

1 DAVID D. LESHNER
 Attorney for the United States
 2 Acting under Title 28, U.S.C. Section 515
 3 EMILY W. ALLEN (Cal. Bar No. 234961)
 W. MARK CONOVER (Cal. Bar No. 236090)
 4 PHILLIP L.B. HALPERN (Cal. Bar No. 133370)
 5 BRADLEY G. SILVERMAN (D.C. Bar No. 1531664)
 Assistant United States Attorneys
 6 U.S. Attorney’s Office
 7 880 Front Street, Room 6293
 San Diego, CA 92101
 8 Telephone: (619) 546-6345
 9 Email: bradley.silverman@usdoj.gov
 10 Attorneys for the United States

11 **UNITED STATES DISTRICT COURT**
 12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 UNITED STATES OF AMERICA,
 14

Case No. 18CR3677(1)-W

15 Plaintiff,

**MOTION TO ADMIT EVIDENCE OF
 HUNTER’S PERSONAL FINANCIAL
 CIRCUMSTANCES**

16 v.

17 DUNCAN D. HUNTER,

18 Defendant.
 19

20 The United States of America, by and through its counsel, David D. Leshner, Criminal
 21 Chief, U.S. Attorney’s Office for the Southern District of California, and Emily W. Allen,
 22 W. Mark Conover, Phillip L.B. Halpern, and Bradley G. Silverman, Assistant U.S. Attorneys,
 23 hereby moves to admit evidence of Duncan D. Hunter’s (“Hunter” or “the defendant”)
 24 personal financial circumstances throughout the charged conspiracy and related offenses.
 25
 26
 27
 28

I.

INTRODUCTION

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2
3 From Duncan Hunter's very first year in Congress, the Hunters remained in a state of
4 continuous personal debt. They had less than \$1,000 available in any one bank account as
5 reflected in Hunter's public financial disclosures. Further, financial records reveal that the
6 Hunters overdrew their bank account more than 1,100 times in a seven-year period resulting
7 in approximately \$37,761 in "overdraft" and "insufficient funds" bank fees, and carried
8 maximum negative balances on their personal credit cards. The Hunters were by no means
9 poor—as a sitting Congressman, Hunter earned more than \$170,000 per year plus benefits,
10 and with Margret Hunter's campaign salary, the Hunter family often took in more than
11 \$200,000 per year—far above the average American family income. Yet they lived a lifestyle
12 well beyond their means, routinely spending money they did not have on luxuries like overseas
13 travel, upscale hotel rooms, fine dining, and seemingly endless rounds of golf. To finance this
14 lifestyle, they treated Hunter's campaign treasury as their personal piggybank, regularly
15 embezzling funds to make personal purchases that their own finances could not support. So
16 much strain did the Hunters' profligate spending put on their own finances, and so little
17 compunction did they feel about stealing to make ends meet, that they began to use campaign
18 funds for such basic expenses as cigarettes, gasoline, and groceries. Evidence of the Hunters'
19 financial circumstances, as charged in the indictment, is admissible under Rules 401 and 403
20 because it is highly probative of Hunter's motive and intent to embezzle campaign funds,
21 his knowledge that Margaret Hunter was doing the same, and his motive and intent to enable
22 and facilitate her fraudulent purchases.

II.

STATEMENT OF FACTS¹

A. The Hunters' Personal Financial Circumstances

Despite the stable income that was a staple of Duncan Hunter's congressional career and prior military service, the Hunters were in an exceptionally poor financial position. As set forth in the indictment, they were in continual debt since Hunter became a member of Congress and before. Indeed, as reflected in his United States House of Representatives Annual Financial Disclosure Statements, the Hunters possessed less than \$1,000 in savings or reportable assets for the years 2009 through 2017—meaning that the Hunters had less than \$1,000 available in any bank account.

Between April 2009 and August 2017, the Hunters incurred 1,100 “overdraft” and “insufficient funds” fees to their family bank account totaling more than \$37,000. During roughly this same period, they also carried maximum negative balances on their USAA credit card (between \$9,000 and \$10,000) and their Discover Card credit card (between \$7,500 and \$10,000), and were charged over \$20,000 in finance charges, interest, and other fees related to late, overdraft, and returned payment fees. They also owed money to a wide variety of merchants, including Macy's, Sears, Home Depot, and Target. In many cases, these debts extended at least as far back as 2010 and continued through late 2016 and beyond.

In July 2009, the Hunters bought a home in Alpine, California, but they had little or

¹ The following proffer is based on a number of different sources of evidence the United States intends to introduce at trial, including: (1) financial records of the Hunters' personal bank accounts and credit cards; (2) records of consumer, mortgage, educational, health care, and other debts and liabilities; (3) vendor receipts and business correspondence; (4) financial records of the Hunter campaign; (5) calendar entries; (6) email and text message communications, (7) social media posts and photographs; and (8) testimony by campaign staff and advisors and other witnesses. Due to the voluminous nature of the evidence and the large number of sources, the United States submits this proffer to provide a basis for the Court's ruling, without submitting specific pieces of evidence to be introduced at trial. Should the Court require evidentiary support, the United States will supplement this motion with exhibits as appropriate.

1 even negative equity in the residence. They were continually late making mortgage payments.
2 They incurred at least eleven late fees of \$110 each between October 2014 and August 2016
3 on their principal mortgage. Similarly, they incurred another fourteen late fees of \$110 each
4 between November 2014 and July 2016 on a separate home equity line of credit.

5 Even when it came to their children's education, the Hunters allowed tuition payments
6 to fall into arrears. They were behind more than \$15,000 in their payments for the 2015 school
7 year. Because of their constant outstanding unpaid bills, the school eventually made an
8 "arrangement" with the Hunters whereby their past due balance and future tuition would be
9 reduced by 50%. The Hunters had similar trouble with delinquencies relating to their family
10 dentist, dance school, and a host of other creditors. To help make ends meet, Hunter's parents
11 regularly supplemented their income with monthly payments of around \$1,000, as well as
12 additional help when new expenses came up for basic needs like car repairs.

13 **B. Hunter Kept a Watchful Eye on the Family's Financial Circumstances**

14 Duncan² was well aware of his family's dismal financial state, and he and Margaret
15 communicated regularly about the state of their family's finances. They did this in part to
16 keep track of their balances, as well as to remind one another when payments were due and
17 avoid overdrafts or insufficient funds at the end of the month. Some of Duncan's close friends
18 and confidants were also aware of his financial woes. One of his advisors recalls that the
19 Hunters' financial problems were so dire that Duncan had to check his account balance before
20 he could buy a bottle of water. Another staffer noticed that Duncan had to check in with
21 Margaret to ask whether they had enough money for him to buy a pair of nail clippers. Even
22 after calling home, on one occasion, Duncan's credit card was declined and he had to use
23 another form of payment. Over the years, this staffer noticed that Hunter did not have enough
24 money to buy cigarettes, new shoes, clothes, or tires for his car.

25 These communications were ongoing and continuous throughout the relevant period.
26

27 ² To aid the reader and avoid confusion, throughout the Statement of Facts the Hunters
28 may be referred to separately as "Duncan" and "Margaret," rather than using their last names.

1 Several examples are set forth here.

2 On December 3, 2012, Margaret asked Duncan whether it was okay that she had
3 purchased a new pair of boots (he said it was). At the time, both their personal funds and their
4 campaign accounts were nearly depleted, so all sources of money were tight. About a week
5 later, Margaret asked if he had any money left from a \$200 gift Duncan's mother had given
6 them. Duncan responded that they had spent it all on ice skating and food. Three days later,
7 he told Margaret that he had filled his gas tank and left \$100 on his card, and that he had some
8 mileage reimbursements coming from the campaign. She told him she had some
9 reimbursements and refunds from the campaign due as well.

10 By Christmas 2012, the Hunters still had almost nothing in their personal or campaign
11 accounts. Duncan's next congressional paycheck was due to be deposited on December 31,
12 but the Hunters feared the holiday would hold it up. On December 28, Duncan texted Margaret
13 to ask, "How do I pay for gas . . . Will the card work?" She advised him to go to Shell, rather
14 than a different gas station, as "[S]hell takes 3 days to actually clear the authorized amount
15 and that will be payday." When Duncan's check cleared on January 1, earlier than expected,
16 he texted Margaret, "It's a new year miracle!"

17 On February 12, 2013, the Hunters texted about their plans to refinance their mortgage
18 after clearing up their credit scores. Duncan asked Margaret what his monthly "allotment"
19 was, and she told him not to take more than \$200 in cash. She also told him that he would
20 need to wait until March to get a tattoo he wanted, because she needed the money to buy
21 groceries. A week later, Hunter alerted Margaret that their personal checking account had a
22 negative balance. "Hey!!! We are finally negative!," he said. "It was weird not being negative.
23 I'm just teasing."

24 On September 19, 2013, Duncan tried to use his personal debit card at a DC liquor store,
25 but it was declined. He texted Margaret, "My card just declined." She told Duncan that she
26 would deposit money in his account for him "next week." A few hours later, he switched to
27 his campaign card and paid a small tab at Bullfeathers, a bar around the corner from Hunter's
28 congressional office. On September 23, 2013, Duncan noticed that their checking account had

1 a balance of negative \$1,200. Margaret explained that they had incurred \$1,500 in unexpected
2 bills, and broke down what each payment was for. She also told him that they were due a
3 refund from a doctor's office. Duncan replied, "Rad!!! Let me deposit it we can get cash."
4 When the check arrived, Duncan told Margaret to take it "to a Chaldean liquor store and cash
5 it. They'll charge you a surcharge. Just do it. Get cash in an envelope like my mom ☺."

6 On October 7, 2013, Duncan was pleasantly surprised when he went to a DC gas station,
7 as he reported to Margaret: "First time I have had enough money to fill up my truck all the
8 way in a few months." But by October 30, he texted Margaret, "I'm out of \$." She responded
9 that she was "down to cash only," and offered to share. She also asked him to reschedule a
10 planned medical test that would cost \$600, because the family needed that money. Duncan
11 asked her, "[w]ould you please buy me a pack of cigarettes for tonight? I literally have no
12 money." He then asked, "will that cost \$30?"—*i.e.*, would buying cigarettes trigger an
13 insufficient funds fee from the bank? Margaret said it would cost \$34.

14 In February 2014, Margaret shared some good news: the Hunters' \$3,600 outstanding
15 property tax balance would be spread over the next 12 months, rather than due all at once in
16 April. Duncan responded, "Holy shit!!!! Wheeeeeee!!!!" Margaret replied that she was "beside
17 herself" with happiness, and reminded him that it would soon be "vacation time!" A few
18 months later, on June 10, 2014, Margaret emailed Duncan a list of expenses they had incurred
19 that month, including \$170 for his high school reunion. His response: "Run away! Run away!"
20 A week later, he texted her, "I'm broke again."

21 But Hunter's campaign finances fared much better during this time—a fact not lost on
22 Duncan or Margaret. In summer 2015, the campaign's public report to the Federal Election
23 Commission ("FEC") showed \$650,157 cash on hand. When the report was released on July
24 15, 2015, Margaret texted Duncan, "650 cash on hand at report closing June 30." Duncan
25 replied, "Hot." Yet their personal finances remained in disarray. Indeed the same night
26 Duncan and Margaret discussed the campaign's hefty cash balance, Duncan used campaign
27 funds to pay a \$137 tab at Bullfeathers. At around 1:20 a.m. that night, he texted Margaret,
28 "I'm tired of having no cash and being embarrassed." She told him that they had \$57 available,

1 and that he could take out \$40. “Don’t know why you always have these issues[.] Going to
2 bed[.] Take \$ out.” About two weeks later, as the Hunters’ personal account was more than
3 \$1,000 in the red, Duncan used his campaign card to buy \$296 worth of groceries, taking \$100
4 cash back.

5 By July 2015, the Hunters were more than \$15,000 behind in tuition payments at the
6 private school where their three children were enrolled. That month, Duncan met with a
7 school official to discuss the possibility of reduced tuition for the Hunter family. The school
8 agreed to reduce their tuition by 50%. On August 1, the Hunters made a tuition payment from
9 their personal account, but stopped payment. Margaret asked an administrator whether the
10 school would accept a credit card payment. She then used campaign funds to make a \$3,500
11 payment toward the overdue tuition balance.

12 Margaret also used the campaign card to pay towards an overdue balance of \$7,258 for
13 the family’s dental care, and to set up recurring monthly payments of \$700 to make up the
14 rest. In August, she admitted to the campaign treasurer that the dental charge was personal,
15 but made no effort to repay it. She stopped the automatic monthly payments in September.
16 When those payments stopped, the dentist’s office manager emailed both Duncan and
17 Margaret regarding their outstanding balance, which by then was up to \$8,690. Receiving no
18 response from the Hunters, the office manager followed up a second time. After talking with
19 the dental office on the phone on October 1, 2015, Margaret texted Duncan to vent her
20 frustration. Throughout their discussions, Duncan was well aware that they had no personal
21 funds available. The same day, he told Margaret, “Need my USAA payment to hit today”
22 (referring to an automatic payment from the Hunters’ joint account to a separate bank account
23 Duncan maintained). Margaret reminded him, “That payment is in [sic] 3rd or 5th.”

24 On September 15, 2015, Hunter bought a new iMac at the Fashion Valley Apple Store.
25 Although evidence suggests the computer was used by one of the Hunters’ children, Duncan
26 nevertheless paid for the laptop with campaign funds. The bill came to \$2,503, but due to the
27 card’s spending limit Duncan was able to put only \$2,000 on his campaign card. To cover the
28 rest, he had to use his personal debit card. He texted Margaret to ask about the campaign

1 card's spending limit. They spoke on the phone, and she texted him afterward, "pls send me
2 personal portion right away need to get it back from [the campaign treasurer] asap." She then
3 admonished Duncan, "can't buy shoes today babe now"—evidently because he had spent the
4 last of their money. At Margaret's urgent request, the treasurer reimbursed the Hunters for
5 the personal portion of the iMac purchase the next day.

6 On March 21, 2016, after a host of online gaming charges to the campaign credit card
7 had caught his attention, Duncan noticed a \$32 iTunes charge on the family account. Duncan
8 sent a text to his children and Margaret: "Do not charge anything in iTunes until next month
9 please." When his children did not respond by the next morning, he followed up: "Children,
10 please acknowledge the text above regarding iTunes." After another day of no response, he
11 instructed them "not to buy anything until next month." He then sent screenshots of receipts
12 showing purchases of Minecraft Resource and Texture packs (\$1.98) and a Clash of Clans
13 Bucket of Gems (\$9.99). He added: "First of the month you can get whatever you want. It's
14 on my dime now and unlike mom's my dimes are limited."

15 As these examples make clear, Duncan watched the family's pennies (and dimes) with
16 a close eye.

17 **C. Hunter Embezzled Campaign Funds When His Personal Funds Were Tight**

18 Throughout the conspiracy, Duncan routinely used campaign funds to make personal
19 expenditures on days when his bank account was overdrawn. Within one month of first
20 opening his campaign credit card, Duncan began misusing the funds to pay for a trip he could
21 not otherwise afford. On January 22, 2010, he spent \$351 to rent a car in Reno, Nevada, drove
22 to Lake Tahoe, and spent the weekend skiing, dining, and drinking with a female companion
23 (identified in the indictment as "Individual 14") to the tune of \$1,008, all of which he paid
24 using campaign funds. Throughout the weekend, the Hunters' personal bank account had a
25 negative balance and incurred numerous insufficient funds fees. Duncan could not have paid
26 for the trip without dipping into his campaign funds improperly.

27 Additional examples abound: Duncan himself spent campaign funds on the following
28 personal items, all at times when the Hunters' personal bank account had a negative balance

1 and had recently incurred one or more insufficient funds fees (averaging around \$30 or more
2 apiece):

- 3 • \$39.95 on August 28, 2010, for the video game ASPYR Civilization
4 IV: Beyond the Sword
- 5 • \$59.26 on July 21, 2012, to purchase Under Armor shorts
- 6 • \$560 on November 23, 2012, at the Barona Creek Golf Resort playing
7 golf with his friend and their two fathers
- 8 • \$150 on June 17, 2013, at Best Buy to purchase SIE2i Sport
9 Headphones
- 10 • \$313.05 on November 26, 2013, to purchase various iPhone accessories
11 for his phone at the Apple Store
- 12 • \$204.34 on October 22, 2014, at the Rancho Bernardo Golf Resort to
13 pay for two green fees, food, and drinks during a personal golf outing
14 with a close friend
- 15 • \$140.62 on January 3, 2016, at the Mount Woodson Golf Club for a
16 golf outing with his brother
- 17 • \$409.45 on June 24, 2016, at L'Homage Bistro Francais socializing
18 and partying with friends
- 19 • \$592.63 on August 4, 2016, at LG's Prime Steakhouse in Palm Springs,
20 California, to buy dinner during a golfing weekend with several friends

21 These examples, and many others, illustrate that Duncan's improper use of campaign funds
22 was motivated by his personal financial circumstances, so that he could afford to pay for
23 outings, dinners, electronic gadgets, games, and other luxuries beyond his means.

24 **D. Hunter Ensures Margaret's Continuous Access to Campaign Funds**

25 In late 2009, Duncan directed his campaign treasurer to open a campaign credit card.
26 Although Margaret had no official role with the campaign at the time, Duncan instructed the
27 treasurer to provide Margaret with her own card. At the time (and frequently thereafter) the
28 treasurer cautioned the Hunters that their campaign credit cards could be used only for
campaign-related expenses. The cards arrived in December; by the end of the month, Margaret
had already spent \$129 at the Brigantine and Olive Garden restaurants. Four days into the
new year, she paid \$80 for gas at a Chevron. When the first credit card statement arrived days

1 later, the treasurer immediately grew concerned about Margaret's spending, and spoke to her
2 about these personal charges.

3 Within just a few months, the treasurer had grown so alarmed over Margaret's spending
4 that he began to warn Duncan about her problematic charges. Duncan promised to talk to
5 Margaret, but her spending only escalated. In November 2010, after Margaret could not
6 adequately explain the legitimate campaign purpose for a number of her credit card charges,
7 the treasurer copied Duncan on his emails with Margaret, bringing Duncan's attention to her
8 spending at Walmart, Costco, and Albertson's, as well as a meal at Olive Garden for an adult
9 and three children. "[T]he chances of audit are high," he warned. "When they go over one
10 item they go over the entire campaign." The next month, the treasurer again asked the Hunters
11 to review their recent campaign card charges. Margaret's included purchases at Costco
12 (\$101), Walmart (\$45), World Market (\$124), Olive Garden (\$130), and fast food restaurants,
13 as well as several travel-related charges. The treasurer reminded the Hunters that campaign
14 funds cannot be used "for a leisure outing at which the discussion occasionally focuses on the
15 campaign." Duncan's defensive response indicates both that he knew Margaret was using
16 campaign funds to benefit the Hunter family, and that he intended to continue allowing her to
17 do so; he asked, "Are we attempting to create an email trail for some reason?" Later that
18 month, after Margaret refused to provide satisfactory explanations for several suspicious
19 charges, the treasurer threw up his hands, and told Duncan he would step down if Duncan did
20 not resolve the situation. Only then did Duncan at last say he would act, promising that
21 Margaret would put the card away (Duncan did not cancel the card outright, however).

22 Around the same time, Duncan first floated to his staff the idea of hiring Margaret as a
23 paid member of his campaign staff—an idea they universally opposed. He ultimately did not
24 hire her just then. Nine months later, however, he revived the idea, and even though his
25 campaign advisors remained opposed, he hired Margaret in September 2011 and began paying
26 her \$2,000 per month for "campaign management services." Almost immediately, she
27 resumed spending campaign funds at places like Wal-Mart, Albertsons, Vons, Costco, World
28 Market, and Barnes & Noble. Over the next year, she spent thousands, if not tens of thousands,

1 of campaign dollars on personal expenses for the Hunter family. The treasurer continued to
2 alert Duncan to Margaret's inappropriate expenditures, but Duncan did nothing. By October
3 2012, a month before the next election, the campaign coffers were left with only \$17,000 in
4 net cash available. One week out from the election, the campaign had so little cash on hand
5 that it was forced to cancel an order for a flyer that was scheduled to be mailed that day, even
6 though they had already sunk \$18,000 into printing costs. After this fiasco, Duncan finally
7 removed Margaret from the payroll (but even then, he did not take her campaign credit card
8 away). Shortly thereafter, the treasurer resigned.

9 In early January 2013, the campaign hired a new treasurer and transferred the campaign
10 account to a new bank. Duncan was issued a new campaign debit card in his name. For the
11 first year, Margaret had little access to spend campaign funds, and the family's finances
12 reflected the burden of having no access to embezzled funds. By December 2013, as the
13 Hunters' personal finances remained in disarray, Duncan rehired Margaret as campaign
14 manager once more, this time at a salary of \$3,000 per month. Not only would this give
15 Duncan a foolproof reason to provide Margaret with a campaign credit card, but it also helped
16 to channel more campaign money to Duncan's household. Indeed, it is clear that Duncan and
17 Margaret both had this in mind: as Margaret told Duncan, referring to her forthcoming
18 campaign salary, "you need the extra money as much as I do." Soon after, Duncan gave
19 Margaret access to his campaign card, and eventually obtained a card in Margaret's own name
20 as well.

21 III.

22 ARGUMENT

23 In this case, Hunter is charged with crimes relating to his and his wife's knowing misuse
24 of campaign funds. There will be little debate at trial that the Hunter family benefited from
25 the chronic and blatant pilfering of campaign funds for clearly personal items including family
26 groceries, vacations, shopping trips, and even medical bills. The salient facts the United States
27 must establish, and that Hunter will dispute, are that Hunter *knew* about these expenditures,
28

1 intended to use campaign funds for his and his family’s benefit, and *agreed* with his wife to
2 allow the theft to continue for many years. Evidence that Hunter and Margaret could not
3 afford to buy the things they wanted with their own money—and that he knew they could not
4 afford them—is extremely probative of Hunter’s knowledge, intent, and motive to instead raid
5 his campaign’s money.

6 The admissibility of this evidence is well-established. For over a century, the Ninth
7 Circuit has recognized that “evidence that tends to show that a defendant is living beyond his
8 means is of probative value in a case involving a crime resulting in financial gain.” *United*
9 *States v. Mitchell*, 172 F.3d 1104, 1108 (9th Cir. 1999) (quoting *United States v. Feldman*,
10 788 F.2d 544, 557 (9th Cir. 1986)); accord *Dimmick v. United States*, 135 F. 257, 266 (9th
11 Cir. 1905) (no error in adducing evidence of defendant’s “financial condition...in respect to
12 your being in debt” on date of alleged theft). When a defendant “is charged with
13 embezzlement or similar financial misconduct,” for example, “the special nature of the crime
14 charged may justify the use of evidence of financial embarrassment in order to show the
15 accused’s knowledge and motive.” *U.S. ex rel. Mertz v. New Jersey*, 423 F.2d 537, 541 (3d
16 Cir. 1970) (citing *Ray v. United States*, 114 F.2d 508, 510–11 (8th Cir. 1940)); see also
17 *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 325 (2007) (“personal financial
18 gain may weigh heavily in favor of a scienter inference...”).

19 **A. The Hunters’ Financial Difficulties Show Hunter’s Motive and Intent to**
20 **Embezzle Campaign Funds**

21 The Hunters’ financial difficulties are probative of Hunter’s motive and his intent to
22 embezzle campaign funds. Hunter was well-informed of his household’s financial troubles,
23 and knew that the only way he could support his lavish personal spending was to use campaign
24 funds. He tracked spending on items as routine as gas, reimbursements due from the campaign,
25 and cash gifts from his mother. He regularly checked in with Margaret about their bank
26 account’s balance, even asking whether so much as buying a pack of cigarettes would trigger
27 an insufficient funds fee. Hunter was sufficiently attuned to his family’s financial condition
28 that he adjusted his spending behaviors when necessary. For example, when the Hunters’

1 personal account was virtually depleted, Hunter and Margaret discussed buying gas from Shell
2 because Shell took longer than other filling stations to withdraw funds from the bank. Thus,
3 when money was tight, Hunter would turn to pilfering campaign funds to make purchases he
4 desired but could not otherwise afford—including, as detailed above, electronic gadgets,
5 shorts, video games, and even a weekend ski getaway.

6 Courts regularly allow evidence of a defendant’s financial difficulties to show motive
7 and intent under similar circumstances. In *United States v. Kostopoulos*, for example, a police
8 officer was charged with stealing money from motorists after pulling them over. 766 F. App’x
9 875 (11th Cir. 2019). Bank records from the relevant time period showed that the defendant’s
10 account (which he shared with his wife) “was regularly overdrawn before his bi-weekly
11 paycheck,” and each time, he “paid a \$34 overdraft fee.” *Id.* at 878. These personal financial
12 records were admissible to show that the defendant “was unable to pay for basic living
13 expenses like gas and groceries without incurring overdraft fees,” and was “under significant
14 financial pressure on the dates of the thefts” because his account was overdrawn or about to
15 be overdrawn. *Id.* at 880. The Court rejected the suggestion that the evidence was used to
16 argue that “people living paycheck to paycheck are more likely to commit crimes,” explaining
17 that “multiple overdraft fees incurred in a short period of time showed that [the defendant]
18 was squeezed, not just that he had a financial interest in being richer.” *Id.* at 881 (alterations
19 and internal quotation marks omitted). Without that evidence, “the jury would have been left
20 to wonder why [] a police officer making over \$120,000 a year, might choose to steal relatively
21 small amounts of money from vulnerable people in the community.” *Id.*³ Similarly, in *United*
22 *States v. Fakhoury*, evidence of a defendant’s “deteriorating financial condition,” which
23 included not only business debts but “a substantial number of insufficient checks” and bank

24
25 ³ Similarly, in *United States v. Caci*, the Second Circuit held that a defendant’s “bad
26 check[s]” had “particular significance” in a robbery case to show why a man the jury might
27 perceive as “highly paid” had “a motive to participate in the planned thefts.” 401 F.2d 664,
28 665, 670 (2d Cir. 1968), *judgment vacated on other grounds sub nom. Giordano v. United*
States, 394 U.S. 310 (1969).

1 records showing a balance of just \$400 in the defendant's personal bank account at the time
2 his store caught fire, was relevant to show his motive to commit arson and insurance fraud.
3 819 F.2d 1415, 1421 (7th Cir. 1987).⁴

4 The law in the Ninth Circuit is equally clear. In *United States v. Feldman*, the defendant,
5 convicted of bank robbery, argued that the district court improperly admitted his personal bank
6 records showing that his account was overdrawn. 788 F.2d 544, 546, 557 (9th Cir. 1986). The
7 Ninth Circuit disagreed, finding this "evidence of [the defendant's] impecunity" was probative
8 of his motive—even where the defendant noted that motive was not an issue at trial (his
9 defense was that he was not the robber). *Id.* at 557. In *United States v. Meling*, the court
10 affirmed the admission of evidence that the defendant's spending put his family into
11 "substantial debt" and "drove their checking account into the red." 47 F.3d 1546, 1557 (9th
12 Cir. 1995). This evidence "was relevant to [the defendant's] motive—greed"—in his
13 prosecution for poisoning his wife after securing her a life insurance policy. *Id.* And in *United*
14 *States v. Saniti*, evidence of the defendant's costly drug habit was probative of his "motive for
15 robbing [a] bank." 604 F.2d 603, 604 (9th Cir. 1979) (per curiam); *see also United States v.*
16 *Tierney*, 424 F.2d 643, 646 (9th Cir. 1970) (finding evidence that defendant "needed more

17 ⁴ Other examples abound where courts have admitted evidence of personal financial
18 circumstances to establish motive, knowledge, and intent in similar cases. In *United States v.*
19 *Metallo*, the defendant was charged with credit card fraud; he ran up an unpaid balance of
20 \$122,000 on company credit cards obtained fraudulently. 908 F.2d 797 (11th Cir. 1990). The
21 defendant's bankruptcy petition, filed at approximately the same time he applied for the credit
22 cards, was probative of his "knowledge, absence of mistake, and intent in obtaining and using
23 the cards with no intention to pay [the issuer] for the items charged." *Id.* at 798–99. In *United*
24 *States v. Polansky*, 418 F.2d 444 (2d Cir. 1969), an IRS employee offered to approve a
25 taxpayer's charitable deduction in exchange for a \$1,000 bribe. *Id.* at 445. The Second Circuit
26 held that evidence of the defendant's "liabilities in excess of \$100,000" (elicited through the
27 defendant's own testimony) was admissible "to show that [he] had a motive for seeking and
28 accepting gratuities." *Id.* at 448. In *United States v. Blood*, the court held that evidence that
the defendant had not filed tax returns was admissible to show that he was "living beyond his
means and that he had created financial pressures for himself wholly in-consistent with any
lawful source of funds available to him." No. CRIM.A. 04-61-KAJ, 2005 WL 3657945, at *3
(D. Del. Aug. 26, 2005).

1 money” admissible to show motive in counterfeiting trial).

2 Evidence of Hunter’s negative bank balances, overdue mortgage payments, credit card
3 debts, and other aspects of their depleted financial condition is relevant to proving his motive,
4 intent, knowledge, and absence of mistake in spending campaign funds for personal use. It
5 explains why he himself used campaign funds to buy everything from cigarettes to gadgets to
6 groceries to getaways—things he wanted but could not afford to buy with his own money.⁵ It
7 also explains why he insisted, against his advisors’ judgments, on hiring Margaret as a salaried
8 campaign staffer and allowing her access to campaign funds. And as in *Kostopoulos*, Hunter’s
9 financial distress likewise shows why a sitting Congressman earning more than \$170,000 per
10 year would embezzle campaign funds. This evidence also demonstrates that Hunter’s use of
11 campaign funds for personal adventures was no accident. As in *Metallo*, Hunter’s use of
12 campaign credit cards was not the product of “mistake” or sloppiness; he did not simply reach
13 inadvertently for the wrong card in his wallet. Hunter was “living beyond his means,”
14 *Feldman*, 788 F.2d at 557, and took advantage of his access to campaign funds to fuel his and
15 his family’s wants and desires.

16 **B. The Hunters’ Financial Difficulties Show the Existence of a Conspiratorial**
17 **Agreement and Knowledge of Margaret’s Spending**

18 In light of the Hunters’ serious and often-discussed financial difficulties, it is
19 inconceivable that Hunter could be blind to Margaret’s illegal campaign spending. Hunter is
20 expected to argue that he had little knowledge of or interest in the family’s finances; he may
21 claim he relied on Margaret to handle these matters and was all too happy to stay out of her
22 way. But the evidence shows otherwise. Financial records, and summaries of those records,
23

24 ⁵ In an improbable harbinger to this case, the Ninth Circuit described an obvious
25 circumstance in which evidence of financial circumstances would clearly be admissible: “If a
26 man is notoriously broke and cannot buy a pack of cigarettes Tuesday, that night a laundromat
27 is burglarized, and on Wednesday the man buys a carton of cigarettes and a \$40 bottle of
28 scotch, all with quarters, the man’s financial circumstances have obvious and significant
probative value.” *Mitchell*, 172 F.3d at 1108. Hunter is just such a notoriously broke man,
and his campaign treasury is much the same as this burglarized laundromat.

1 will show that debts, negative account balances, and frequent overdraft fees were too
2 numerous and overwhelming to ignore. Text messages, emails, and other communication
3 records show many examples in which the Hunters explicitly discussed these troubles. In
4 short, Hunter knew that the family did not have the money to support Margaret’s spending
5 habits. And that evidence strongly suggests that he knew she turned to campaign funds to
6 make up the difference.

7 Evidence of financial difficulties is admissible to establish knowledge by coconspirators
8 of another conspirator’s misdeeds. In *United States v. Hampton*, for example, the defendants
9 committed fraud using forged real property deeds, pretending that one of the defendants had
10 purchased the properties. No. CR 15-00302, 2017 WL 1954369, at *1 (E.D. Pa. May 10,
11 2017). The government sought to admit evidence of that defendant’s financial condition to
12 prove that the coconspirators knew the deeds were forged—because they knew he “lacked the
13 money necessary to purchase the properties.” *Id.* The court agreed, because the evidence
14 went directly to the coconspirators’ knowledge. As the court described, “Evidence that the
15 Defendants knew a co-conspirator could not afford those purchases is appropriate
16 circumstantial evidence that he or she was aware of the alleged scheme and therefore
17 participated in it knowingly.” *Id.* at *2. Just as in *Hampton*, the Hunters’ financial difficulties
18 show Hunter’s knowledge that Margaret “could not afford those purchases”—and, by
19 extension, that she could only have done so using campaign funds.

20 Likewise, in *United States v. Tager*, the defendant lied about his financial worth in order
21 to obtain credit. 788 F.2d 349, 353 (6th Cir. 1986). Around the same time, he wrote two bad
22 checks that later bounced. *Id.* The court allowed the prosecution to establish the defendant’s
23 financial condition using evidence of the bad checks because it helped to establish that “he
24 knew the representations of financial worth were false[.]” *Id.* And in *Metallo*, the defendant’s
25 bankruptcy petition “was probative of [his] knowledge” of the fraudulent nature of his
26 corporate credit card charges. 908 F.2d at 799. Here, evidence of the Hunters’ financial
27 troubles likewise illustrates his knowledge of Margaret’s illegal spending.

1 And the Hunters’ finances show more than just Hunter’s knowledge of Margaret’s
2 embezzlement—they establish his motive and intent to facilitate it. From his first year in
3 Congress, Hunter went to lengths to ensure Margaret had regular access to campaign funds.
4 He arranged for her to receive a campaign credit card, despite her lack of any role on his
5 campaign. He ignored repeated warnings from his trusted staff of her questionable and
6 downright illegal spending. He overruled his advisors and twice hired her on to his campaign
7 staff, so that she could draw a salary. These otherwise-inexplicable actions by Hunter—all
8 taken in furtherance of their conspiracy—make perfect sense in light of the Hunters’ severe
9 financial troubles. Hunter knew that he could not afford the lifestyle they wanted without
10 allowing for Margaret’s continuous theft. As she herself put it to Hunter: “you need the extra
11 money as much as I do.” The jury must be allowed to hear this evidence.

12 **C. Evidence of the Hunters’ Personal Finances Is Not Unduly Prejudicial**

13 Finally, the probative value of the Hunters’ finances is not substantially outweighed by
14 a risk of unfair prejudice.⁶ As the Ninth Circuit has explained, the traditional concern with
15 allowing evidence of a defendant’s financial condition is that “it is of slight probative value
16 and would be unfairly prejudicial to poor people charged with crimes.” *Mitchell*, 172 F.3d at
17 1108. Neither of these conditions hold here. First, the Hunters’ dire financial circumstances
18 show far “more than the mere fact that the defendant is poor.” *Id.* (quotation marks omitted).
19 Instead, this evidence is highly probative of Hunter’s knowledge, motive, and intent to
20 embezzle from his campaign and to allow Margaret to do the same—crucial issues in a
21 prosecution for conspiracy to convert campaign funds.

22 Second, the Hunters’ finances do not suggest that Hunter was likelier to commit a crime
23 because he was poor, because he wasn’t poor at all. To the contrary, Hunter’s congressional
24 salary placed him in an income bracket well above most Americans. The Hunters’ problem
25 was not that they lacked money to provide for their family, but that they spent recklessly on a
26

27 ⁶ Because a defendant’s difficult financial circumstances are “not a crime, wrong, or
28 act,” Rule 404(b) does not apply. *Mitchell*, 172 F.3d at 1107.

1 luxurious lifestyle well beyond their already-comfortable means. *Cf. Mitchell*, 172 F.3d at
2 1109 (contrasting the evidence appropriately admitted in *Feldman* because “Feldman was
3 squeezed, not just poor”). Because “there is no evidence or argument offered to suggest that
4 [Hunter] was poverty stricken,” as opposed to merely financially irresponsible, “the specific
5 concern about unequal justice for the poor does not appear to be implicated here.” *Blood*,
6 2005 WL 3657945, at *3; *compare Hampton*, 2017 WL 1954369, at *3 (barring admission of
7 evidence that defendant “participated in social welfare programs”).

8 Third, the financial evidence is tailored to show that specific financial pressures, such
9 as declined credit card payments or an overdrawn bank account, motivated the Hunters to
10 engage in the theft at the time of the conspiracy. *See Metallo*, 908 F.2d at 798-99 (bankruptcy
11 petition probative of “knowledge, absence of mistake, and intent” where “filed at
12 approximately the same time” defendant applied for credit cards used for fraud); *Kostopoulos*,
13 2019 WL 1220841, at *5 (“the district court carefully limited the financial motive evidence
14 that it admitted...to the four months of records immediately surrounding the thefts”); *United*
15 *States v. Shelow*, No. CRIM.A. 10-0037, 2011 WL 6130974, at *7 (E.D. Pa. Dec. 9, 2011)
16 (“To be relevant, the evidence of the financial motive must be close in time to the charged
17 crime.”). Among other things, the United States intends to introduce bank records showing
18 that the Hunters’ personal account was overdrawn and incurred insufficient funds fees on or
19 around specific days when they used campaign funds to make personal purchases, and that
20 throughout the conspiracy the Hunters maintained low or negative balances or faced
21 mountainous consumer, mortgage, and education debt.

22 Moreover, the Hunters’ personal financial records will not be introduced to show that
23 they spent their personal funds on luxuries or extravagances—indeed, the evidence will show
24 the opposite, that they often turned to illegally spending from the *campaign*’s coffers to fund
25 their more lavish desires. Thus, as opposed to their campaign spending, the evidence of the
26 Hunters’ *personal* finances will not be prejudicial in the way the Eleventh Circuit feared in
27 *Kostopoulos*. Here, as there, the defendant’s personal financial records will not be used to
28

1 show “that he was purchasing luxury items or needed money to sustain an extravagant
2 lifestyle[;]” thus, “the danger of undue prejudice [i]s relatively low.” 766 F. App’x at 881.

3 Finally, to allay any fears that the prejudicial impact of such evidence might be unfair,
4 this Court may deliver a limiting instruction admonishing the jury to consider the financial
5 evidence only for the purpose of showing Hunter’s knowledge, motive, intent, and other
6 permissible grounds. *See United States v. Quattrone*, 441 F.3d 153, 187 (2d Cir. 2006)
7 (evidence of “wealth, or lack thereof...may be admitted where other safeguards are employed
8 such as limiting instructions...”); *cf. United States v. Stahl*, 616 F.2d 30, 32 (2d Cir. 1980)
9 (“[T]he jury had been given curative instructions against drawing adverse inferences from the
10 defendant’s wealth or social status.”).

11 **IV.**

12 **CONCLUSION**

13 For the reasons set forth above, evidence of the Hunter’s personal finances should be
14 admitted at trial.

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16
17 Respectfully submitted,

18 DAVID D. LESHNER
19 Attorney for the United States

20 *s/ Bradley G. Silverman*
21 EMILY W. ALLEN
22 W. MARK CONOVER
23 PHILLIP L.B. HALPERN
24 BRADLEY G. SILVERMAN
25 Assistant U.S. Attorney
26
27
28