worth at the time this prosecution commenced was less than $2 million, as required by the Hyde Amendment.[2] Prior to the prosecution, Mrs. Parker made several disclosures regarding her assets, but those disclosures were challenged by the Government. Nonetheless, those disclosures fairly demonstrate that prior to her indictment, Mrs. Parker's net worth was less than $2 million, and her financial position has depreciated since that time.

**Legal Standard for a Hyde Amendment Award**

A defendant can be awarded attorneys fees and litigation costs based on the vexatious, frivolous or bad faith nature of the government's decision to prosecute charges pursuant to the Hyde Amendment, 18 U.S.C. § 3006A.[3] A defendant may prevail by establishing any one of those three characteristics. *United States v. Braunstein*, 281 F.3d 982, 994 (9th Cir. 2002) (finding in connection with Government's claim that the case was about fraud, that "[t]he evidence in the record supports the conclusion that the government's position was so obviously

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[2] Should the Court require it, Mrs. Parker will provide an affidavit as to her net worth. Such supplementation is permitted pursuant to *United States v. Hristov*, 396 F.3d 1044, 1047-48 (9th Cir. 2005) (permitting movant to provide supplemental evidence of net worth).

[3] The Hyde Amendment provides in pertinent part:

> [T]he court, in any criminal case (other than a case in which the defendant is represented by assigned counsel paid for by the public) ... may award to a prevailing party, other than the United States, a reasonable attorney's fee and other litigation expenses, where the court finds that the position of the United States was vexatious, frivolous, or in bad faith, unless the court finds that special circumstances make such an award unjust. Such awards shall be granted pursuant to the procedures and limitations (but not the burden of proof) provided for an award under section 2412 of title 28, United States Code.

Pub. L. No. 105-119, § 617, 111 Stat. 2440, 2519 (1997) (reprinted in 18 U.S.C. § 3006A, historical and statutory notes) (emphasis added).

wrong as to be frivolous.") The inquiry into the government's prosecution is with regards to the case as a whole. *United States v. Heavrin*, 330 F.3d 723, 731 (6th Cir. 2003) (remanding with the direction that the district court conduct such a review). In essence, "the appropriate inquiry under the Hyde Amendment is as follows: was it reasonable to prosecute this case?" *United States v. Shaygan*, 676 F.3d 1237, 1243 (11th Cir. 2012). *See also United States v. Knott*, 256 F.3d 20, 31 (1st Cir.2001) (award may properly be based on "an array of government conduct both before the indictment and during litigation").

Under the plain meaning of the provisions of the statute, an applicant for fees pursuant to the Hyde Amendment must: (1) apply for fees and expenses within 30 days of the final judgment, (2) allege that the United States' position was vexatious, frivolous, or in bad faith, (3) allege that she prevailed, (4) allege that she is an eligible "party" under § 2412(d)(2)(B), (5) allege the amount sought, and (6) include an itemized statement from his attorney stating the actual time spent and the rate at which the fees and expenses were computed. *See Untied States v. True*, 250 F.3d 410, 419 (1st Cir. 2001) .

## ARGUMENT

### I. Mrs. Parker is a proper party making a timely application.

The action against Mrs. Parker was voluntarily — but necessarily — dismissed by the Government after their unsuccessful trial of Mr. Parker. Mr.

Parker's case was dismissed by this Court pursuant to Fed. R. Crim. Pro. 29 . (ECF Doc. 186.) Because the evidence and witnesses against Mrs. Parker were similar—but much weaker—with respect to the charges against Mrs. Parker, the Government recognized a second trial would again result in a Rule 29 dismissal. Consequently, Mrs. Parker is a prevailing party in this matter. *See United States v. Campbell*, 291 F.3d 1169, 1172 (9th Cir. 2002) (observing that a prevailing party includes one who has achieved a material alteration in the legal relationship between the parties to receive some relief on the merits) (collecting cases); *Cf. Heavrin*, 330 F.3d at 727 (remanding after determining defendant who prevailed on Rule 29 motion was proper party). The dismissal of the action was no more than thirty days ago, so this motion is timely. Mrs. Parker is a party, as required by the statute, because her net worth at the commencement of the action was less than $2 million.

**II. The Government's Position Against Mrs. Parker Was Vexatious, Frivolous and in Bad Faith.**

The defendant has the burden of establishing that any of the three grounds for which a Hyde Amendment award may be granted — frivolous, vexatious or bad faith—is present. *Braunstein*, 281 F.3d at 994 (quoting *United States v. Adkinson,* 247 F.3d 1289, 1291 (11th Cir.2001)) "The plain meaning of the [ Hyde Amendment] text indicates that the test is disjunctive--satisfaction of any one of the three criteria (vexatiousness, frivolousness, or bad faith) should suffice

by itself to justify an award." *United States v. Tucor Int'l, Inc.,* 238 F.3d 1171, 1178 (9th Cir. 2001). In this case, all three grounds are present and an award of fees and litigation expenses is appropriate.

*A. Mrs. Parker's Prosecution was Vexatious.*

The "vexatiousness" standard under the Ninth Circuit is as follows: "a defendant is entitled to attorney fees under the Hyde Amendment only when the prosecution was (1) unwarranted because it was intended to harass (the subjective element) and (2) without sufficient foundation (the objective element)." *United States v. Sherburne,* 506 F.3d. 1187, 1189 (9th Cir. 2007) (remanding to the district court for application of proper standard). The first element of a vexatious prosecution is that it involves maliciousness or an intent to harass. The second element is that the prosecution if objectively deficient because, for example, it lacks sufficient grounds. *Id.* at 1126-27. Indeed, the Ninth Circuit noted that "proof that the government deliberately suppressed, or willfully ignored, relevant evidence" is pertinent to evaluating whether the prosecution was vexatious, frivolous or conducted in bad faith.

Here, the subjective element is shown through the Government's witness, Paul Wedepohl. In Mr. Wedepohl's testimony at Mr. Parker's trial, he revealed his animus towards the Parkers and most especially their previous tax counsel, an attorney whom the Court noted has never been disciplined or charged with

unprofessional conduct. (Wedepohl Trans. p. 32- 36, 38-39, 62-66; Rule 29 Trans. p. 36.)

The objective element of vexatiousness is present in the Government willful disregard of the Special Agent Report, which noted that Mrs. Parker was merely a housewife and not a participant in any illegal conduct. Defendants' investigation of the witnesses proffered by the Government for trial further reinforced that Mrs. Parker lacked knowledge of business dealings and finance, and therefore could not have had a willful mental state.

Additionally, the Court noted in granting Mr. Parker's Rule 29 motion that part of the Government's case theory was that Mr. Parker's attorney, Greg Robinson (the same lawyer who prepared the offers in compromise that the Government claimed Mrs. Parker falsely signed), acted illegally and therefore the Parkers acted illegally. The Court found that the Government failed to show Mr. Robinson did anything wrong. (Rule 29. Trans. at 36) Therefore, to the extent that the Government could try to bootstrap Robinson's criminal liability onto his clients, this approach also fails.

Indeed, so outrageous was the Government's decision to prosecute Mrs. Parker, that this case mirrors *United States v. Braunstein*, 281 F.3d 982 (9th Cir. 2002), for which the defendant was granted fees pursuant to the Hyde Amendment. *Braunstein*, originating out of this district, was a fraud case relating to the sale of

computer products. None of the grand jury witnesses testified that the defendant made such misrepresentations. *Id.* In fact, witnesses told the Government that the conduct in question was well known and endorsed by the alleged victim. *Id.* Furthermore, defense counsel implored that the Government look at specific evidence that refuted the allegations of fraud. *Id.* In light of this robust evidence—of which the Government was at all times aware, deliberately suppressed and willfully ignored—there was no foundation for the prosecution. *Id.* at 997.

*B. The Government's Prosecution of Mrs. Parker was Frivolous.*

The Ninth Circuit has adopted the definition of "frivolous" used by the Eleventh and Fourth Circuits to mean that the Government's conduct was "groundless ... with little prospect of success; often brought to embarrass or annoy the defendant." *Braunstein*, at 995 (quoting *United States v. Gilbert,* 198 F.3d 1293, 1299 (11th Cir.1999)). *See also In re 1997 Grand Jury,* 215 F.3d 430, 436 (4th Cir.2000) (same). "Whether the prosecution's position as a whole is deemed frivolous requires the court to inquire into the merits of the entire case." *Heavrin*, 330 F.3d at 731.

As discussed above, the alleged case against Mrs. Parker was contradicted by the Government's evidence. For over a year, the Court warned the Government that it had little prospect of success with regards to Mrs. Parker's case. The

Court's perception was consistent with the Government's proof (or lack thereof). The Government could proffer no evidence to show that Mrs. Parker had knowledge or willful intent to sign any incorrect -- much less materially false -- document. Consequently, her indictment was groundless, with no prospect of success. The Government prosecuted Mrs. Parker with the intention of embarrassing or annoying both Parkers so that they would accept a plea, despite scant evidence of any wrongdoing. When looking at the merits of the entire case, the prosecution's position was frivolous and properly dismissed.

*C. Mrs. Parker was Prosecuted with Bad Faith*

The Ninth Circuit has adopted the definitions of bad faith of the Eleventh and Fourth Circuits, "bad faith 'is not simply bad judgment or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity; ... it contemplates a state of mind affirmatively operating with furtive design or ill will.'" *Manchester Farming*, 315 F.3d at 1184 (9th Cir 2003) (quoting *Gilbert,* 198 F.3d at 1299). *See also Trulis v. Barton,* 107 F.3d 685, 694 (9th Cir.1995) (defining "bad faith" for purposes of a sanctions award under 28 U.S.C. § 1927, in part, as "when an attorney knowingly or recklessly raises a frivolous argument" (quotation omitted)).

To prosecute a case, the Government must have a reasonable belief that the defendant committed the crime. *Compare Shaygan*, 676 F.3d 1237, 1239 (11th Cir.

2012) ("the United States began its investigation and prosecution of Ali Shaygan with more than good cause: it all started with a suspicious death.") *denial rehearing en banc.* Here, as discussed above, the Government was conscious of evidence that refuted the possibility of the willfulness element of the crimes it charged against Mrs. Parker. The Government willfully ignored the evidence and inferred—baselessly—that "something" was improper. This is the essence of bad faith prosecution.

**II. Mrs. Parker is entitled to the Attorney Fees and Costs She Incurred in Preparing her Defense.**

This Court has discretion in calculating reasonable fee awards pursuant to the Hyde Amendment. *See United States v. Claro,* 579 F.3d 452, 462 (5th Cir. 2005) (concluding that a contingency fee arrangement was reasonable in governing the awarded fees under the circumstances). In addition to the cost of legal counsel, paralegal fees are generally reimbursable. *Id.*, 579 F.3d at 464. Mrs. Parker seeks fees and costs for expenses stemming from this litigation that, so far, exceed $68,000. Attached to this motion is a declaration of Mrs. Parker's lead counsel setting forth the actual time spent on Mrs. Parker's defense and the rate at which the fees and expenses were calculated.[4] Mrs. Parker requests that her lawyers be

[4] To preserve attorney work product and attorney-client privilege, Mrs. Parker's counsel provides the fee statement without attaching the invoices or time sheets. In the event that the Court seeks to review of the attorney and law clerk time spent on this matter, defense counsel respectfully requests that such additional submission be reviewed in camera. *See, e.g., United*

reimbursed pursuant to the Laffey Matrix, which the United States Department of Justice recommends using to calculate fee awards. Specifically, Joy Bertrand, who graduated from law school in 1996, would be assessed at a rate of $400 per hour. Ms. Bertrand's hourly rate also is reasonable because of the complexity of this case (namely, few attorneys are capable of trying cases for criminal tax fraud), Ms. Bertrand's extensive trial experience, and Ms. Bertrand's graduate degree in public affairs and policy analysis, which includes graduate-level coursework in economics and statistics. Patricia Ronan, who graduated from law school in 2001, is assessed at $350 per hour. Shannon Peters, who graduated from law school in 2008, is assessed at $230 per hour. Anjali Patel, who worked as a law clerk on this case while her admission to the Arizona State Bar in 2010, is assessed at $130 per hour. As shown in the accompanying exhibit, the United States Department of Justice specifically supports the use of this index in calculating fee awards under the Equal Access to Justice Act.[5]

Mrs. Parker's legal counsel spent appropriate time on this case, including filing motions to compel discovery, a motion to sever Mrs. Parker's trial from that of her husband, and preparing for a trial that should have never been required. Because this case concluded less than a month before the scheduled trial date of

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*States v. True,* 250 F.3d at 420-21 *(citing Dunn v. United States,* 775 F.2d 99, 104 (3d Cir.1985)); *Hristov*, 396 F.3d at 1047-48.

[5] The Laffey Matrix that accompanies this Motion is available at http://www.justice.gov/usao/dc/divisions/civil_Laffey_Matrix_2003-2012.pdf .

July 17, 2012—despite repeated motions for continuance because Ms. Bertrand and Mrs. Parker were seconded from Mr. Parker's trial—Mrs. Parker incurred costs and fees as counsel devoted considerable energy, time and resources in trial preparation.

**PRAYER**

Defendant Jacqueline Parker requests that this Court find that the Government's decision to prosecute her for felonious false statements was vexatious, frivolous and in bad faith. Mrs. Parker further requests that the Court issue an order granting Mrs. Parker her full attorneys fees and costs of defense in the amount of $68,689.28.

Respectfully submitted on July 27, 2012.

*/s/ Joy Bertrand*
Counsel for Defendant Jacqueline Parker

**CERTIFICATE OF SERVICE**

On July 27, 2012, I, Joy Bertrand, attorney for the Defendant Jacqueline Parker, filed this motion and supporting declaration with the Arizona District Court's electronic filing system. 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 the parties upon its submission to the Court.

*/s/Joy Bertrand*
Joy Bertrand
Attorney for Defendant Jacqueline Parker

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Attorney for the Defendant

**IN THE UNITED STATES DISTRICT COURT**
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**UNITED STATES OF AMERICA**,
Plaintiff,

v.

**JAMES PARKER, et. al**,
Defendants.

**No. 10-CR-757-PHX-ROS**

**DECLARATION OF ATTORNEY JOY BERTRAND IN SUPPORT OF DEFENDANT'S MOTION FOR ATTORNEYS FEES AND COSTS**

The undersigned, Joy Bertrand, swears upon her oath and states:

1. I am an attorney at Joy Bertrand, Esq., LLC, and lead counsel in the defense of Jacqueline Parker.

2. I entered a notice of appearance on July 23, 2010, after being retained by Mrs. Parker pursuant to a representation agreement. (ECF Doc. 20.)

3. Consistent with my experience as a criminal defense attorney, my advanced education in areas of statistics and economics, and the market rate for specialized criminal representation in connection with U.S. tax laws, the hourly rate for my legal services in representing Mrs. Parker was $400. This rate is less than the prevailing rate for attorneys pursuant to the EAJA and the Laffey Matrix.

4. In addition, I was assisted on this case by my associate, Shannon Peters. Consistent with the prevailing rate for attorneys pursuant to the EAJA and the Laffey Matrix, Ms. Peters' legal services were provided at an hourly rate of $230.

5. Patricia E. Ronan, an attorney admitted in Arizona and New York who has extensive white collar criminal experience, also assisted on this case. Consistent with the prevailing rate for attorneys pursuant to the EAJA and the Laffey Matrix, Ms. Ronan's hourly rate is $350.

6. Anjali Patel worked as a law clerk for Joy Bertrand Law after her graduation from Arizona State Law School. Ms. Patel is appropriately billed at a law clerk rate of $130, consistent with the prevailing rate for law clerks pursuant to the EAJA and the Laffey Matrix.

7. The total attorneys fees and expenses accrued by Mrs. Parker in defending this matter are $68,689.28.

8. Among the work performed on behalf of Mrs. Parker, I successfully brought a motion to sever her trial from that of her husband, and I assisting in litigating a motion to compel the Government to fulfill its discovery obligations. I prepared extensively for trial, to include attend mock trial sessions and witness preparation sessions. I was prepared to go to trial in this case on the scheduled date of July 17, 2012, after motions for continuance were denied.

Submitted under penalty of perjury, this 27th day of July, 2012.

Respectfully submitted on July 27, 2012.

*/s/ Joy Bertrand*
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# LAFFEY MATRIX -- 2003-2012
## (2009-10 rates were unchanged from 2008-09 rates)

Years (Rate for June 1 - May 31, based on prior year's CPI-U)

| Experience | 03-04 | 04-05 | 05-06 | 06-07 | 07-08 | 08-09 | 09-10 | 10-11 | 11-12 |
|---|---|---|---|---|---|---|---|---|---|
| 20+ years | 380 | 390 | 405 | 425 | 440 | 465 | 465 | 475 | 495 |
| 11-19 years | 335 | 345 | 360 | 375 | 390 | 410 | 410 | 420 | 435 |
| 8-10 years | 270 | 280 | 290 | 305 | 315 | 330 | 330 | 335 | 350 |
| 4-7 years | 220 | 225 | 235 | 245 | 255 | 270 | 270 | 275 | 285 |
| 1-3 years | 180 | 185 | 195 | 205 | 215 | 225 | 225 | 230 | 240 |
| Paralegals & Law Clerks | 105 | 110 | 115 | 120 | 125 | 130 | 130 | 135 | 140 |

*Explanatory Notes:*

1. This matrix of hourly rates for attorneys of varying experience levels and paralegals/law clerks has been prepared by the Civil Division of the United States Attorney's Office for the District of Columbia. The matrix is intended to be used in cases in which a "fee-shifting" statute permits the prevailing party to recover "reasonable" attorney's fees. *See, e.g.,* 42 U.S.C. § 2000e-5(k) (Title VII of the 1964 Civil Rights Act); 5 U.S.C. § 552(a)(4)(E) (Freedom of Information Act); 28 U.S.C. § 2412 (b) (Equal Access to Justice Act). The matrix does **not** apply in cases in which the hourly rate is limited by statute. *See* 28 U.S.C. § 2412(d).

2. This matrix is based on the hourly rates allowed by the District Court in *Laffey v. Northwest Airlines, Inc.*, 572 F. Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985). It is commonly referred to by attorneys and federal judges in the District of Columbia as the "*Laffey* Matrix" or the "United States Attorney's Office Matrix." The column headed "Experience" refers to the years following the attorney's graduation from law school. The various "brackets" are intended to correspond to "junior associates" (1-3 years after law school graduation), "senior associates" (4-7 years), "experienced federal court litigators" (8-10 and 11-19 years), and "very experienced federal court litigators" (20 years or more). *See Laffey*, 572 F. Supp. at 371.

3. The hourly rates approved by the District Court in *Laffey* were for work done principally in 1981-82. The Matrix begins with those rates. *See Laffey*, 572 F. Supp. at 371 (attorney rates) & 386 n.74 (paralegal and law clerk rate). The rates for subsequent yearly periods were determined by adding the change in the cost of living for the Washington, D.C. area to the applicable rate for the prior year, and then rounding to the nearest multiple of $5 (up if within $3 of the next multiple of $5). The result is subject to adjustment if appropriate to ensure that the relationship between the highest rate and the lower rates remains reasonably constant. Changes in the cost of living are measured by the Consumer Price Index for All Urban Consumers (CPI-U) for Washington-Baltimore, DC-MD-VA-WV, as announced by the Bureau of Labor Statistics for May of each year.

4. Use of an updated *Laffey* Matrix was implicitly endorsed by the Court of Appeals in *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516, 1525 (D.C. Cir. 1988) (en banc). The Court of Appeals subsequently stated that parties may rely on the updated *Laffey* Matrix prepared by the United States Attorney's Office as evidence of prevailing market rates for litigation counsel in the Washington, D.C. area. *See Covington v. District of Columbia*, 57 F.3d 1101, 1105 & n. 14, 1109 (D.C. Cir. 1995), *cert. denied*, 516 U.S. 1115 (1996). Lower federal courts in the District of Columbia have used this updated *Laffey* Matrix when determining whether fee awards under fee-shifting statutes are reasonable. *See, e.g.*, *Blackman v. District of Columbia*, 59 F. Supp. 2d 37, 43 (D.D.C. 1999); *Jefferson v. Milvets System Technology, Inc.*, 986 F. Supp. 6, 11 (D.D.C. 1997); *Ralph Hoar & Associates v. Nat'l Highway Transportation Safety Admin.*, 985 F. Supp. 1, 9-10 n.3 (D.D.C. 1997); *Martini v. Fed. Nat'l Mtg Ass'n*, 977 F. Supp. 482, 485 n.2 (D.D.C. 1997); *Park v. Howard University*, 881 F. Supp. 653, 654 (D.D.C. 1995).