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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

UNITED STATES OF AMERICA,)	No. 3:06-cr-00099-JWS-JDR
)	
Plaintiff,)	GOVERNMENT’S RESPONSE
)	TO DEFENDANT’S MOTION
vs.)	IN LIMINE REGARDING
)	GOVERNMENT’S TRIAL
THOMAS T. ANDERSON,)	EXHIBITS
)	
Defendant.)	
)	<u>Filed on Shortened Time</u>

Comes Now the United States of America by and through counsel and hereby responds to Defendant’s Motion In Limine Regarding Government’s Trial Exhibits filed at Docket 45.

Government Exhibits 2, 8, & 9

The defendant objects to the admission of government's exhibits 2, 8 and 9 on the basis that the exhibits contain bank records for a time period a year after the crimes charged in the indictment occurred. The government does not intend to offer exhibits 2, 8 and 9 during the government's case-in-chief. Should either the defendant or the defendant's spouse testify at trial, however, the records marked as exhibits 2, 8, and 9 may be relevant impeachment material.

Government Exhibits 3, 4, 7, 10-17

The defendant objects to all the financial records, tax returns and credit reports relating to Mr. Anderson. Defense counsel cites Federal Rules of Evidence 401 and 403, exclusively, in support of his contention that this evidence is inadmissible because it bears no relevance to the matters charged in the indictment.

At trial, the government will demonstrate that during the time period of the acts charged, Mr. Anderson had a significant debt load, and that the payments that Mr. Anderson received from the charged conduct amounted to more than one-quarter of Mr. Anderson's adjusted gross income for the calendar year 2004. The government will also introduce evidence from multiple sources that Mr. Anderson

accepted these illegal payments in part because of Mr. Anderson's financial condition. The government will also likely introduce evidence that, during the same time period, Mr. Anderson was living beyond his means. The exhibits containing Mr. Anderson's bank records, credit reports, and tax returns for a period before, and including, 2004, establish Mr. Anderson's financial situation leading up to, and during the time in which he received money in 2004 from Cornell through Pacific Publishing.

Rule 401 describes relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." The evidence alone does not have to prove anything to be relevant and therefore admissible. The only requirement under Rule 401 is "that there a *tendency* to prove a fact in issue" U.S. v. Boulware, 384 F.3d 794, 805 (9th Cir. 2004).

Evidence of a defendant's financial difficulties is admissible in cases where a defendant's charges specifically relate to monetary gain. While simply being poor, absent any additional evidence, cannot be admitted to suggest motive, a defendant's financial debt can be admitted to show motive for why he would seek to obtain money by a particular means. U.S. v. Jackson, 882 F.2d 1444, 1449 (9th

Cir. 1989). In Jackson, trial courts are cautioned about admitting evidence of a defendant's financial history alone as evidence of motive. The court, however, went on to explain that trial courts should allow evidence of financial motive when there is other evidence of the crime charged other than simply that the defendant is poor. Id. When the defendant is living beyond his means such evidence is of probative value in a case where the crime resulted in financial gain. Id. (citations omitted). Moreover, evidence of financial debt is admissible when it is accompanied by evidence of a "specific and immediate financial need" U.S. v. Bensimon, 172 F.3d 1121, 1129 (9th Cir. 1999.).

For these reasons, evidence of Anderson's financial picture is relevant to the charges set forth in the indictment. The government will not rely solely on Anderson's bank account statements, tax returns, and credit reports to prove motive; rather, such evidence will be introduced in conjunction with Anderson's own statements to demonstrate Anderson's motive for using his public legislative office for personal gain. Anderson's financial situation prior to and during his involvement with the scheme charged in the indictment provides further motive for Mr. Anderson's knowing and intentional act of soliciting and receiving bribe payments. Anderson's financial difficulties led to his eagerness to do what he

could in his position as a state legislator to help Cornell.

RESPECTFULLY SUBMITTED this 25th day of June, 2007, at Anchorage,
Alaska.

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s/ Nicholas A. Marsh
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CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2007,
a copy of the foregoing Response to
Defendant's Motion *In Limine* was
served electronically and by hand delivery
on Paul Stockler.

s/ Joseph W. Bottini