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8
9 UNITED STATES DISTRICT COURT
10 DISTRICT OF ARIZONA

11 United States of America,
12
13 Plaintiff,

14 v.

15 James R. Parker,
16 Defendant.

CR 10-0757-01-PHX-ROS

**GOVERNMENT’S MEMORANDUM IN
REGARDING RULE 29 PROCEEDINGS**

17
18 **A. Tax Evasion (Counts 1-4).**

19 **1. Tax Due and Owing (Element 1).**

20 **a. 1997 and 1998 Tax Years (Counts 1-2).**

21 Defendant and his wife, Jacqueline Parker, jointly filed U.S. Income Tax Returns for tax
22 years 1997 and 1998. (Trial Exhibits 1-2, 11-12.) The 1997 and 1998 tax filings reported tax
23 liabilities of \$2,089 and \$7,967 respectively. (*Id.*) The 1997 tax return was filed on May 30,
24 1998, and the 1998 return was filed on October 17, 1999. (Trial Exhibit 1-2, 11-12.)

25 **1. 1997 and 1998 Audits and Notice of Deficiencies.**

26 In 2001, subsequent to an audit initiated by the Internal Revenue Service (“IRS”), the
27 IRS determined that defendant owed \$320,155 in unpaid taxes for the 1997 calendar-year. (Trial
28 Exhibits 11, 32.) In 2002, the IRS determined defendant’s tax liability to be \$714,324 for 1998.

1 (Trial Exhibits 12, 33.) The IRS also calculated penalties and interest in the amounts of \$64,031
2 and \$130,434.91 respectively for the 1997 calendar-year (Trial Exhibit 32), and penalties and
3 interest of \$143,064 and \$258,362.19 respectively for 1998.(Trial Exhibit 33.)

4 On or about May 29, 2002, subsequent to the audit, the IRS issued and served defendant
5 and Jacqueline Parker a Notice Of Deficiency for the calculated 1997 tax liability, wherein the
6 IRS informed defendant that he owed \$320,155 in taxes and \$64,031 in penalties. (Trial Exhibit
7 34.)

8 On or about September 13, 2002, the IRS issued and served defendant and Jacqueline
9 Parker a second Notice Of Deficiency for the 1998 tax year, informing defendant and Jacqueline
10 Parker that they owed \$715,324 in taxes and \$143,064 in penalties. (Trial Exhibit 35.)

11 **2. 2003 Stipulated Tax Court Decisions.**

12 On May 6, 2003, defendant entered into a stipulated agreement with the IRS in U.S. Tax
13 Court with regards to the 1998 tax liability. (Trial Exhibit 38.) The total deficiency agreed upon
14 was \$715,324, with an additional penalty of \$143,064.(Id.) On May 14, 2003, defendant entered
15 into a second agreement with regards to the 1997 tax liability. (Trial Exhibit 37.) The total
16 deficiency agreed upon for 1997 was \$320,155, with an additional \$64,031 in penalties. (Id.)

17 **b. Defendant's 2001 and 2002 Federal Tax Returns (Counts 3 and 4).**¹

18 On or about August 19, 2003, the IRS received defendant's jointly filed tax return for the
19 2002 calendar year. (Trial Exhibit 4.) Defendant reported a tax liability of \$12,331. (Id.) On or
20 about September 5, 2003, the IRS received defendant's jointly filed tax return for calendar year
21 2001. (Trial Exhibit 3.) Defendant reported a tax liability of \$13,924. (Id.)

22 As of April 20, 2012, the IRS has also not received any payments for these years. On
23 April 21, 2012, approximately one month before trial, defendant paid \$13,324 towards his 2001
24 tax liability (Trial Exhibit 545), and \$14,469 towards his 2002 tax liability. (Trial Exhibit 546.)

25
26 ¹ For 1999 and 2000, defendants failed to timely file tax returns; the IRS again audited
27 defendants and assessed a substantial liability in excess of \$1.0 million, which defendants have
28 failed to pay. (Trial Exhibits 13-14.)

1 **2. Defendant Knew He Owed More Tax Than Paid (Element 2).**

2 As noted above, for the 1997 and 1998 tax years, starting on May 29, 2002, subsequent
3 to the audit, the IRS served defendant a Notice Of Deficiency for the calculated 1997 tax
4 liability, wherein the IRS informed defendant that he owed \$320,155 in taxes and \$64,031 in
5 penalties. (Trial Exhibit 34.) On or about September 13, 2002, the IRS served defendant a
6 second Notice Of Deficiency for the 1998 tax year, informing defendant that he owed \$715,324
7 in taxes and \$143,064 in penalties. (Trial Exhibit 35.)

8 On May 6, 2003, defendant entered into a stipulated agreement with the IRS in U.S. Tax
9 Court with regards to the 1998 tax liability. (Trial Exhibit 38.) The total deficiency agreed upon
10 was \$715,324, with an additional penalty of \$143,064. (Id.) On May 14, 2003, defendant entered
11 into a second agreement with regards to the 1997 tax liability. (Trial Exhibit 37.) The total
12 deficiency agreed upon for 1997 was \$320,155, with an additional \$64,031 in penalties. (Id.)

13 As noted above, for the 2001 and 2002 tax years, defendant did not pay the tax he owed
14 on the returns he filed. He was thus aware of the tax he calculated on those returns, and knew
15 he had not paid the tax owed on either return.

16 **A. Other Notices Regarding the Taxes Defendant Owed.**

17 **1. Notices Reflected on Transcripts.**

18 For the 1997 tax year, the transcript reflects nine (9) separate statutory notices between
19 June 23, 2003 and October 2, 2006. (Trial Exhibit 11). For the 1998 tax year, the transcript
20 reflects eight (8) separate statutory notices between June 16, 2003 and October 2, 2006. (Trial
21 Exhibit 12). For the 2001 tax year, the transcript reflects six (6) separate statutory notices
22 between October 20, 2003 and October 2, 2006. (Trial Exhibit 15). For the 2002 tax year, the
23 transcript reflects six (6) separate statutory notices between September 22, 2003 and July 4,
24 2005. (Trial Exhibit 16).

25 **2. Collection Efforts.**

26 Subsequent to the U.S. Tax Court Decision, IRS revenue officers began the process of
27 attempting to collect the amount of tax liability owed by defendants. On February 4, 2004, IRS
28

1 Revenue Officer Paul Wedepohl met with defendant's tax preparer and then power-of-attorney,
2 Timothy Liggett. They discussed the payment of taxes owed based on amounts previously
3 stipulated to in U.S. Tax Court. Mr. Wedepohl set a February 13, 2004 deadline, at which time
4 he requested that defendant provide him with a summary of his assets and income, start making
5 partial payments on unpaid taxes, and begin the process of obtaining a second loan against
6 defendant's Carefree residence as a way to meet his tax liability.

7 On February 12, 2004, the IRS sent, via certified mail, to defendant and Jacqueline Parker
8 a *Final Notice, Notice Of Intent To Levy And Notice Of Your Right To A Hearing*. (Trial Exhibit
9 450.) In this letter, the IRS provided the amount of tax, interest, and penalties defendant owed
10 for tax years 1997, 1998, 2001, and 2002. (*Id.*) Defendant signed the certified mail receipts. (*Id.*)
11 Timothy Liggett was also provided a copy of the notice. (*Id.*)

12 On February 17, 2004, the IRS sent a *Notice Of Federal Tax Lien Filing* to Timothy
13 Liggett, which again listed the amount of tax owed for 1997, 1998, 2001, and 2002. (Trial
14 Exhibit 36, 451.)

15 **3. Affirmative Acts of Evasion of Payment (Element 3).**

16 On July 29, 2002, after the first Notice of Deficiency on May 29, 2002 (Trial Exhibit 34),
17 defendant created Sunlight Financial LLP ("Sunlight") in the State of Arizona. (Trial Exhibit
18 42.)

19 On August 9, 2002, approximately three months after defendant received the IRS' first
20 Notice Of Deficiency for the 1997 tax year, defendant transferred, for no consideration,
21 ownership of his approximately \$1.5 million Carefree, Arizona residence to Sunlight. (Trial
22 Exhibit 119.) Other than purportedly managing the Carefree home, Sunlight did not manage any
23 other properties, or generate any income from the sale of any product or service. (Trial Exhibit
24 67.) In addition, IRS records show that the entity has never filed a tax return. (Trial Exhibits 24-
25 25.)

26 On May 7, 2003, Sunlight financial opened a bank account at American Sterling Bank,
27 with the signors on the account being defendant's two sons. (Trial Exhibits 67-68.)
28

1 On July 31, 2003, defendant takes out a \$355,000 loan with Universal to encumber the
2 Carefree residence now being held in Sunlight. (Trial Exhibits 120, 174.)

3 On February 13, 2004, defendant created a fictitious encumbrance between Omega
4 Construction (owned by defendant) and Sunlight for \$296,000, in which Sunlight purportedly
5 borrowed the money from Omega. This fictitious obligation was used by defendant to further
6 encumber the Carefree residence from the IRS collection efforts. (Trial Exhibit 166.)

7 On April 21, 2004, defendant organized Cimarron River Ranch, L.L.C. (CRR), in which
8 defendant's 21 year old son Samuel is named sole manager. (Trial Exhibit 40.)

9 On April 26, 2004, a checking account, in the name of CRR, was opened up at First State
10 Bank in Boise City, Oklahoma. (Trial Exhibits 76-77.) Nominees Samuel Parker and Rachel
11 Harris both signed the signature card. (Id.)

12 On June 7, 2004, defendant Parker, as President, Chairman, and an owner of Mackinnon
13 Belize Land and Development Limited, agreed to sell 597 prime acres in Belize for
14 approximately \$6.0 million. (Trial Exhibits 123-25, 203.) The buyer of the property was "ioVest
15 Development L.L.C" ("ioVest"), an unrelated Illinois company. (Id.) The Memorandum of Sale
16 listed the vendor as "Mr. James Parker," at the address of "35802 N. Meander Way Carefree,
17 Arizona 85377." (Id.) Defendant signed the document. (Id.) Defendant signed several subsequent
18 amendments, documents, and receipts pertaining to the sale. (Trial Exhibit 125, 203, 461-62,
19 467-501.) He signed as the "President" or "Chairman" of Mackinnon Belize Land &
20 Development Ltd. (Id.) At the direction of defendant, ioVest wired payments for the agreed upon
21 \$6 million into an account (account #5019837) at Belize Bank Limited, Belize. (Trial Exhibit
22 124.)

23 On June 18, 2004, defendant filed his first Offer in Compromise, in which he materially
24 lied about his income and assets. (Trial Exhibit 104.) This is also Count 5, and will be discussed
25 below.

26 On July 16, 2004, defendant Parker, using CRR as the purported owner, and his 21-year
27 old son Samuel Parker as the "straw buyer," purchased a \$306,695 Rolls Royce automobile from
28

1 Desert European Motorcars Ltd., a dealership in Rancho Mirage, California. (Trial Exhibits 184,
2 597.) The money used to purchase the car was wired directly from Belize Bank Limited from
3 an account associated with MacKinnon Belize Land and Development. (Id.) The Rolls Royce
4 was subsequently delivered by the California car dealership to defendant's Carefree residence.
5 (Id.)

6 On October 3, 2004, defendant filed his second Offer in Compromise, in which he
7 materially lied about his income and assets. (Trial Exhibit 104.) This is also Count 6, and will
8 be discussed below.

9 On December 3, 2004, defendant purchased a \$36,029 Ford truck. (Exhibit 132-34, 206.)
10 The money used to purchase the vehicle was wired from Belize to the dealership. (Id.)

11 On January 24, 2005, a checking account, in the name of CRR, was opened up at First
12 National Bank of Tribune, Elkhart, Kansas. (Trial Exhibits 69-70.) Roy Young, a rancher
13 employed by defendant, was the nominee on the signature card. (Id.)

14 On January 26, 2005, defendant formed Resorts Consulting Quorum LLP ("RCQ") in the
15 State of Arizona. (Trial Exhibit 43.) RCQ has never filed a tax return. (Trial Exhibits 28-29.)

16 On January 31, 2005, a checking account, in the name of RCQ, was opened up at Bank
17 One. (Trial Exhibits 60-61.)

18 On March 24, 2005, defendant filed his third Offer in Compromise, in which he
19 materially lied about his income and assets. (Trial Exhibit 111.) This is also Count 7, and will
20 be discussed below.

21 On August 4, 2005, defendant filed his Installment Payment Request, in which he
22 materially lied about his income and assets. (Trial Exhibit 111.) This is also Count 8, and will
23 be discussed below.

24 On August 16, 2005, defendant Parker obtained a hard money loan for \$1.5 million
25 against the Carefree, Arizona residence. (Trial Exhibits 115, 121, 137-38, 204-05, 384, 447, 547-
26 569.) Again, he used Universal Properties as the private lender, and defendant exclusively
27 negotiated the terms of the loan with Universal. Three separate checks in the amounts of
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1 \$377,419.00 were issued to Sunlight Financial LLP, endorsed by defendant's nominee daughter,
2 Rachel Harris, and deposited into the RSJ account at The First National Bank of New Mexico
3 associated with the nominee entity, RSJ Investments. (Trial Exhibits 57-59.)

4 On August 22, 2005, defendant created RSJ Investments, LLC ("RSJ Investments") in
5 the State of Oklahoma.(Trial Exhibit 41.) Again, similar to CRR, Samuel Parker signed as the
6 company's nominee manager. (Id.) RSJ has also never filed a tax return. (Trial Exhibit 30.)

7 On August 26, 2005, a checking account, in the name of RSJ Investments, was opened
8 up at First National Bank of New Mexico. (Trial Exhibits 54-55.) Samuel Parker and Rachel
9 Harris were the nominees on the signature card. (Id.)

10 On September 7, 2005, defendant purchased his first Texas home at 103 Jyntewood
11 Drive, in Canyon, Texas, for his daughter Rachel Harris. (Trial Exhibits 355, 357.) The
12 purchase price of the home was \$205,000. (Id.) The money used to purchase the home was wired
13 directly from Belize. (Id.)

14 On September 9, 2005, defendant purchased his second Texas home at 218 Turkey Track
15 Trail, in Canyon, Texas. This was a \$1.0 million purchase of a 7000 square foot home. (Trial
16 Exhibits 116, 142-48, 178.) At the closing, the defendant's 22-year old son Samuel, as nominee,
17 signed on behalf of the newly created represented RSJ Investments. (Id.)

18 **a. Cimarron Ranch Affirmative Acts of Evasion.**

19 In addition to the above affirmative acts, after the \$6 million sale on June 7, 2004 of
20 defendant's Belizian land, between June 2004 and January 2008, wire transfers were made from
21 Belize Bank Limited into three accounts associated with defendant. (Trial Exhibits 211-247,
22 259-320, 341-351, 390, 392-395.) These transfers included the following:

- 23 • \$1,302,000 wired into a CRR nominee account held at First State Bank of Boise
24 City, Oklahoma (from June 15, 2004 through August 8, 2007);
- 25 • \$1,544,375 wired into a CRR nominee account held by First National Bank of
26 Tribune, Elkhart, Kansas (now Colorado East Bank Trust) (from January 27,
27 2005 through January 8, 2008).

1 As discussed above, CRR was created on April 21, 2004 in the State of Oklahoma. (Trial
2 Exhibit 40.) As part of the cattle operation, defendant wanted to start a hunting lodge that
3 would contain a “western-style” bread and breakfast in the small rural town of Kenton,
4 Oklahoma, approximately 35 miles from Boise City, Oklahoma. To hide the true ownership of
5 CRR, defendant made his then 21-year old son, Samuel Parker, the straw owner, although it was
6 clear to the local residents that it was defendant Parker who was the “brains and money” behind
7 the operation. In addition, defendant hired a local rancher, Roy Young, to help run the cattle
8 operation.

9 To start his business, defendant began the process of purchasing privately-held land from
10 residents, and attempting to gain control of public lands controlled by the Oklahoma
11 Commissioners of the Land Office (“Land Office”). In June of 2005, defendant purchased 400
12 acres of land from Monty Jo Roberts, a resident of Kenton, Oklahoma. He paid \$350,000 for the
13 land. Defendant build two homes and an old Western style structure on his deeded property.

14 Defendant then began the process of bidding on the right to lease state public lands, which
15 had been used by local ranchers for cattle operations. In October 2005 and 2006, defendant
16 attended and participated in the state’s auction of lease agreements to publicly-held lands in
17 Cimarron County. (Trial Exhibits 155-59, 383, 397.) Defendant was able to out bid many of the
18 local residents, by paying sometimes more than four times the market rate. Defendant, through
19 his son as nominee, obligated CRR to over \$1 million in future lease payments. From January
20 2005 until December 2007, defendant paid the Commissioner Of The Land Office approximately
21 \$592,941.54. (Trial Exhibits 252-58, 397.) The two CRR bank accounts also show that from
22 February 2005 until April 2006, deposits made into the account, from money wire transfers, were
23 used to purchase \$693,550 worth of cattle for the business (Trial Exhibits 72-75, 396), and pay
24 for other general expenses associated with the operation, including the salary of a cattle rancher,
25 and the purchase of equipment and feed. (Trial Exhibits 69, 76.)

26 Defendant also constructed a large-sized cabin on the above-mentioned land that he had
27 bought, and began to build his western style hunting lodge. (Trial Exhibits 436-442.) In sum,
28

1 defendant invested, through his son as nominee, more than \$1.2. million into a startup cattle
2 operation on land both owned and leased in the State of Oklahoma.

3 **b. Using Belizian Proceeds to Service the \$1.5 Million Hard Money Loan.**

4 In order to make the quarterly interest payments from 2005 through 2007 on the \$1.5
5 million dollar loan, defendant used funds from the Bank One account, associated with the
6 nominee entity RCQ, and the First State Bank Account, associated with the nominee entity CRR.
7 (Trial Exhibits 48, 50-51, 65-66, 248-251, 327-28, 398.)

- 8 • Between September 2005 and June 2006, defendant made four interest payments
9 from the RCQ account, totaling \$152,575.10 to Stewart Title. (Trial Exhibits 65-
10 66, 327-28, 398.)
- 11 • Between September 2006 until June of 2007, defendant made four interest
12 payments, using the First State Bank CRR account, totaling \$171,548.85. (Trial
13 Exhibits 248-51, 398.)

14 As explained above, these accounts were primarily capitalized with money wired directly
15 into them from Belize subsequent to the June 2004 sale of Belizian land to ioVest. (Trial
16 Exhibits 211-47, 341-51.) In other words, these accounts were used as conduits, which
17 permitted the flow of Belizian revenues through them in order to facilitate the interest payment.

18 Defendant also made interest payments from an account with Marshall & Isley Bank, a
19 third account associated with CRR that was opened up on September 21, 2007. (Trial Exhibits
20 50-51.)

21 **4. Willfulness.**

22 The above affirmative acts, in combination with the trial testimony and other exhibits,
23 show that defendant knew of his duty to pay his income taxes for the years in question, and
24 affirmatively violated that duty. His willfulness is demonstrated repeatedly in his many
25 affirmative acts to hide or shield his assets in the nominee entities, in his many lies to the IRS
26 in the Offers in Compromise, and in how he spent money on a lavish lifestyle, fully knowing that
27 he had an enormous unpaid tax liability for the tax years 1997, 1998, 2001, and 2002.

1 **B. False Statements (Counts 5-8).**

2 **1. Elements**

3 In order for the defendant to be found guilty of making a false statement, the government
4 must prove each of the following elements beyond a reasonable doubt with respect to Counts 5-
5 8:

- 6 • *First*, defendant made and signed a tax document that the defendants knew
7 contained false information as to a material matter;
- 8 • *Second*, the tax document contained a written declaration that it was being
9 signed subject to the penalties of perjury; and
- 10 • *Third*, in submitting the tax document, defendant acted willfully.

11 **2. Facts Establishing the False Statements and Willfulness.²**

12 **a. 1st Offer in Compromise (June 18, 2004).**

13 After the establishment of CRR in April 2004 and the June 7, 2004 Belizian land sale,
14 defendant and Jacqueline Parker, on or about June 18, 2004, submitted their first Offer in
15 Compromise. They sought to eliminate their collective \$1.7 million obligation through a
16 one-time payment of \$130,000.00. They materially lied as follows:

17 (1) Defendant failed to report he had any income or assets associated with
18 his business interests in Belize. He did not put down that he was the President and Chairman
19 of the McKinnon Belize Land and Development company. He also did not disclose any income
20 from the recent sale of land for \$6 million, or that there were other unsold holdings in Belize.

21 (2) Defendant reported no business or personal income of any sort in this
22 Offer in Compromise, even though he had his employment and financial stake in McKinnon
23 Belize, and was otherwise living lavishly in his Carefree home and spending money on travel
24 and through credit cards.

25
26 _____
27 ² All the Offers in Compromise and the Installment Request were submitted under penalty of
28 perjury.

1 (3) Defendant reports he had no banking or investment accounts, even
2 though he expended large sums to maintain the Carefree home, travel, and spend money on
3 luxury items. The Court should remember that starting in April of 2005, defendant starts loaning
4 his son Samuel more than \$1 million in personal funds.

5 (4) Defendant listed few personal assets, such as \$6,600 in furniture,
6 watches valued at \$700, a \$2,450 wedding ring, and a gun valued at \$560, despite having an
7 insurance policy for personal items in his home valued at \$500,000. (Trial Exhibit 177, 570-
8 581.)

9 (5) Defendant fails to list his Carefree home, which the evidence
establishes is still his home even though he placed the home in a nominee entity.

10 **b. 2nd Offer in Compromise (October 3, 2004).**

11 On or about October 3, 2004, defendant again attempted to seek a second "compromise"
12 with the IRS through a one-time payment of \$130,000.00. Defendants again falsely stated that
13 they intend to borrow the proposed sum of money from friends and family. This second Offer
14 in Compromise repeated the lies discussed above, as well as not listing defendant's recent
15 purchase of the \$306,695 Rolls Royce.

16 **c. 3rd Offer in Compromise (March 24, 2005).**

17 On March 24, 2005, defendant, for the third time, attempted to seek a "compromise" with
18 the IRS for their unpaid tax liabilities. (Trial Exhibit 110-11.) This time he sought to eliminate
19 their collective tax obligations, now more than \$2 million dollars, through a one-time payment
20 of \$450,000. (Id.) Defendant was trying to compromise what they owed for eight tax years from
21 1997 through 2004. (Id.) Defendant again falsely claimed that they were borrowing the money
22 from their family, and receiving collections from a purported note that Omega Construction
23 supposedly held from Sunlight Financial. (Id.)

24 The same lies apply to the third Offer in Compromise as noted above. In addition, this
25 third offer in compromise contained a letter signed by Gregory Robinson, defendant's attorney,
26 in which he claimed that defendants had been unable to pay their rent since August of 2004, that
27 they had cut "their expenses to the bone," that they lacked health insurance, that they share one
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1 car, and that defendant's children own the Carefree house through Sunlight Financial. This offer
2 was made while hundreds of thousands of dollars were being wired into defendant's CRR
3 accounts from Belize. The offer also failed to mention the Belizian land sale, the Rolls Royce,
4 the creation of CRR, and the purchase of hundreds of thousands of dollars worth of cattle.(Id.)

5 **d. 4th Submission – Installment Payment Request (August 3, 2005).**

6 After the IRS turned down the previous offers of compromise, defendant, on or about
7 August 4, 2005, submitted a fourth set of false financial statements, which were signed under
8 penalty of perjury. Defendant was now requesting that their purported dire financial condition
9 entitled them to pay only a monthly \$2,000 installment on their now approximately \$2.7 million
10 tax liability. The same lies, noted above, were repeated in this submission. In addition,
11 defendant failed to list the two promissory notes to his son in the sum of \$900,000, as well as
12 not disclosing anywhere how he had the funds to loan his son an additional \$230,000 in just a
13 few days after this fourth submission to the IRS.

14 **C. Conclusion.**

15 For the reason set forth above, and construing the evidence in the light most favorable to
16 the government, the United States respectfully asks the Court to deny defendant's request under
17 Rule 29.

18 Respectfully submitted this 20th day of June, 2012.

19 ANN BIRMINGHAM SCHEEL
20 Acting United States Attorney
21 District of Arizona

22 */s Peter Sexton*

23 PETER SEXTON
24 WALTER PERKEL
25 Assistant U.S. Attorneys

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