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<b>UNITED STATES OF AMERICA</b>	)	
	)	
<b>v.</b>	)	<b>Crim. No. 2:22-CR-0012-JDL</b>
	)	
<b>JASON PARENT,</b>	)	
<b>Defendant</b>	)	
	)	

The Defendant, Jason Parent, by and through counsel, David J. Bobrow, and submits the following trial brief pursuant to the Court's Scheduling Order and Local Rule 157.2.

Mr. Parent was charged by indictment with Conspiracy to Commit Offenses Against the United States in violation of 18 U.S.C. §371, specifically defining the offense as “two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.” See ECF #1 at page Id. 17-28. On October 20, 2022, Defendant Jason Parent was indicted on a single count of conspiracy to “defraud the United States by interfering with and obstructing, by deceitful and dishonest means, a lawful function of NOAA, namely, the collection, evaluation, and analysis of biological, economic, and catch data” relating to

Atlantic herring. See Superseding Indictment at ¶ 18 (ECF #140). Additionally, Mr. Parent was indicted on count 59, Conspiracy to Defraud the Internal Revenue Service in violation of 18 U.S.C. §371 in the superseding indictment. *Id.* Numerous Motions to Dismiss were filed and litigated and remain preserved. ECF #103, 109, 116-18. This matter is scheduled for jury selection on March 4 and 5, 2024 and has been specially assigned for trial commencing on March 7, 2024. The estimates of trial time vary between seven and fourteen days.

The Defendant's estimate of trial time depends largely on whom the Government calls as witnesses and presents as exhibits. The Government disclosed over 45 potential witnesses and with subparts, over 300 exhibits. It is anticipated that some of the witnesses will be subject to more significant cross-examination than others and certain exhibits will be the subject of admissibility litigation.

There has been little discussion on stipulations. Some discussion has transpired on bank records however Mr. Parent has indicated objection to the Government cherry-picking bank statements and individualized checks that fit their theory of the case without introducing corresponding records. There is also a disagreement regarding the intended submission of certified copies of income taxes with Mr. Parent's position that they are inadmissible absent testimony. See *United States v. Jimenez*, 513 F.3d 62 (3<sup>rd</sup> Cir. 2008).

## **II. Summary of the Case**

The Government alleges that the five Defendants acted in a conspiracy. The layman's summary of the Government's argument is that each defendant, and with the

particularized counts against Mr. Parent, had knowledge as to exceeding the poundage limit of caught herring and that they conspired to profit from selling such herring and not disclosing the proceeds on their individual tax returns.

### **III. Legal Basis for Defenses and Requested Jury Instructions**

Each Defendant has submitted proposed jury instructions. The legal basis for the requested jury instructions are cited in the individualized submissions. Mr. Parent has proposed jury instructions that are more in-line with the intention rather than interpretation of *Pinkerton v. United States*, 328 U.S. 640 (1946). See *United States v. Gallerani*, 68 F. 3d 611, 620 (2<sup>nd</sup> Cir. 1995)(Pinkerton is not “a broad principle of vicarious liability that imposes criminal responsibility upon every co-conspirator for whatever substantive offenses any of their confederates commit.”)

### **IV. Controverted Points of Law, Controverted Evidentiary Issues and Other Legal Issues**

Two Motions *in Limine* remain outstanding (ECF #407, 408). Mr. Parent may seek to renew his Motion to Sever after the Government’s case in chief.<sup>1</sup>

In this matter, Mr. Parent believes that the Government chose to proceed against him on conspiracy because it is putatively easier way to secure a conviction than as a

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<sup>1</sup> The basis for this is outlined in ECF #319, Response to Objection to Motion to Sever, which was denied by Court. ECF #332.

substantive offense.<sup>2</sup> See *Krulewitch v. United States*, 336 U.S. 440 (1949)(Jackson, J.); see also *United States v. Giunta*, 925 F. 2d 758, 766 (4<sup>th</sup> Cir. 1991)(conspiracy charge is a “potent and oft-used weapon in the prosecutorial arsenal.”) The charge of Conspiracy to Defraud the Internal Revenue Service, one form of a Klein Conspiracy, is exactly the type of broad net the Government seeks to sustain a conviction with the connect the dots approach rather than substantive evidence of a conspiracy. Mr. Parent implores the Court to address this through evidentiary rulings, jury instructions, and a possible directed verdict in order to protect Mr. Parent from being caught in the ‘net’ of the Government’s own act of ‘overfishing.’ See *United States v. Coplan*, 703 F. 3d 46, 68 (2<sup>nd</sup> Cir. 2012)(Second Circuit reversed conviction of Richard Shapiro holding that it must be proven beyond a reasonable doubt that person charged must know of the existence of the scheme and knowingly joined and participated in it, and when the evidence is equipoise, “it would not satisfy the Constitution to have a jury determine that the Defendant is probably guilty” because his codefendants were). Put another way, as related to this Klein Conspiracy, the fraud has to be the purpose or object of the conspiracy and not merely the foreseeable consequence of the conspiratorial scheme otherwise the ramifications are the concerns addressed in *Coplan* that all acts by all co-defendants are imputed to each individual. *Dennis v. United States*, 384 U.S. 855, 861, 16 L. Ed. 2d 973, 86 S. Ct. 1840 (1966); 1 Sand et al., *Modern Federal Jury Instructions* § 19.02 (1990). As the Court

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<sup>2</sup> As an aside, the allegation is that Mr. Parent owes \$22,000 in back taxes. It would be an anomaly for the Government to proceed in a felony Federal case based on such a low sum.

noted in *United States v. Vogt* where it used the example of a band of bank robbers, all know the agreed upon robbery will generate income that none will report, but it would be a strain to describe the IRS as the purpose or object of the conspiracy. 910 F.2d 1184 (4<sup>th</sup> Cir. 1990).<sup>3</sup> Similarly, under the auspice of the argued overbreadth of conspiracy charges, using the *Vogt* example, assume that four bank robbers fail to disclose income but the fifth does, the Government would still argue that the fifth was engaged in conspiracy against the IRS based on the actions of the cohorts (noting this is contrary to *Dennis*, *infra*). The Court in *United States v. Goldberg* also addressed this issue. 105 F.3d 770 (1<sup>st</sup> Cir. 1997)(“In permitting a factfinder to equate the two purposes, we leave untouched the general precept, namely, that mere collateral effects of jointly agreed-to activity, even if generally foreseeable, are not mechanically to be treated as an object of the conspiracy.”)

Thus, Mr. Parent seeks specific redress from the Court and will submit additional proposed jury instructions as well as other relief that the evidence (or lack thereof) presents.

Respectfully submitted,

/s/ David J. Bobrow

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<sup>3</sup> This should not be construed as an admission or suggestion that any of the Defendants engaged in any wrongdoing but it outlines the incredulity in the Government’s theory of conspiracy against the IRS.

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

UNITED STATES OF AMERICA	)	
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v.	)	Crim. No. 2:22-CR-0012-JDL-003
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JASON PARENT,	)	
Defendant	)	
	)	

**CERTIFICATE OF SERVICE**

I, David J. Bobrow, Esq., hereby certify that I have caused to be served via ECF the Defendant's Trial Brief to the following individuals:

1. Joyce, David (USAME) <David.Joyce@usdoj.gov>
2. All other attorneys of record in this matter.

Dated this 23<sup>rd</sup> day of February 2024 at Portland, Maine.

Respectfully submitted,

/s/ David J. Bobrow

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