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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

United States of America,

Plaintiff,

v.

James R. Parker,

Defendant.

CR 10-0757–01-PHX-ROS

GOVERNMENT'S RESPONSE TO DEFENDANT MOTION IN LIMINE (CR 116)

I. Overview.

In an omnibus pleading, defendant moved to preclude twelve (12) categories of evidence as either irrelevant, or unfairly prejudicial if relevant. Defendant's pleading generally lacked any meaningful analysis of the facts and law to support his claims. The evidence that defendant seeks to preclude is clearly admissible and highly probative of defendant's affirmative acts of evasion, his financial wherewithal during the relevant periods, his knowledge and willfulness in evading his growing tax obligations, and his mendacity in the offers of compromise he and his wife jointly submitted to the IRS. For these and other reasons, discussed in detail below, defendant's motion in limine should be denied.

II. Factual Background.

A. Indictment.

On June 8, 2010, a federal grand jury returned an indictment against James R. Parker ("Parker") and Jacqueline L. Parker ("Jacqueline Parker"). (CR 1.) Defendant Parker was charged with four counts of Tax Evasion in violation of 26 U.S.C.§ 7201, and four counts of making a False Statement in violation of 26 U.S.C.§ 7206(1). (***Id.***) The four counts of tax evasion involve tax years 1997, 1998, 2001, and 2002 respectively, though the acts of evasion involve other overlapping and subsequent time periods. The four counts of making false statements involve defendant and his wife attempting to "compromise" what they owed to the IRS for tax years 1997 through 2004.

Defendant Jacqueline Parker was jointly charged with two of the counts of making a False Statement in violation of 26 U.S.C.§ 7206(1). (***Id.***) The Indictment provided the following information in support of these charges.

1. Relevant Facts Contained in the Indictment (CR 1).

Defendants were married and resided in Carefree, Arizona. Parker was the owner of Omega Construction, Inc., a Nevada corporation, and the owner and chief executive officer of Mackinnon Belize Land and Development Limited, a Belize corporation, which developed land for hotels on the Placencia Peninsula in Belize. (¶ 1).

In 1997 and 1998, defendants filed joint U.S. Individual Income Tax Returns, which reported minimal income and tax liabilities of $2,089.00 and $7,967.00 respectively. These returns were subsequently the subject of an extensive Internal Revenue Service ("IRS") audit, which revealed that defendants failed to report substantial income for 1997 and 1998. (¶ 2).

In May 2003, defendants, who were represented by legal counsel, entered into a stipulated agreement with the government in United States Tax Court as to their correct income tax liability for the years 1997 and 1998. The defendants stipulated to owing, collectively, approximately $1,035,479.00 in additional tax and $207,095.00 in penalties, and were later also assessed

$465,860.00 in interest charges around this same time. Defendants never paid any of the approximately $1.7 million in additional taxes, penalties, and interest. (¶ 3).

For 1999 and 2000, defendants failed to file their tax returns; the IRS again audited defendants and assessed a substantial liability in excess of $1.0 million, which defendants have failed to pay. For the years 2001 and 2002, defendants filed their U.S. Individual Income Tax Returns, with tax liabilities of $13,924.00 and $12,331.00 respectively. Defendants have failed to pay any of the taxes for these years as well. (¶ 4).

In anticipation of a substantial tax liability resulting from the audit of defendants' 1997 and 1998 tax returns, defendant Parker, as early as 2002, began to hide assets and income sources. In August 2002, defendant Parker transferred, for no consideration, ownership of the defendants' approximately $1.5 million Carefree, Arizona residence to Sunlight Financial Limited Liability Partnership ("Sunlight"), a nominee entity purportedly managed by the defendants' daughter, Rachael T. Parker Harris. Although ownership of the property was transferred, defendants maintained sole use and control over the residence. Sunlight also has never filed a tax return. (¶¶ 6, 7).

Between 2004 and 2007, defendant Parker invested more than $1.2 million into a startup cattle operation on land both owned and leased in the State of Oklahoma. Defendant Parker owned and operated the cattle operation using a nominee entity, Cimarron River Ranch, LLC ("Cimarron LLC"). To hide the true ownership of Cimarron LLC, defendant Parker made his then 21 year old son, Samuel Parker, the straw owner of Cimarron LLC. Cimarron LLC also has never filed a tax return. (¶ 8).

On or about June 7, 2004, defendant Parker, as chief executive officer of Mackinnon Belize Land and Development Limited, agreed to sell 597 prime acres in Belize for approximately $6.0 million. The buyer of the property was I.D., an unrelated Illinois company. At the direction of defendant Parker, I.D. deposited the sales proceeds into an account at Belize Bank, Limited, Belize. (¶ 12).

In July 2004, defendant Parker, using Cimarron LLC as the purported owner and his 21 year old son Samuel Parker as the "straw buyer," purchased for his personal use a $306,695 Rolls Royce automobile. The Rolls Royce was delivered by the California car dealership to the defendants' Carefree residence, and the insurance policy listed the primary driver as defendant Parker. (¶¶ 9, 19).

In August 2005, in order to further place his assets beyond the reach of the government, defendant Parker obtained a $1.5 million second mortgage against the Carefree, Arizona residence. Defendant Parker then used approximately $1.0 million of the proceeds to purchase a 7,000 square foot residence in Amarillo, Texas. Defendant Jacqueline Parker inspected the home prior to the purchase, and has on occasion also resided at the residence. The Amarillo, Texas residence was placed into yet another nominee entity, RSJ Investments LLC. Again, defendant Parker attempted to hide his ownership of RSJ Investments LLC by again making his son, Sam Parker, the purported owner/member of this entity. RSJ Investments LLC also has never filed a tax return. (¶¶ 10, 11).

In January, 2005, the Resorts Consulting Quorum LLP ("RCQ") bank account at Chase (formerly Bank One) was established. The only authorized signor on the account was an individual associated with a Phoenix, Arizona law firm, which at the time was representing the defendants with regard to the taxes they owed to the IRS. Approximately $112,000, in monthly installments of $7,000, was paid to defendant Parker's Omega Construction Company from the RCQ account, and approximately $152,000 was paid from the RCQ account to make loan payments on the $1.5 million second mortgage on defendants' Carefree home. (¶ 13).

After the sale of the above-described property in Belize, and between June 2004 and January 2008, wire transfers were made from Belize Bank Limited into several accounts in the United States. These transfers included transfers of $1,302,000 and $1,544,375 into two bank accounts associated with Cimarron River Ranch, a $223,500 transfer into a bank account associated with RCQ, a $306,000 transfer to purchase the Rolls Royce, and a $36,029 transfer to acquire a Ford truck. (¶¶ 12, 13).

Other than the nominal monies that flowed through the RCQ and Cimarron River Ranch bank accounts to Omega, none of the $3,411,904.00 of repatriated funds from the Belize land sale were reported on the defendants' tax returns. The defendants' tax returns for the years 2004, 2005, and 2006 only reflected the following taxable income: $13,320, $37,391, and $40,810 respectively. (¶ 13).

On or about July 30, 2004, defendants attempted to "compromise" with the IRS for their unpaid tax liabilities.[1] For tax years 1997, 1998, 2001, 2002, ***and 2003***, they sought to eliminate their collective $1.7 million obligation through a one-time payment of $130,000.00. Defendants also falsely claimed that they were borrowing the proposed sum of money from friends and a bank. This offer was not accepted by the IRS. (¶¶ 15, 19).

On or about November 16, 2004, defendants again attempted to seek a second "compromise" with the IRS through a one-time payment of $130,000.00. Again they sought to compromise their tax liabilities for 1997, 1998, ***1999, 2000,*** 2001, 2002, ***and 2003***. Defendants also claimed that they were borrowing the proposed sum of money from friends and family. This offer was not accepted by the IRS. (¶¶ 16, 19).

On or about April 13, 2005, defendants, for the third time, attempted to seek a "compromise" with the IRS for their unpaid tax liabilities. This time they sought to eliminate their collective $1.7 million obligation through a one-time payment of $450,000.00. This time they sought to "compromise" their unpaid tax liabilities for tax years 1997, 1998, ***1999, 2000***,

[1] Generally, an individual who owes money to the IRS can seek, under various provisions of law, a reduction to his or her outstanding obligations to the IRS. This is known as a "compromise." Insufficient assets and income to pay the full amount due is an acceptable reason for seeking a compromise. A completed Offer in Compromise (Form 656), signed under the penalty of perjury, is required to be submitted to the IRS in order to seek a compromise of the outstanding liability. This was generally done with the thought that the compromised liability would be made in a single payment thereafter, which would ordinarily be substantially less than the amount originally owed by the taxpayer. Collection Information Statement for Wage Earners and Self-Employed Individuals (Form 433-A) and Collection Information Statement for Businesses (Form 433-B) were schedules used to itemize various financial information, and are often required with an Offer in Compromise (Form 656). Forms 433-A and 433-B also are required to be signed under the penalty of perjury. On occasion, and under limited circumstances, the IRS allowed a taxpayer who owed taxes to enter into an installment agreement and make monthly payments to satisfy a taxpayer's outstanding tax liability.

2001, 2002, ***2003, and 2004***. Defendants again falsely claimed that they were borrowing the money from their family, and receiving collections from a purported note that Omega Construction supposedly held from Sunlight Financial. This offer was not accepted by the IRS. (¶¶ 17, 19).

For all three offers, defendants submitted and signed under penalty of perjury various IRS documentation falsely reflecting that the defendants purportedly had neither the income nor the assets to pay the IRS. (¶¶ 15, 16, 17).

After the IRS turned down the previous offers of compromise, defendants, on or about August 5, 2005, submitted a fourth set of false financial statements, which were signed under penalty of perjury. The defendants were now requesting that because of their purported dire financial condition, they should be allowed to pay a monthly $2,000 installment on their now approximately $2.7 million tax liability. This offer was again rejected by the IRS. (¶¶ 18, 19).

The financial statements submitted by the defendants to the United States in connection with the above-referenced offers of compromise and installment request, falsely failed to disclose the defendants' true ownership of a home worth more than $1 million, a Rolls Royce automobile, a million dollar cattle operation, and approximately $6 million in proceeds received from the sale of Belizean land. The defendants falsely and fraudulently stated to the IRS that they were unable to pay their rent, were impoverished, would be homeless if not for the kindness and support of their two children, and further misrepresented their monthly income and net worth. (¶ 19).

During this same time period, from 2000 through February, 2008, defendants frequently traveled to Belize. Defendant Parker made eighteen (18) trips, and defendant Jacqueline Parker made eleven (11) trips. (¶ 20).

The factual allegations in paragraphs 1-20 of the Indictment were re-alleged in each count of the Indictment.

B. Notice of Other Act Evidence Under Rule 404(b).

On October 7, 2010, the government filed a "Notice of Intent to Introduce Other Acts Evidence Pursuant to 404(b). (CR 40). Though the government maintains that the noticed acts are otherwise admissible as evidence inextricably intertwined with, necessary background to, or otherwise relevant to the allegations in the Indictment, the government nonetheless noticed defendant's (1) failure to timely file tax returns for 1999, 2000, 2008 and 2009, (2) substantial tax liabilities for tax years 1999 and 2000, and (3) failure to pay the entire tax due and owing on returns filed for tax years 2003, 2004, and 2005.

III. Legal Standards.

A. Evasion of Payment (26 U.S.C. § 7201).

The first four counts of the Indictment charge tax evasion. Tax Evasion can be committed in two distinct manners: (a) the willful attempt to evade or defeat the assessment of a tax and (b) the willful attempt to evade or defeat the payment of a tax. ***United States v. Mal***, 942 F.2d 682, 686-88 (9th Cir. 1991)(***citing Sansone v. United States***, 380 U.S. 343, 354 (U.S. 1965)). In this case, defendant evaded the payment of tax.

The affirmative acts of evasion almost always involve some form of concealment of the taxpayer's ability to pay the tax due and owing, or the removal of assets from the reach of the IRS. Both occurred in this case. ***See e.g., United States v. McGill***, 964 F.2d 222, 227-229, 232-33 (3d Cir. 1992) (defendant concealed assets by using bank accounts in the names of family members and co-workers); ***United States v. Conley***, 826 F.2d 551, 553 (7th Cir. 1987) (defendant concealed nature, extent, and ownership of his assets by placing his assets, funds, and other property in the names of others).

To establish a violation of Section 7201, the government must prove the following:

1. Defendant owed more federal income tax for the specific calendar year than was paid by him for any income tax return filed for that year;

2. Defendant knew he owed more federal income tax than was paid by him for any tax return defendant filed for that specific year;

3. Defendant made an affirmative attempt to evade or defeat the payment of income tax for that year; and

4. Defendant acted willfully.

Ninth Circuit Model Criminal Jury Instructions; ***United States v. Marashi***, 913 F.2d 724, 735 (9th Cir. 1990).

1. Willfulness.

Willfulness has been defined as a "voluntary, intentional violation of a known legal duty." ***Cheek v. United States***, 498 U.S. 192, 200-01 (1991). When determining whether a defendant has acted willfully, the jury must apply a subjective standard – thus a defendant asserting a good faith defense (which is being raised here) is not required to have been objectively reasonable in his misunderstanding of his legal duties or belief that he was in compliance with the law. ***Id.***, ***United States v. Powell***, 955 F.2d 1206, 1211-12 (9th Cir. 1992). The jury may, however, "consider the reasonableness of the defendant's asserted beliefs in determining whether the belief was honestly and genuinely held." ***United States v. Grunewald***, 987 F.2d 531, 536 (8th Cir. 1993).

Willfulness is rarely subject to direct proof and must generally be inferred from the defendant's acts or conduct. ***United States v. Marchini***, 797 F.2d 759, 766 (9th Cir 1986); ***United States v. Marabelles***, 724 F.2d 1374, 1379 (9th Cir. 1984). In addition, defendant's attitude and actions regarding his reporting and payment of taxes can bear on the issue of willfulness. ***See United States v. Hogan***, 861 F.2d 312, 316 (1st Cir. 1988); ***United States v. Johnson***, 386 F.2d 630, 631 (3d Cir. 1967); ***United States v. Magnus***, 365 F.2d 1007, 1009-10 (2d Cir. 1966); ***United States v. Alker***, 260 F.2d 135, 139, 149 (3d Cir. 1958). Once the evidence establishes that a tax evasion motive played any role in a defendant's conduct,

willfulness can be inferred from that conduct. ***See Spies v. United States***, 317 U.S. 492, 499 (1943); ***United States v. DeTar***, 832 F.2d 1110, 1114 n.3 (9th Cir. 1987).

B. False Statements (26 U.S.C. § 7206(1).

Defendant also is charged with four counts of making false statements in three "Offers in Compromise" and one "Request for Installment Agreement." Generally, defendant lied about his income, assets, and ability to pay his several million dollar tax obligation. He sought to "compromise" his obligations for the tax years 1997-2004, ***and specifically did not contest his tax liability for those years***, but merely argued he lacked the income and assets to pay his accrued liability.

The elements of a Section 7206(1) offense are:

1. Defendant made and subscribed a statement or other document which was false as to a material matter;
2. The statement or other document contained a written declaration that it was made under the penalties of perjury;
3. Defendant did not believe the statement or other document to be true and correct as to every material matter; and
4. Defendant acted willfully.

United States v. Scholl, 166 F.3d 964, 979-80 (9th Cir. 1999). Section 7206(1) applies to offers in compromise. ***See United States v. Cohen***, 544 F.2d 781, 782-83 (5th Cir. 1977) (false statement made in an offer in compromise, Form 656).

C. The Evidence is not 404(b) Evidence.

Much of what defendant complains about in his in limine motion was noticed by the government under Rule 404(b) of the Federal Rules of Evidence. It was noticed even though the evidence is inextricably intertwined with, necessary background to, or otherwise relevant to the allegations in the Indictment. Evidence of incidents that are "inextricably intertwined" with the charged offenses are admissible independent of Rule 404(b). ***See United States v. Sanchez-***

Robles, 927 F.2d 1070, 1078 (9th Cir. 1991); ***United States v. Soliman***, 813 F.2d 277, 278 (9th Cir. 1987) (evidence of 102 other fraudulent claims to the 3 alleged in the indictment was not 404(b) evidence); ***United States v. Stovall***, 825 F.2d 817, 825 (5th Cir. 1987). This evidence is admissible to demonstrate a "connected or inseparable transaction" with respect to the crimes charged. ***United States v. Wexler***, 621 F.2d 1218, 1225-26 (2d Cir. 1980); ***see also United States v. Warren***, 25 F.3d 890, 895 (9th Cir. 1994) (uncharged offenses occurring in a single criminal episode are admissible independent of Rule 404(b)). Because such evidence is intrinsic, and not extrinsic, the Court need not engage in a Rule 404(b) analysis. ***United States v. Church***, 955 F.2d 688, 700 (11th Cir. 1992).

D. Relevant Evidence.

To determine relevancy, Rule 401 requires only that evidence have a tendency to make a fact of consequence more or less probable. A "fact of consequence" under Rule 401 is not limited to the ultimate issue in a case, such as one of the defined essential elements of a crime. ***Old Chief v. United States***, 519 U.S. 172, 178-79 (1997). Instead, a fact of consequence can be any step along a path of inference that leads to an "ultimate fact." Neither does it matter that there are multiple "evidentiary route[s] to the ultimate fact other than the one relied upon by the proponent of the evidence. ***Id.*** In addition, evidence that makes a fact of consequence to a defense less likely is relevant evidence in the government's case. ***See United States v. Kemp***, 500 F.3d 257, 296-97 (3d Cir. 2007); ***United States v. Curtin***, 489 F.3d 935, 940 (9th Cir. 2007).

1. Standard for Unfair Prejudice Under Rule 403.

Defendant claims in his in limine motion that certain evidence is unfairly prejudicial even if relevant. Unfair prejudice "must do more than 'damage the defendant's position at trial,' it must 'make[] a conviction more likely because it provokes an emotional response in the jury or otherwise tends to affect adversely the jury's attitude toward the defendant wholly apart from its judgment as to his guilt or innocense [sic] of the crime charged.'" ***United States v. Burgess***, 576 F.3d 1078, 1099 (10th Cir. 2009) (***citing United States v. Tan***, 254 F.3d 1204, 1211-12

(10th Cir. 2001). Unfair prejudice is "prejudice of the sort which clouds impartial scrutiny and reasoned evaluation of the facts, and which inhibits neutral application of principles of law to the facts as found." ***United States v. Starnes***, 583 F.3d 196, 215 (3d Cir. 2009).

IV. Argument.

In his motion, defendant listed twelve (12) categories of evidence he seeks to exclude before the trial has begun. Below, some of them are grouped because they raise overlapping arguments.

A. Jacqueline Parker's American Express Statements (Defendant's Category No. 1.

Defendant first moved to preclude introduction of the American Express credit card statements and records. Defendant does not want the jury to see how co-defendant Jacqueline Parker was spending her money while they jointly failed to pay their taxes and contemporaneously claimed to have little to no income or assets to live on when submitting their "offers in compromise". (Motion at 1). Defendant argued that because Jacqueline Parker was severed, any information about her spending habits would be irrelevant and unfairly prejudicial. (Motion at 1-2).

Defendant ignores as a factual matter that he and his wife's tax obligations were (1) jointly stipulated to in Tax Court, (2) jointly assessed against them by the IRS, and/or (3) jointly agreed to in their joint tax returns. The American Express information is relevant for the following reasons.

1. The American Express records reflect expenditures made by Jacqueline Parker during the same time period that defendant Parker and his wife filed their three joint offers in compromise and an additional request for an installment plan. The expenditures on her credit card are probative that they lied when submitting their offers in compromise to the IRS. While these expenditures were reflecting a lavish lifestyle, defendants falsely represented to the IRS their lack of income and assets, especially with

outlandish assertions such as they "have cut their expenses to the bone" and "without the largesse of their family, [they] would have no place to live." (Government's Trial Exhibit 110).

2. The monthly balance on the American Express card was often paid with funds from bank accounts associated with several nominee entities, including First State Bank and M & I Bank related to the nominee entity, Cimarron River Ranch, and First National Bank, for the nominee RSJ Investments. The payments made to American Express, from the nominee entities, show that these entities were not, in fact, true and separate entities, but were an extension of defendant himself. These expenditures and payments also show that defendants had the ability to pay their taxes, lied about their financial wherewithal, and maintained actual control over the nominee entities to disguise their true net worth and income stream.

In sum, this evidence is probative of their actual net worth and sources of income, which shows they had the ability to pay their tax debts and undermines their claims of poverty in their joints offers in compromise. The evidence is further probative of how the nominee entities were sham entities actually controlled by the defendants and not their children, and that the funds being used to pay for lavish credit card expenditures had nothing to do with any purported business purpose for the entities in question.

B. Boise City Bank Memorandum (Defendant's Category No. 2).

Defendant sought to exclude a business record created by the President of The First State Bank, which held an account for the nominee entity Cimarron River Ranch (CRR). Defendant objected to the records as "uncorroborated opinion and prejudicial hearsay." (Motion at 2).

On August 9, 2007, Tim W. Barnes, President of The First State Bank in Oklahoma, wrote a "Dear Sir or Madam" letter to CRR, which is attached as Exhibit 1 to this Response. In that letter, Mr. Barnes recounts that from June 28, 2004 through the date of the letter (August

9, 2007), the checking account for CRR received "thirty-six money wires totaling $1,277,000.00," and that all the money wires were originated by the Belize Bank International Limited. In accordance with the bank's Customer Due Diligence Policy, which required the bank to examine funds coming from a country listed by the United States Department of State as a major money laundering country, the letter specifically requested that someone contact the bank to explain the source of the funds and the intended use of those funds.

On August 16, 2007, at approximately 11:00 a.m., defendant James Parker called Mr. Barnes. Mr. Barnes summarized the contents of their conversation in a memorandum to be placed with the records for this Cimarron account, which is attached as Exhibit 2 to this Response. Defendant Parker told Mr. Barnes that the source of the funds originated from his real estate development business in Belize, and that the funds were to be used to build a lodge and operate a cattle ranch.

The August 9 letter and August 16 memorandum are business records, and have been certified as such by the bank. Mr. Barnes will testify to the admissions made by defendant Parker, and the evidence is neither "uncorroborated opinion" or "prejudicial hearsay" as argued by defendant. It is extremely probative to show that large sums of money were transferred into CRR, one of defendant's nominee companies, that defendant responded to the bank inquiry as the representative of this nominee entity, and that huge sums of money were available to defendant while he and his wife were ignoring their tax obligations and claiming to be impoverished in their offers in compromise.

C. Certain Tax Returns (Category 3), Certificates of Assessment (Category 4), Failures to File Returns (Categories 9 and 12), and Failures to Pay Tax Liabilities (Categories 10 and 11).

Defendant objected to the use of certain tax returns, certificates of assessment, failures to file returns, and failures to pay tax liabilities. Generally using only a single sentence for each of these six categories, defendant Parker's overarching theme for each is that he was not charged

with crimes for those tax years, thus any mention of this information would be unfairly prejudicial. (Motion at 2-4).

1. Tax Years 1997 - 2004.

Defendant is charged with evading taxes for 1997 (Count 1), 1998 (Count 2), 2001 (Count 3), and 2002 (Count 4). He also is charged with making false statements in his offers in compromise and installment request (Counts 4-8), which falsehoods were done in an attempt to get the IRS to compromise defendant's tax liabilities for tax years 1997-2004. Within one or more of the forms submitted to "compromise" defendant's tax liabilities, defendant specifically did not check the box that would reflect he was in anyway contesting the tax liability he owed for every tax year between 1997 through 2004.

Thus, every return he filed (1997, 1998, 2001, 2002, 2003, 2004), every return he didn't timely file (1999, 2000), every return he stipulated to liability in Tax Court (1997, 1998), every tax year he was audited (1997, 1998), and every tax year he was assessed (1999, 2000), are directly relevant to one or more charges in the Indictment. He made every one of these tax years relevant when he lied to the IRS in an attempt to get the IRS to forgive his tax liabilities for the years 1997-2004. Thus, the returns themselves, the absence of any returns, and the assessments of tax liability and the notices of such, are all directly relevant to one or more of the charged counts.

The evidence of what was done or not done in 1999, 2000, 2003, and 2004, is also relevant to proving defendant's willfulness in evading his taxes and lying to the IRS. Willfulness is a "voluntary, intentional violation of a known legal duty." ***Cheek***, 498 U.S. at 200-01. Willfulness is rarely subject to direct proof and must generally be inferred from the defendant's acts or conduct. ***Marchini***, 797 F.2d at 766 (9th Cir 1986); ***Marabelles***, 724 F.2d at 1379 (9th Cir. 1984). Thus, defendant's attitude and actions regarding his reporting and payment of taxes can bear on the issue of willfulness. ***See Hogan***, 861 F.2d at 316 (1st Cir.

1988); ***Johnson***, 386 F.2d at 631 (3rd Cir. 1967); ***Magnus***, 365 F.2d at 1009-10 (2d Cir. 1966); ***Alker***, 260 F.2d at 139, 149 (3rd Cir. 1958).

Here, failing to file, ignoring IRS notices and assessments for years, and refusing to pay even slight amounts of tax liability, was done at the same time that defendant was repatriating and spending millions in Belizean profits, borrowing $1.5 million of equity from his Carefree home to buy a million dollar home in Texas, and lavishly paying cash for a $300,000 Rolls Royce. There is no better evidence of defendant's willfulness, and absence of good faith, then his direct dealings with the IRS during this time frame.

2. Tax Years 2005-2009.

In 2005-2007, defendant filed joint tax returns but did not pay any of the tax due and owing for those years. For 2008 and 2009, defendant filed no returns. Thus, from 1997 through 2009, defendant either filed false returns (1997, 1998), failed to timely file any returns (1999, 2000, 2008, 2009), or filed returns and did not pay most of the taxes he reported owing on those returns (2001-2007). Thus, for more than ten years defendant has been repeatedly put on notice of his legal duty as a taxpayer. This evidence for later years is probative of his knowledge of the underlying tax situation he has created over the years, and his willfulness in continuing to evade and ignore his responsibilities in that regard. What he knew, and what he did, with regard to his taxes during this extended period, is further proof of "facts in consequence" for the charges in the Indictment. As such, the evidence is probative and not unfairly prejudicial.

D. Non-Filings of Tax Returns for Nominee Entities (Defendant's Category 5).

Defendant also seeks to preclude evidence that the above-described nominee entities also failed to file tax returns after defendant created them and designated his children as straw owners of these entities. Defendant claims the evidence is unfairly prejudicial. (Motion at 2).

Defendant created these entities around the time he was litigating and evading his tax liabilities. He moved his assets into these entities (e.g., Carefree home), acquired new personal assets with these entities (e.g. Texas ranch and Rolls Royce), and used these entities as a conduit

to repatriate his Belizean land profits. In addition, at the time the entities were created, defendant's son, Samuel Parker, the straw owner or beneficiary of Cimarron River Ranch, RSJ Investments, and the Parker Children Irrevocable Trust, and defendant's daughter Rachel Harris, the straw general partner of Sunlight Financial, clearly did not have the experience to oversee these ventures as both were in there twenties, with Samuel being just 21 years old when one or more of these entities were created.

The evidence will show that defendant James Parker called the shots with these entities, and that they were created to hide his assets from collection, and disguise his profits from land sales in Belize.

The fact that all of these entities failed to file tax returns is probative evidence that the entities were not established for any legitimate purpose, and were merely shell entities still controlled by defendant through his children. As such, this evidence is relevant and not unduly prejudicial.

E. Insurance Coverage for Rolls Royce (Defendant's Category 6).

Defendant also sought to exclude the reference in a business record that defendant's Rolls Royce was insured for "pleasure." He argued the word "pleasure" in this business record was unduly prejudicial. (Motion at 2-3).

In July, 2004, defendant bought a Rolls Royce automobile for $306,695 from a car dealership in California. The car was personally chosen by defendant, and it was delivered to his home in Carefree, Arizona. The funds for this purchase were wired directly to the car dealership from a Belize Bank account controlled by defendant. The direct and circumstantial evidence will show that defendant sold $6 million in Belizean land the month before, and that the Rolls Royce was a cash purchase from some of defendant's proceeds from that land sale. Instead of purchasing the Rolls Royce in his own name, defendant listed Cimarron River Ranch and his 21 year old son Samuel as the straw buyer of the car. In this same month of July,

defendants also submitted their first false "Offer in Compromise" to the IRS, in which they claimed to have little or no income and modest assets.

The Rolls Royce was insured through Ralph Compton. Mr. Compton's business records showed that the "principal operator" was to be defendant James Parker, and the "use of vehicle" was for "pleasure." Eventually in 2008 the policy was updated to include co-defendant Jacqueline Parker as a driver.

The probative value of this evidence is overwhelming. It reflects defendant's true use and ownership of the Rolls Royce, that he had a spare $300,000 to buy the car, that the vehicle was not to be used for business, and that he had the mean to pay his taxes and was thus evading his legal responsibilities in that regard. There is absolutely nothing unfairly prejudicial about this evidence.

F. Pictures of Texas Ranch (Defendant's Category 7).

Defendant sought to preclude certain pictures of the exterior and interior of defendants' Texas home. As to the exterior of the residence, defendant objected because certain unknown vehicles were depicted outside the home. As to the interior, defendant did not mention anything specifically, just that the pictures were not a fair and accurate depiction of the home when defendants' owned it. (Motion at 7).

This issue is really not appropriate for a motion in limine. The government either will use other pictures not depicting the unknown vehicles, or have a witness verify the accuracy of the pictures minus the vehicles. It is likely that the government will simply use other exterior pictures of the house. As to the interior photos of the Texas home, the witnesses are expected to testify that they fairly and accurately depict the interior of the house when the defendants took possession of the property.

At a minimum, the government will discuss with counsel their concerns with this photographic evidence, and before the evidence is sought to be admitted, the government will lay the necessary foundation before seeking to admit the photos. At this time, however, it is a

matter for the parties to discuss and attempt to reach some accommodation before seeking the Court's guidance in that regard.

G. Breach of Contract Allegation (Defendant's Category 8).

Defendant sought to preclude any reference to a breach of contract dispute against "Prather Kalman, PC." (Motion at 3). At this time, the government has insufficient information about what this concern is all about. The government will discuss this matter with defense counsel and try to resolve the matter without the Court having to be involved.

V. Conclusion.

For the reasons expressed above, defendant's in limine motion should be denied.

Respectfully submitted this 2nd day of May, 2012.

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/s Peter Sexton

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I hereby certify that on this date, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF system for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants: Michael Minns, Ashley Arnett, Michael Kimerer, John McBee, and Joy Bertrand