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7 Counsel for Defendant James Parker

8
9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF ARIZONA**
11

12 **UNITED STATES OF AMERICA,**
13 **Plaintiff,**
14 **v.**
15 **JAMES R. PARKER, ET AL.,**
16 **Defendant**

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Case No.: CR-10-00757 PHX-ROS
DEFENDANTS'
REQUEST FOR INSTRUCTIONS
AND CLARIFICATIONS

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18 Your Defendant, James Parker, requests the court's instruction and clarification prior to
19 the start of trial on critical issues raised Friday night, May 18, 2012 at 8:47 p.m. by personal
20 contact with Government witness, Greg Robinson, and continuing witness problems.

21 **I.**

22 On the 16th day of May 2012 the parties appeared before the court for pre-trial
23 instructions and began the process of jury selection.
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II.
Sequestration

The parties agreed, with the court's permission, to allow three witnesses to be allowed in the courtroom, free from sequestration. The Government was allowed Special Agent, Lisa Giovannelli, and Expert Summary Witness, Mark Klamrzynski. The defense was allowed C.P.A. Gail Prather. Both Government witnesses were in the courtroom throughout the hearing. Ms. Prather was not. No other requests for relief from sequestration were made by either party.

III.
Inquiry into Sequestration

The Government raised a concern with the court about a person in the audience, counsel had introduced to the government, Cathy Christiansen. The court inquired, at the Government's request, and was informed Christiansen worked for Prather, would not be testifying but was taking notes for Prather since Prather was not present.

IV.
Inquiry into Attorney/Client Information

The Government also pressed its Motion to force an immediate waiver of attorney/client privilege and allow them to interact directly with Greg Robinson ("Robinson"), former counsel to the defendant. The court denied this unconstitutional request.

V.
May 18 Letter from Peter Sexton to Greg Robinson

On Sunday, May 20, counsel checked e-mail and learned about the May 18th correspondence with the Government and Robinson (See Exhibit "A" attached and incorporated herein.)

1 The letter says in relevant part:

2 “Greg . . . We had a pretrial conference with Judge Silver . . . May 16,
3 2012 . . . As you know, we moved in limine to require the defense to
4 disclose . . . The court declined to order the defense . . . the defense
5 appears to be focusing on you and your brother’s representation of Mr.
6 Parker.”

7 The Government has clearly been communicating with Mr. Robinson on this case. The
8 Government believes sequestration has started for the defense but it has not started for the
9 Government. They are inflaming an already difficult defense relationship with former counsel
10 against the defense team, and simultaneously courting and coaching him.

11 They put in bold print: **“At this juncture, we seek no information from you. Please do
12 not communicate with us about any communications or dealings you had with Mr. Parker.”**

13 They repeat this in substance two more times. It is apparent this is an effort to skirt
14 ethical requirements, as well as sequestration, putting bold form over reasonable substance to
15 ignore this court’s ruling and claim immunity by saying, “Don’t communicate with us.”

16 The defense must inquire what the Government means by “At this juncture . . .” What
17 happened before this juncture between the Government and “Greg”? Does the Government
18 claim the right to enforce sequestration, ostensibly because the jury selection process has begun,
19 on the defense, but ignore it altogether? A reasonable construction of Exhibit “A” informs Mr.
20 Robinson that the Government wants him to know things, the defense doesn’t, they will share
21 these with him anyway and they will continue to assist him on his need to know if he will, quid
22 pro quo, get ready for their use of him in the courtroom against his client.
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VI.
Exhibit "A"

Exhibit "A" is now on the defense exhibit list. Although it is an effort to prepare the Government's witness, Greg Robinson, a promise to continue to avoid sequestration when it is inconvenient, and a direct communication with the witness, Government counsel, Walter Perkel, contends it is irrelevant. The Government would be hard pressed to come up with a more relevant witness document. The document shows:

- (1) A personal, first name relationship with the Government;
- (2) Planning the examination of the witness;
- (3) A request for work preparation without consideration (the Government offers no money, the defense has been required to pay for Mr. Robinson's time);
- (4) Communications with Robinson before even requesting permission;
- (5) A reason for the jurors to understand some of Robinson's hostility, if exhibited to the jury on direct or cross;
- (6) Efforts by the Government to alienate former counsel from present counsel and the defendant; and
- (7) An ostentatious effort to skirt around sequestration.

VII.
Pre-Trial Exhibit Discussions

On Thursday May 24, 2012, Mr. Perkel and the undersigned, along with Ms. Arnett, struggled to agree on exhibits. The defense recognizes the legitimacy of banking wires and checks, and approved, without objection, to admission of 327 of 596 Government exhibits. The defense will not change their position on this. The defense has, and always does, work diligently to offer unopposed exhibits into evidence expeditiously and to only oppose offers if a court instruction is necessary, the record must be kept, or a valid objection is required. Mr. Perkel has accused the defense of being uncooperative. (Exhibit "B" – Mr. Perkel's complaint.) The defense respectfully disagrees. Ordinarily these type of counsel discussions do not reach the bench, but the Government, ignoring Rule 11, and supplying counsel to counsel communications, already compels the defense to respond or leave a potentially unfair picture for the court.

1 At first the Government objected to the relevancy of defense exhibits that were on the
2 Government's own list of exhibits too. When counsel pointed out how unreasonable this was
3 Mr. Perkel conceded that he would not object to his own proffers being admitted. That is just
4 about the limit of his concessions.

5 The Government then objected to any expenses being admitted. Counsel was
6 unsuccessful in getting Mr. Perkel to agree that in an income tax case, where the Government
7 will put on, without objection, evidence of revenue, the defense may then counter with evidence
8 of expenses.

9 Of 56 defense exhibits, aside from those already on the Government exhibit list, the
10 Government would only state they do not intend to object "at this time" to a few. Since they can
11 change their mind at anytime, before admittance, their potential cooperation is limited to no
12 cooperation at all.

13 Neither the Government, nor the defense, are required to agree to any exhibits, but it is
14 customary when counsel have no legitimate objections, to attempt to save court time, and
15 defense expense, and the jurors' time by conceding that which cannot be rationally objected to.

16 The defense brings this to the attention of the court because of the inordinately long
17 Government estimate of time, in the hopes that as the weeks drag on the court will be mindful that the
18 time expended is not due to the defense refusing cooperation as Mr. Parker suggests in his
19 correspondence to defense, which often, and unique to this case, seems to work its way into this record.

20
21 **VIII.**
22 **The Court's Request**

23 Counsel was surprised to learn, after meeting with Mr. Liggett the morning of the pre-trial
24 (after numerous unsuccessful efforts) that the Government was not calling him; counsel inaccurately
25 supposed him to be the Government's leading witness. He created two of the tax returns, the only
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1 two, which are directly relevant to the case and not 404b. The Government named 75 witnesses.
2 After this revelation in court, the Government admitted to the court they had only 25. The court
3 asked them to share these with the defense so the defense would not have to prepare for 50
4 witnesses that would not be called. To date the Government has ignored this court's instructions,
5 and other than Mr. Liggett, not one single additional witness has left the Government coral, in spite
6 of agreements to pre-admit a large majority of their exhibits. This creates a great burden on the
7 limited resources of the defense.

8 **IX.**
9 **Defendant's Finances**

10 The defendant is broke. His most experienced counsel, Mr. Kimmerer, has been forced to
11 limit his role because the defendant has been unable to continue paying him and like most private
12 counsel, the prospect of two months pro bono is daunting. The undersigned is now in the position
13 of advancing credit to the defendant who simultaneously is worried about his wife's case – which
14 the Government so far has refused to agree to a continuance on, in spite of the fact it is currently set
15 during this trial – so Mrs. Parker's legal team must continue to prepare.

16 The defendant desperately needs the court's assistance to level the field.

17 **Remedies**

18
19 1. The defense should know, before opening arguments, the full extent of the
20 Government's communications with Greg Robinson and any other counsel to the Parkers.

21 2. The defense prays the court will let the parties know if sequestration in this court
22 allows direct communication of exact statements offered in open court to sequestered witnesses.

23 3. The defense pleads for a new reduced Government witness list so scarce resources
24 are not squandered on witnesses who will never testify.
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1 4. The defense requests the Memo of Interview with C.P.A. Tim Liggett for his
2 interview on or around May 1 – May 15, 2012, which the Government has not shared, but which
3 likely contains exculpatory information, since it was at that meeting, estimated over an hour of
4 time, that the Government decided not to put Mr. Liggett on the stand. The defense is
5 overwhelmed with work and apparently two-thirds of it will not be necessary. The defense is
6 being side lined with a padded witness list.

7 5. This inquiry is not made for delay, but that justice be served. The defense does
8 not want this case to be delayed. The defense has shown good faith in agreeing to nearly 90% of
9 the Government’s exhibits, and may be able to concede more as Ms. Prather reviews staggering
10 long documentation behind conclusory summary charts over the weekend.

11 6. The defense pleads to know, as this court suggested, and to which the
12 Government agreed, which witnesses are coming on the first day of trial, and even the second
13 day of trial, would be reasonable.

14 7. Accordingly, your defendant, Jim Parker, requests help.

15 Respectfully submitted this 25th day of May 2012.

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17
18 /s/ Michael Louis Minns
19 Michael Minns (pro hac vice)
20 State Bar No. 14184300
21 Ashley Blair Arnett (pro hac vice)
22 State Bar No. 24064833 (Texas)
23 MICHAEL LOUIS MINNS, P.L.C.
24 Counsel for Defendant James Parker
25 9119 S. Gessner Suite One
26 Houston, TX 77074
 Tel.: (713) 777-0772
 Fax: (713) 777-0453
 Email: ashley@minnslaw.com

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/s/ John McBee
John McBee
Arizona State Bar No. 018497
Local counsel for Defendant James Parker
3104 E. Camelback Rd. RD PMB 851
Phoenix, AZ 85016-0001
Tel.: 602-903-7710
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Email: mcbee@cox.net

CERTIFICATE OF SERVICE

On May 25, 2012, I, Ashley Blair Arnett, attorney for the Defendant James Parker, filed this motion 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/ Ashley Blair Arnett
Ashley Blair Arnett
Attorney for Defendant James Parker

EXHIBIT A

Subject: United States v. James Parker
Date: Friday, May 18, 2012 4:48:37 PM Central Daylight Time
From: Sexton, Peter (USAAZ) <Peter.Sexton@usdoj.gov>
To: greg <greg@lawfrl.com>
CC: Restaino, Gary (USAAZ) <Gary.Restaino@usdoj.gov>, Lopez, John (USAAZ) <John.Lopez3@usdoj.gov>, Perkel, Walter (USAAZ) <Walter.Perkel@usdoj.gov>, MDK@kimerer.com <MDK@kimerer.com>, Michael Minns <mike@minnslaw.com>, Ashley Arnett <ashley@minnslaw.com>

Greg,

We had a pretrial conference with Judge Silver on Wednesday, May 16, 2012 at 2:15 p.m. As you know, we moved in limine to require the defense to disclose before trial the nature of the "Advice of Counsel" defense they intend to pursue in this case. We were seeking any communications and other records regarding any legal advice purportedly given to Mr. Parker that the defense will argue negates his criminal intent in this matter. The Court declined to order the defense to waive the privilege today and disclose the nature and content of their advice of counsel defense.

At the pretrial conference, the defense appeared to be focusing on you and your brother's representation of Mr. Parker. It appeared primarily to be associated with the formation and operation of the entity called Results Consulting Quorum, and your work on the three offers in compromise and one installment payment request to the IRS. We are ordering an expedited copy of the transcript for you to review and glean the nature of what they represented to the Court at the hearing.

At this juncture, we seek no information from you. Please do not communicate with us about any communications or dealings you had with Mr. Parker. Instead, let me tell you what we plan to do if Mr. Parker takes the stand and testifies about any advice you and your brother gave him during the time you both represented him.

1. We will send you a transcript of the pretrial conference hearing on May 16, 2012.
2. We will subpoena you for trial. We do not intend to call you until the privilege is waived and you can discuss the matter openly.
3. We will ask the Court to allow us to communicate to you any information the defense may disclose about this advice of counsel defense in their opening statement and in cross--examination of witnesses.
4. We will ask you to locate any files that may bear on these issues, and have them standing by in case they are needed.
5. We will ask you to review your records about whether you had knowledge of the following facts:
 - a. The offers in compromise were filed on 6/18/04, 10/3/04, 3/24/05. A letter was written by you to the IRS on 4/4/05. An installment request was submitted on 8/3/05. These are marked as Trial Exhibits 104, 106, 111, 110, and 114, and are attached to this email. During this time frame, would you review your records as to whether you had any knowledge of the following:
 1. That on June 7, 2004, Mr. Parker, as President, Chairman, and part owner of MacKinnon Belize Land & Development, Ltd., consummated a sale of 597 acres of Belizian beach front property for \$6 million. Between June 7, 2004 and August 15, 2007, the purchaser wired the funds to a Belizian account as directed and acknowledged by Mr. Parker. I tell you this to juxtapose this evidence with your sentence in your April 4, 2005 letter to the IRS (Exh. 110) in which you wrote

that: "After much hard work the project [Belize beach front lots] was wiped out by September 11, 2001 and immediately thereafter Hurricane Mitch."

2. That on June 16, 2004, after the above \$6 million sale, Mr. Parker purchased a 2004 Rolls Royce Phantom Sedan for \$306,000 from a car dealership in California, and paid cash for it by wiring funds directly to the dealership from a Belizian bank account he controlled. The car was insured and listed Mr. Parker as the only insured driver, and the insurance records indicate the car was to be driven for "pleasure" and not for business. The Rolls Royce was titled in the name of Cimarron River Ranch, LLC, an entity formed on April 21, 2004, with Mr. Parker's 21 year old son as the only member of the LLC.
3. As to the entity Cimarron River Ranch, between June 15, 2004 through January 8, 2008, starting just after the \$6 million sale of Belizian land noted above, Mr. Parker thereafter transferred to Cimarron from his Belizian bank account, approximately \$2.85 million in funds into two separate Cimarron bank accounts.
4. That Mr. Parker's Carefree home, that was placed into an entity called Sunlight Financial, LLP on August 9, 2002, was purportedly controlled by Mr. Parker's daughter, Rachel Harris. Were you aware that right after you submitted the August 3, 2005 installment request to the IRS, a deed of trust was recorded 13 days later in which \$1.5 million was borrowed against the Carefree home, which money was used by Mr. Parker to buy a \$1 million home in Canyon, Texas, as well as to purchase \$75,000 of the seller's home furniture? The Texas residence was titled in the name of RSJ Investments LLC, which was formed a week after the \$1.5 million hard money loan was recorded against the Carefree home. RSJ had Mr. Parker's 22 year old listed as the manager. Both the Carefree and Texas homes were lived in by Mr. and Mrs. Parker. The hard money loan payments on the Carefree home were paid from monies from Belize.
5. That on 4/13/05, 6/16/05, and 8/31/05, through three promissory notes, in amounts of \$450,000, \$450,000, and \$239,903 respectively, Mr. and Mrs. Parker purportedly loaned their son Samuel Parker a total of approximately \$1.1 million. The obligation was to be repaid to Mr. and Mrs. Parker as husband and wife. This is Trial Exhibit 78, which is attached. As you know, these promissory were not brought to the attention of the IRS, nor are the monetary transfers consistent with claims being asserted in the offers in compromise and installment request.

We do not know what will transpire at trial. ***At this time, we do not need you to communicate with us until the need arises and a waiver of the privilege occurs.*** Please just review the information we have provided to you and compile your files in case they are needed.

We hope not to have to call you in this case, but in case we do, we want you to be prepared for that possibility.

Again, please do not communicate with us about the substance of your representation. If you would, we need to serve you with a subpoena. Could you indicate to us how you would like that service accomplished.

Thanks.

Peter

EXHIBIT B

Subject: FW: Trial Exhibits
Date: Friday, May 25, 2012 9:54:20 AM Central Daylight Time
From: Ashley Arnett <ashley@minnslaw.com>
To: Patti Harris <patti@minnslaw.com>

MLM might want to attach this email to the Robinson motion.

From: Ashley Arnett <ashley@minnslaw.com>
Date: Friday, May 25, 2012 9:06 AM
To: "Perkel, Walter (USAAZ)" <Walter.Perkel@usdoj.gov>, "Sexton, Peter (USAAZ)" <Peter.Sexton@usdoj.gov>
Cc: Michael Minns <mike@minnslaw.com>, Michael Kimerer <MDK@kimerer.com>
Subject: Re: Trial Exhibits

I have reviewed Defense Exhibit 1010. I have removed the first two pages (IRS Collection Files 013060 – 013061). I will update the Exhibit List to reflect Bates Numbers IRS Collection Files 013062 – 013090. I have attached a new copy of this exhibit.

Also, we were supposed to talk about the Government Witnesses. Can you please send me a list the witnesses you do not plan on calling? Thanks

We are not entering into a stipulation. I am sorry you are confused.

You are correct. You have no objection to the defense exhibits you listed below.

As far as the Government Exhibits we have no objection to some of your number sets are off. I have made changes in red to your list where the numbers are off. The other numbers are correct. We have no objection.

Rachel's attorney is Bruce Fedder.

If you have anything to send us via Fedex or mail please send it to the Renaissance Hotel 50 East Adams, Phoenix, Arizona 85004 Attn Minns Law/Ashley Arnett. I will have access to my email.

I will review the additional exhibits concerning the pictures and get back to you. Please do the same as indicted on the phone call yesterday regarding our Belize Pictures.

Thanks
Ashley

From: "Perkel, Walter (USAAZ)" <Walter.Perkel@usdoj.gov>
Date: Thursday, May 24, 2012 7:56 PM
To: Ashley Arnett <ashley@minnslaw.com>
Cc: Michael Minns <mike@minnslaw.com>, "Sexton, Peter (USAAZ)" <Peter.Sexton@usdoj.gov>
Subject: Trial Exhibits

Ashley,

Hello again.

Pursuant to our earlier conversation and to confirm; at this point, you do not intend to object to the

admission of the following government exhibits :

- 1-5
- 32-38
- 40-45
- 61-75
- 78-79
- 104-106
- 111-114
- 116-123
- 126-127
- 137
- 139
- 142-154
- 162-163
- 166-175
- 180 - 206
- 211-357
- 362-368
- 374-386
- 389
- 443
- 447-453
- 456
- 458-462
- 465-466
- 514-517
- 547-573
- 582-586
- 596

At this point, we do not intend to object to the admission of the following defense exhibits:

- 1008-1009
- 1011-1013
- 1021-1024
- 1045-1051
- 1061
- 1075
- 1076-1077
- 1083

I will take a closer look at the photos in 1034.

Please let me know if I am mistaken.

Also, I found the earlier conversation a little confusing with regards to the use of the word, "stipulation."

I just want to be clear - we do not intend to enter into any pre-trial stipulation agreements at this point with regards to any of the defense exhibits.

Thanks,

Walter

Walter Perkel

Assistant U.S. Attorney

District of Arizona

Desk: (602) 514-7633

walter.perkel@usdoj.gov