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5 **ATTORNEY FOR: DEFENDANT**

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

10 United States of America,
11 Plaintiff,
12
13 v.
14 Jacqueline Parker, et al.,
Defendant.

10CR757-ROS-PHX

**MOTION TO PRECLUDE THE
ADMISSION OF PRIVILEGED
MARITAL COMMUNICATIONS**

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18 NOW COMES the Defendant, Jacqueline Parker, by and through her counsel of
19 record, to ask this Court to preclude the admission of evidence regarding the
20 communications between Mrs. Parker and her husband, James Parker, in this matter.

21 As further grounds therefore, the Defendant submits the following:

22
23 **INTRODUCTION**

24 A grand jury indicted the Defendant and her husband on June 8, 2010. In eight
25 felony counts, the Indictment alleges that Mr. Parker evaded the payment of income tax,
26 in violation of 26 U.S.C. 7201 (ECF Doc. 1 at 7,14) and made false statements to the
27 Internal Revenue Service (IRS), in violation of 26 U.S.C. 7206. *Id.* at 14-15. Mrs. Parker
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1 was in any way involved in Mr. Parker's business in that country. ECF Doc. 1 at 7. The
2 Indictment focuses primarily on Mr. Parker's business dealing, but makes little mention
3 of Mrs. Parker. *See, e.g. Id.* at 3-5. Indeed, the best allegation the Government can
4 muster about Mrs. Parker about the couple's activities in a four-year period was that
5 she "inspected" and has "resided at time" in a Texas home purchased by her husband.
6
7 *Id.* at 3.

8
9 To prove that Mrs. Parker violated 26 U.S.C. 7206(1), the Government must show
10 that, when she signed the documents at issue, she acted willfully. To prove that she
11 acted "willfully," the Government must show beyond a reasonable doubt that Mrs.
12 Parker knew the federal tax law imposed a duty on her and that she intentionally and
13 voluntarily violated that duty." Comment to Ninth Cir. Crim. JI 9.42. The Government
14 cannot prevail, even if the Defendant's understanding of the law is wrong or
15 unreasonable. Ninth Cir. Crim. JI 9.42.
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18 Because Mrs. Parker's day-to-day life was so removed from her husband's
19 dealings, to the point where even the lead investigator initially did not believe that Mrs.
20 Parker was involved in them to the extent to support criminal charges, the Government
21 will attempt to prove Mrs. Parker's knowledge of both the facts in support underlying
22 the documents at issue and of the law surrounding the signing of the documents.
23 However it decides to attempt to prove what the Defense maintains will ultimately be
24 un-provable by any burden of proof, not to mention beyond a reasonable doubt, the
25 Government cannot elicit communications between the Parkers to reach that end.
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ARGUMENT

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2 The marital communications privilege “protects from disclosure private
3 communication between spouses,” *United States v. Griffin*, 440 F.3d 1138, 1143-44 (9th
4 Cir. 2009), and may be invoked by the non-testifying spouse. *United States v.*
5 *Marashi*, 913 F.2d 724, 729 (9th Cir. 1990). The privilege exists “to protect the integrity of
6 marriages and ensure that spouses freely communicate with one another.” *Griffin*, 440
7 F.3d at 1143 (citation, alterations and internal quotation marks omitted). Marital
8 communications are presumptively privileged and the party opposing the assertion of
9 the privilege bears the burden of demonstrating that the privilege does not exist.
10 *Marashi*, 913 F.2d at 730. The Ninth Circuit reviews legal determinations regarding the
11 marital communications privilege *de novo*. *United States v. Banks*, 556 F.3d 967, 972 (9th
12 Cir. 2009) The Ninth Circuit reviews the admission of evidence for an abuse of
13 discretion. *Id.* at 972.

14
15 Under the common law, a husband and wife were incompetent as witnesses
16 against each other. *Hawkins v. United States*, 358 U.S. 74,75 (1958). This approach was
17 overruled in *Trammel v. United States*, 445 U.S. 40 (1980). The privilege regarding the
18 confidentiality of spousal communications, however, continues. *Id.* at 51, citing *Blau v.*
19 *United States*, 340 U.S. 332 (1951).

20
21 Understandably, the marital communications privilege does not apply to
22 communications made in the furtherance of joint criminal activity. *Marashi*, 913 F.2d at
23 731. Such a determination does not hinge on whether or not both spouses have been
24 indicted. *Id.* at 730. Rather, it appears to rely upon the extent of the criminal
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1 participation by the spouse asserting the privilege. In *Marashi*, for example, the Ninth
2 Circuit noted that the “intimate participation” of the ex wife of the defendant in the
3 double-ledger scheme at issue in that case vitiated any “innocent spouse” interpretation
4 for Smith’s communication. *Id.* at 731, n. 10.

5
6 Here, unlike the situation in *Marashi*, the Government has yet to show that Mrs.
7 Parker was involved in any of her husband’s business activities, not to mention the
8 managing of two separate sets of books for him. Without such a showing, the
9 Government must be precluded from using the Defendants’ privileged marital
10 communications at trial.
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13 **CONCLUSION**

14 For the foregoing reasons, the Defendant respectfully asks this Court to grant her
15 Motion to Preclude Marital Communications.

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17 RESPECTFULLY SUBMITTED on April 22, 2011.

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19 s/Joy Bertrand
20 Joy Bertrand
21 Attorney for Defendant
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CERTIFICATE OF SERVICE

On April 22, 2011, I, Joy Bertrand, attorney for the Defendant, Jacqueline Parker, filed the Defendant’s Motion to Sever 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 opposing counsel, Peter Sexton and Walter Perkel, and codefendant counsel Michael Minns, Ashley Arnett, and John McBee upon its submission to the Court.

Respectfully submitted this 22nd day of April, 2011.

s/Joy Bertrand
Joy Bertrand
Attorney for Defendant