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 11 UNITED STATES OF AMERICA

12 UNITED STATES DISTRICT COURT

13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 THOMAS VINCENT GIRARDI and
 CHRISTOPHER KAZUO KAMON,

18 Defendants.
 19

No. CR 23-47-JLS

GOVERNMENT'S MOTION IN LIMINE TO
 ADMIT AT TRIAL EVIDENCE OF
 DEFENDANT CHRISTOPHER KAMON'S
 FLIGHT FROM PROSECUTION

Hearing Date: July 26, 2024
 Location: Courtroom of the
 Hon. Josephine L.
 Staton

20
 21 Plaintiff United States of America, by and through its counsel
 22 of record, the United States Attorney for the Central District of
 23 California and Assistant United States Attorneys Scott Paetty and Ali
 24 Moghaddas, hereby moves the Court in limine to admit at trial
 25 evidence of defendant Christopher Kamon's flight from prosecution.

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27 This motion is based upon the attached memorandum of points and
 28 authorities, the files and records in this case, and such further

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In late 2020, as news of the fraud scheme at Girardi Keese
4 perpetrated by defendants Thomas V. Girardi and Christopher Kamon
5 broke, defendant Kamon told a female companion that he feared Girardi
6 Keese would shut down and that he was planning to leave the United
7 States because he would likely be implicated in the scheme to
8 misappropriate client settlement funds. Defendant Kamon further told
9 the woman that he was going to change his name and hide from
10 authorities in connection with whatever federal case might be
11 brought. To that end, defendant Kamon wired over \$2.4 million to the
12 Bahamas to purchase a house because he understood that the Bahamas
13 would grant permanent residency with the purchase of a residential
14 property. In September 2022, defendant Kamon booked a roundtrip
15 ticket from Los Angeles to the Bahamas but then did not board the
16 return flight and remained in the Bahamas until he was arrested two
17 months later at the Baltimore airport.

18 The government submits that defendant's flight from prosecution
19 is relevant to defendant's "consciousness of guilt and of guilt
20 itself." United States v. Harris, 792 F.2d 866, 869 (9th Cir. 1986).
21 Therefore, as explained in further detail below, evidence of
22 defendant's flight from prosecution is relevant and should be
23 admitted at trial.

24 **II. ARGUMENT**

25 **A. Legal Standard**

26 In the Ninth Circuit, "[e]vidence of flight is generally
27 admissible as evidence of consciousness of guilt and of guilt
28 itself." Harris, 792 F.2d at 869. "The relevance and the probative

1 value of the evidence are, in the first instance, for the judge.”

2 Id. “Thereafter, the probative value of flight evidence depends upon
3 all facts and circumstances and is a question of fact for the jury.”

4 Id. “Since ‘flight’ is essentially an admission by conduct, its
5 probative value as circumstantial evidence depends upon the degree of
6 confidence with which four inferences can be drawn: (1) from the
7 defendant’s behavior to flight; (2) from flight to consciousness of
8 guilt; (3) from consciousness of guilt to consciousness of guilt
9 concerning the crime charged; and (4) from consciousness of guilt
10 concerning the crime charged to actual guilt of the crime charged.”

11 United States v. Felix-Gutierrez, 940 F.2d 1200, 1207 (9th Cir.
12 1991).

13 **B. Evidence of Defendant’s Flight Is Highly Probative of**
14 **Defendant’s Participation in the Charged Fraud Scheme**

15 Evidence of defendant Kamon’s efforts to flee to the Bahamas to
16 evade prosecution should be admitted at trial because it is relevant
17 to show his guilt for the charged offenses. Here, the facts
18 surrounding defendant Kamon’s efforts to flee to the Bahamas from the
19 United States after his involvement in the fraudulent conduct at
20 Girardi Keese came to light strongly support an inference of
21 defendant Kamon’s consciousness of guilt. Specifically, the timing
22 of his departure shows that defendant Kamon was fleeing the country
23 in order to avoid prosecution for his efforts to aid and abet the
24 scheme to misappropriate client settlement funds orchestrated by
25 defendant Girardi. See Felix-Gutierrez, 940 F.2d at 1208. Indeed,
26 consistent with comments to his former female companion regarding
27 changing his name and buying a house in the Bahamas to escape
28 culpability, defendant Kamon did just that. He booked a round trip

1 flight from Los Angeles to the Bahamas in September 2022, never
2 boarded his return flight, and finalized a sale on a \$2.4 million
3 home in New Providence, Bahamas on October 13, 2022. Thus, at the
4 time he moved to the Bahamas, defendant Kamon was conscious of the
5 impending charges against him in this case and, despite his
6 subsequent arrest in Baltimore, there is a clear inference that he
7 was attempting to avoid those charges. Courts have found an
8 inference of flight to be supported by facts similar to these. See,
9 e.g., United States v. King, 200 F.3d 1207, 1215 (9th Cir. 1999) (the
10 defendant fled to Mexico immediately prior to his scheduled
11 extradition hearing); United States v. Fox, 627 F. App'x 608, 609
12 (9th Cir. 2015) (the inference existed where the defendant fled out
13 the back of his residence in four-degree weather while wearing
14 minimal clothing when police arrived at his home).

15 Although "[t]he government need not, as a condition of
16 admissibility, lay a foundation that the defendant knew he was being
17 sought for the crime charged", Harris, 792 F.2d at 869 (citations
18 omitted), here defendant Kamon's flight to the Bahamas occurred after
19 allegations of misappropriation of Girardi Keese client funds came to
20 light in the Northern District of Illinois in December 2020 and the
21 case was referred to the United States Attorney's Office in Chicago
22 for prosecution. Given that evidence of flight is "generally
23 admissible as evidence of consciousness of guilt and of guilt
24 itself," evidence of defendant Kamon's efforts to flee the United
25 States should be admissible at trial in this case. See Harris, 792
26 F.2d at 869.

1 **C. There is No Risk of Unfair Prejudice**

2 The probative value of defendant Kamon's flight to the Bahamas
3 is not substantially outweighed by any potential for unfair
4 prejudice. The Supreme Court has long recognized that flight
5 evidence is both probative and admissible. "In fact, deliberately
6 furtive actions and flight at the approach of law officers are strong
7 indicia of mens rea." District of Columbia v. Wesby, 583 U.S. 48, 59
8 (2018) (cleaned up). And "[h]eadlong flight—wherever it occurs—is the
9 consummate act of evasion: It is not necessarily indicative of
10 wrongdoing, but it is certainly suggestive of such." Illinois v.
11 Wardlow, 528 U.S. 119, 124 (2000). The Ninth Circuit has similarly
12 recognized that "the fact of an accused's flight [is] admissible as
13 evidence of consciousness of guilt, and thus of guilt itself" and
14 that "the admissibility of evidence relating to flight is no longer
15 open to question." United States v. Greiser, 502 F.2d 1295, 1299
16 (9th Cir. 1974); see also United States v. Harrison, 585 F.3d 1155,
17 1159-60 (9th Cir. 2009); United States v. Dixon, 201 F.3d 1223, 1232-
18 33 (9th Cir. 2000); United States v. King, 200 F.3d 1207, 1215 (9th
19 Cir. 1999); United States v. Felix-Gutierrez, 940 F.2d 1200, 1207-08
20 (9th Cir. 1991).

21 Here, no unfair prejudice would result from admission of the
22 flight evidence. Evidence of defendant Kamon's flight is highly
23 probative because it shows that he knew that he and defendant Girardi
24 were improperly handling client settlement funds and thus provides
25 context for the charged offenses. And while the admission of this
26 evidence will undercut defendant Kamon's claim that he was merely
27 carrying out defendant Girardi's instructions with no understanding
28 of the criminal misappropriation of client money that was occurring,

1 that is not unfair prejudice. At a minimum, there is no sense in
2 which any such prejudice to defendant Kamon's defense would
3 substantially outweigh the probative value of this evidence. In any
4 event, the district court can mitigate the risk of any unfair
5 prejudice by giving an appropriate limiting instruction. Indeed, the
6 Ninth Circuit recently reversed the exclusion of flight evidence in a
7 case brought in this district. The appellate court held that it was
8 an abuse of discretion to prohibit the government from introducing
9 evidence of post-theft flight because such evidence was probative of,
10 among other things, mens rea and consciousness of guilt. See United
11 States v. Flores, 23-4002, Dkt. 37 at 3 (9th Cir. June 3, 2024)
12 (unpublished) (denial of rehearing, Appellate Dkt. 39). Notably, the
13 court also found that "[t]o the extent that the district court's
14 determination was based upon a conclusion that the jury might draw
15 impermissible propensity inferences, the district court abused its
16 discretion in implicitly concluding that such inferences could not be
17 resolved by the government's requested jury instructions." Id. at 4;
18 see also United States v. Rodriguez, 880 F.3d 1151, 1168 (9th Cir.
19 2018) (holding that exclusion was not required under Rule 403, in
20 part, because "the district court gave an adequate limiting
21 instruction to reduce the danger of unfair prejudice"); United States
22 v. Ramos-Atondo, 732 F.3d 1113, 1124 (9th Cir. 2013) (same).

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