UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DEMOCRACY PARTNERS, LLC, et al.,

Plaintiffs,

v.

PROJECT VERITAS ACTION FUND, et al.,

Defendants.
_____/

CASE NO.: 1:17-CV-1047-ESH

PROJECT VERITAS PARTIES' MOTION TO ADMIT CREAMER'S FEDERAL FELONY CONVICTIONS FOR BANK FRAUD AND TAX CRIMES AND INCORPORATED MEMORANDUM OF LAW

Plaintiff Bob Creamer has peddled this lawsuit challenging Project Veritas's investigative journalism and claiming to have been damaged by it. He is a felon who was convicted of bank fraud and tax crimes, sentenced to five months in federal prison, and released from prison on November 3, 2006. Project Veritas learned of Creamer's felony convictions when they researched Creamer after Scott Foval described Creamer as "diabolical," stated that Creamer was likely the one behind a voter fraud scheme that Creamer's contractor Foval discussed, and identified Creamer as someone who "hatches" such schemes. All of this was known to Project Veritas before Allison Maass's unpaid internship and the reporting which forms the basis of Plaintiffs' allegations. Creamer's prior crimes were also reported in "Rigging the Election," Part I – the video that those who paid his entity for political consulting reacted to. Accordingly, Creamer's felony bank fraud and tax crime convictions are admissible: (1) as impeachment of Creamer pursuant to Rule 609(b), and (2) independently admissible as direct evidence to explain Project Veritas's purpose of investigating a newsworthy story (not the "tortious purpose," "infiltration," "political

hit job," or "spying" allegations that Plaintiffs have peddled to this Court as the purported central focus of their lawsuit) and to rebut Plaintiffs' theory of causation.

The Circumstances of Creamer's
Federal Felony Convictions for Bank Fraud and Tax Crimes

Creamer's felony convictions arise from the fraudulent check-kiting schemes he planned and repeated over time as the director of organizations he controlled: Illinois Public Action Fund (IPAF), the Citizen Action Center for Consumer Rights (CACCR), and the National Consumers Foundation (NCF). Check-kiting schemes like the ones Creamer engaged in are a form of bank fraud that "involves the knowing drafting and depositing of a series of overdrawn checks between two or more federally insured banks with the purpose of artificially inflating bank balances so that checks can be drawn on accounts that actually have negative funds." *United States v. LeDonne*, 21 F.3d 1418, 1425 n.2 (7th Cir. 1994). Creamer turned to defrauding banks and willfully failing to pay taxes to keep afloat his perpetually mismanaged and cash-strapped entities, when prior suspect practices like selling "credit card insurance" failed. **Exhibit A**, Creamer Plea Agreement at 3-4, *United States v. Robert B. Creamer*, Case No. 1:04-cr-00281 (N.D. Ill.); *see generally* regarding the perpetual financial problems and the suspect credit card insurance, **Exhibit B**, Laurie Cohen, Ray Gibson and Rick Pearson, "Consumer Group in Fight for Survival," CHICAGO TRIBUNE, June 8, 1997.

A grand jury indicted Creamer and charged him with 34 felony counts: 16 counts of bank fraud (18 U.S.C. § 1344), 14 counts of willfully failing to pay withholding taxes (26 U.S.C. § 7202), and 4 counts of filing false or fraudulent tax returns (26 U.S.C. § 7206). **Exhibit C**, Creamer Indictment. The Indictment was structured around three of Creamer's check-kiting schemes: one which occurred in 1993, another in 1996, and another in 1997. One set of bank fraud counts charge the issuance of one in a series of six kited checks – they ranged in value from a "low" of $93,000

to $98,000. Another group of bank fraud counts charge a series of kited checks ranging from a "low" of $64,000 to $99,000. A third and group of bank fraud counts charge kited checks from a "low" of $13,721 to $14,200. The counts charging Creamer with willfully failing to pay taxes he withheld from employees cover specified fiscal quarters from 1996 to 2000. Finally, the remaining counts charge Creamer with making false statements on his tax returns, namely including withholding taxes on his 1040 Forms when he knew his entities had never paid that money over to the IRS (1040 Forms must be signed under penalty of perjury).

The means and methods Creamer employed in defrauding banks are consistent throughout each of the charged schemes. The fraudulent schemes Creamer executed required his careful attention and management. The description of his method in committing the 1997 fraud is illustrative, and included here in the terms that Creamer agreed were accurate as part of his guilty plea:

> On a daily basis, IPAF clerical employee and staff members, acting under and at the ultimate direction of defendant CREAMER:
> (i) obtained and reported to defendant CREAMER the stated opening balances in the accounts, as well as other accounts of IPAF and CACCR;
> (ii) generated and reported to defendant CREAMER reports on revenues received from door to door and telephone canvassing activities as well as newly processed sales of CACCR credit card protection plans, and
> (iii) compiled and reported to defendant CREAMER the operational expenses and bills of IPAF and CACCR that required prioritized payment.
>
> From this daily information defendant CREAMER
> (i) estimated the total of stated and actual funds available to pay for IPAF and CACCR operational expenses and
> (ii) decided which bills or expenses would be paid that day, whether the payment of the outstanding obligation would be whole or partial, and the manner in which the obligation was to be paid.
>
> Based on the foregoing, defendant CREAMER directed one or more IPAF employees to execute and make specific intrabank transfers and deposits among the aforementioned accounts, knowing that there were not sufficient funds in the accounts to pay for these transfers and deposits, thereby creating materially false and fraudulently inflated account balances for the purpose of inducing the banks to

> unwittingly extend IPAF and CACCR unauthorized and unsecured short-term loans.

Exhibit A, Creamer Plea Agreement at 4. Creamer's fraud also included instructing his employees to use specific ATMs in order to lengthen bank processing times and avoid detection. *Id.* at 5. Creamer's routine of carefully orchestrated interbank transfers occurred on a daily basis, and Creamer would specifically authorize expenses to be paid on a given day, "including defendant CREAMER's salary[.]" *Id.* at 5. At the time that banks discovered Creamer's 1997 fraud and froze the accounts he manipulated, one of them had a negative balance of approximately -$2.385 million. *Id.* at 6.

Creamer's criminal failure to pay withholding taxes was an outgrowth of the same bank fraud schemes. After his efforts to defraud banks were discovered, Creamer turned to bilking the United States of taxes due, instead using that money to cover the debts of his organization. In addition to the entities through which Creamer operated his check kiting, Creamer owned and was the sole employee of a political consulting business called Issue Dynamics, Inc. Creamer's political consulting business was of course obligated to pay to the United States income tax withholdings, FICA taxes, and Medicare withholdings. From 1998-2000, despite having funds available to pay taxes to the United States, Creamer instead used those funds to pay debts for IPAF. *Id.* at 9-10.

Creamer's plea was structured such that he pled guilty to one of the bank fraud counts (Count 1, which charged the 1997 check-kiting scheme) and one of the willful failure to pay withholding tax counts (Count 21, which charged the willful failure to pay withholding taxes for the quarter ending December 30, 1997). He nonetheless specifically agreed that the other charged bank frauds and the other charged willful failure to pay withholding tax counts were relevant conduct to be considered at sentencing. *Id.* at 6-8 (bank fraud counts); 10 (willful failure to pay withholding taxes).

Ultimately, the court sentenced Creamer to five months imprisonment followed by eleven months home confinement with electronic monitoring for his felonies. **Exhibit D**. Creamer Judgment. He was released from federal prison on November 3, 2006.

Creamer's Felony Convictions are Admissible Pursuant to Fed. R. Evid. 609(b) to Expose His Lack of Credibility

Rule 609 of the Federal Rules of Evidence governs "attacking a witness's character for truthfulness by evidence of a criminal conviction[.]" Fed. R. Evid. 609(a).

> Rule 609 rests on the common-sense proposition that a person who has flouted society's most fundamental norms, as embodied in its felony statutes, is less likely than other members of society to be deterred from lying under oath in a trial by the solemnity of the oath, the (miniscule) danger of prosecution for perjury, or internalized ethical norms against lying.

Mattiaccio v. DHA Group, Inc., Case No. 12-1249, 2019 WL 6498865, at *11 (D.D.C. Dec. 3, 2019) (Kollar-Kotelly, J.) (citations omitted). Subsection (b) to the rule applies when, as is the case with Creamer's felony convictions for crimes of dishonesty, "more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later." Such a conviction is admissible if:

> (1) its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect; and
>
> (2) the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

Fed. R. Evid. 609(b). Raising the issue in a pre-trial motion is reasonable notice satisfying the requirement of Rule 609(b)(2). *Id.* at *16 (citing *Sanders v. Ritz-Carlton Hotel Co., LLC*, Case No. 05-CV-6385, 2008 WL 4155635, at *5 n. 4 (S.D.N.Y. Sept. 9, 2008) (Leisure, J.)). Creamer's bank fraud and tax crime convictions meet the requirements of the rule and should be admissible for impeachment.

As Chief Judge Howell recently explained in a pre-trial ruling that a 12 year old drug felony would be admissible against a criminal defendant, "[t]he degree to which a prior conviction is probative for Rule 609 purposes depends on what the conviction is for, how old it is, and on whether the defendant's credibility will be central to the trial." *United States v. Thorne*, Case No. 18-389, 2020 WL 122985, at *24 (D.D.C. Jan. 10, 2020) (citing *United States v. Jackson*, 627 F.2d 1198, 1209 (D.C. Cir. 1980)). The application of these factors demonstrate that Creamer's bank fraud and tax crime convictions are highly probative.

As to the first factor identified by Chief Judge Howell: Creamer's felony convictions are for two counts of crimes of dishonesty and therefore highly probative of Creamer's lack of truthfulness. Crimes of dishonesty are so probative that Rule 609 ordinarily requires that crimes of dishonesty must be admitted. R. 609(a)(2), Fed. R. Evid. Unsurprisingly, courts also readily admit felony convictions older than 10 years for crimes of dishonesty under Rule 609(b) despite the additional requirements of that subsection. In *United States v. Bumagin*, 136 F. Supp. 3d 361 (E.D.N.Y. 2015), the court granted a motion in limine to admit a bank fraud conspiracy conviction under Rule 609(b) and emphasized that "the impeachment value of a fraud conviction is high" because such a conviction bears on the "propensity to testify truthfully," and this weighed "heavily in favor of admitting" the bank fraud conspiracy conviction. *Id.* at 376-77 (citations omitted); s*ee also Sanders*, 2008 WL 4155635 at *4-6 (civil plaintiff's federal tax evasion conviction admissible); *Herbst v. LBO Holdings, Inc*., 783 F. Supp. 2d 262 (D.N.H. 2011) (civil plaintiff's federal mail fraud conviction was admissible); *Mattiaccio*, 2019 WL 6498865 at *16 (civil plaintiff's conviction for obtaining money by false pretenses under Virginia law was admissible). Moreover, Creamer testified in his deposition that the criminal scheme which landed him in federal prison

was "not an honest mistake." **Exhibit E,** Excerpts of Creamer Depo. Tr. at 10:8. His admission in this regard emphasizes the nature of these felonies as crimes of dishonesty.

Creamer's felony crimes of dishonesty involved methodical planning and sophisticated financial knowledge and engaging in the fraudulent conduct over a period of years – in 1993, 1996, and 1997.[1] These were no crimes of impulse. Instead, Creamer was engaged in deliberate campaign to defraud banks in order to keep afloat the entity he controlled and from which he drew a substantial salary and which had been plagued with financial problems for years. Reporting from the *Chicago Tribune* from when Creamer resigned following questioning by the FBI further illuminates the context in which Creamer committed these crimes and his dishonest motivations for them:

> If recent events are any measure, the group apparently was in worse financial shape than even its own board members could have suspected.
>
> On Friday, Robert Creamer, the man who for 22 years *was* Citizen Action, stepped down as executive director just one week after FBI agents questioned him about a $1 million bank overdraft. Federal authorities also are investigating whether the overdraft is connected to a check-kiting scheme involving up to $2.7 million in transactions at as many as three banks in Chicago, and Portland, Ore. [. . .]
>
> The crisis has been a long time in the making. Beneath the group's carefully crafted image of respectability and influence were problems that had festered for years. The biggest: the group was financially overextended and used questionable techniques to raise funds. [. . .]
>
> From the start, the group dealt with its cash crunches by not paying bills, particularly tax bills, records show. It lost its bingo license in 1987 for not making timely payments of state taxes.

[1] In Creamer's Sentencing Memorandum, his criminal defense lawyers also identify an uncharged allegation of check kiting for which Creamer was questioned by the FBI in 1992. **Exhibit F**, Excerpts of Creamer Sentencing Memo at 25. The Project Veritas Parties make this observation to further emphasize that the bank fraud for which Creamer was ultimately convicted was not isolated or a crime of youth or impulse, but a sophisticated scheme Creamer repeated over time, and do not seek to admit evidence related to Creamer's uncharged 1992 check kiting.

> The debts were so overwhelming by 1989 – more than $1 million, including payroll taxes owed to the Internal Revenue Service – that Illinois Public Action Council was dissolved.
>
> The successor group, Illinois Public Action, changed its name last July to reflect its affiliation with Citizen Action, a Washington-based consumer group that Creamer helped fund.
>
> The Illinois successor group has also been burdened with debt, bank overdrafts and tax problems. Its filing for 1994 with the Illinois attorney general's office – the latest state disclosure the group has made – shows $550,378 in unpaid state and federal payroll taxes [….]
>
> Board members say they dealt only with policy matters and knew nothing about the group's financial affairs.

Exhibit B, "Consumer Group in Fight for Survival"; **Exhibit G,** Laurie Cohen, "Consumer Group Still Faces Complaints After Takeover," CHICAGO TRIBUNE, June 27, 1997; *see also* **Exhibit H**, Sam Smith, "2 Quit, Charge Consumer Action Group Mismanaged," CHICAGO TRIBUNE, April 12, 1981 (resigning board members charging that financial mismanagement had brought the entity "to the brink of bankruptcy" and that Creamer specifically has "constantly blocked my efforts, and those of the board, to obtain accurate financial information.").

As to the second factor: Creamer was released from custody on November 3, 2006. *See* http://bop.gov/inmateloc (search: Robert Creamer or Reg No. 16923-423). Although this lies outside the ten year period, it is not radically so (in fact, it was less than ten years before the events that Plaintiffs have made the focus of this lawsuit). Courts admit older and even substantially older convictions than Creamer's, including convictions for bank fraud and federal tax crimes specifically. *See, e.g.*, *Bumagin*, 136 F. Supp. 3d at 366-67 (bank fraud conspiracy conviction admissible approximately 15 years after release); *Salmons Inc. v. First Citizens Bank & Trust Co.*, Case No. 2:10-cv-72, 2011 WL 4828838, at *2 (Oct. 11, 2011) (23 year old bank fraud conviction admissible); *Sanders,* 2008 WL 4155635 at *4-6 (federal tax evasion conviction admissible 19-20

years after release). It is also clear that his crimes are not the kind of offenses that could be chalked up to "youthful indiscretion" – Creamer engaged in the charged fraud beginning when he was 47, and continuing when he was 49 and 50.[2] He was an established professional political operative and married to then-Illinois State Representative Jan Schakowsky (who sat on the board of the entity Creamer used to commit his bank fraud, and who would shortly thereafter be elected to Congress). **Exhibit B** ("Consumer Group in Fight for Survival").

As to the third factor: Creamer's credibility is central to this case. He is the sole named individual plaintiff and the sole owner of Strategic Consulting Group. Plaintiffs have no experts in support of their claims. Instead, Plaintiffs will ask the jurors to credit Creamer's view of events instead of the facts Project Veritas recorded, on a host of matters – for example, Creamer's view of what information Allison Maass was exposed that was "confidential" or what duties were "implied" from Allison Maass's unpaid internship.

There is no risk of prejudicial effect. Rule 609's prejudice analysis is primarily concerned with the risk of prejudice to criminal defendants. The fear in criminal cases is that introducing prior criminal convictions against a defendant "might allow a jury to unfairly infer that a defendant committed the crime at issue." *Mattiaccio*, 2019 WL 6498865 at *16. "This is not as pressing of a

[2] This stands in stark contrast to the ten year old misdemeanor conviction of James O'Keefe which the Court nonetheless cited in the course of the Order granting the Project Veritas Parties' motion for summary judgment in part and denying it in part. [D.E. 83] at 5 n.4. Unlike Creamer's felonies, Mr. O'Keefe plead to a single misdemeanor count arising from entering a federal building. Unlike Creamer's sophisticated scheme repeated over time, Mr. O'Keefe entered a federal building on one occasion while investigating a news story in the early days of Project Veritas. Unlike Creamer, who committed his felonies when he was a seasoned political operative in his late 40s and 50s, Mr. O'Keefe's misdemeanor came about when Mr. O'Keefe was a young reporter and 25 years old. And very much unlike Mr. Creamer, government lawyers who prosecuted Mr. O'Keefe were later forced to resign in disgrace in a scandal stemming from their anonymous blogging about defendants in another case (and, indeed, it was revealed that one had blogged anonymously about Mr. O'Keefe's case too).

concern in a civil suit, especially where the witness with prior convictions is a plaintiff whose claims rely upon his credibility." *Id*. Accordingly, the risk of prejudicial effect is "lower in civil cases than in criminal ones." *Id.* at *14. Creamer, of course, has voluntarily chosen to come into Court as a civil plaintiff and stake his claims on his credibility.

Moreover, by focusing his allegations on Project Veritas's alleged "tortious purpose" in recording (as opposed to investigating a newsworthy story), Creamer has put Project Veritas's prior knowledge of Creamer's conviction at issue – that is part of the reason why Project Veritas knew it had a newsworthy story about a historically dirty political operative to investigate. As discussed in the subsequent section, Project Veritas's prior knowledge of Creamer's crimes must necessarily be admitted as direct evidence of this point. The jury will also hear of his prior crimes as Project Veritas reported in "Rigging the Election," part I – the news story that AFSCME reacted to in cutting ties with Creamer and a central focus of the causation argument. Because the jury must already hear of Project Veritas's prior knowledge of Creamer's crimes and subsequent reporting on them, there is no prejudice to result from their further use under Rule 609(b).

Creamer's crimes are crimes of dishonesty. Committing bank fraud via multiple check kiting schemes and bilking the government of payroll taxes are undoubtedly serious felonies, but relatively sterile ones. Creamer's felonies would not inflame the jury's passions and create prejudice the way it might were his felonies for possession of child pornography, sexual battery, murder, or the like. Creamer's felonies are the sort that a jury can readily take for their proper purpose when he is subject to cross-examination – evaluating his lack of credibility. They should be admitted for impeachment under Rule 609(b).

The Project Veritas Parties' Knowledge of Creamer's Conviction at the Time of the Investigation is Admissible to Show the Project Veritas Parties' Journalistic Purpose in Investigating a Newsworthy Story and the Reporting on Creamer's Conviction in "Rigging the Election" Part I is Admissible as to Causation

In bringing this lawsuit, Plaintiffs' squarely place at issue the Project Veritas Parties' purpose in investigating and reporting on Creamer. The Project Veritas Parties must defend themselves by offering evidence of their prior knowledge of Creamer's convictions, a fact which highlighted the newsworthiness of the story they investigated and why they did so. Additionally, causation will be a critical element at trial. While Plaintiffs survived summary judgment on this point, the trial evidence will be clear that AFSCME reacted to the content of Project Veritas's reporting in "Rigging the Election" Part I (AFSCME R. 30(b)(6) witness: "the broader concern was just clearly, regardless of the circumstances that led to the video, the video in itself and the way it was released and the timing was a very unfortunate distraction, and we didn't want to be a party to it." [D.E. 63-11] at 78-79) which included discussion of Creamer's prior felony convictions.

These are focused purposes independent of the admissibility of Creamer's convictions under Rule 609(b) (discussed *supra)* and which do not implicate Rules 404(a) or 404(b). Although the Rules prohibit admission of crimes to show action in conformity therewith, the Rules permit admission of such evidence for other purposes. For example, "[b]ackground evidence may be admitted to show, for example, the circumstances surrounding . . . events or to furnish an explanation of the understanding or intent with which certain acts were performed." *Bumagin,* 136 F. Supp. 3d at 367 (citing *United States v. Ashburn,* 2015 WL 588704, at *10 (E.D.N.Y. Feb. 11, 2015)).

The standard rule is applicable -- generally, all relevant evidence is admissible under Rule 402, and evidence is relevant if it has "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." R. 401, Fed. R. Evid. Although it provides for the exclusion of otherwise relevant evidence if the probative value is *substantially* outweighed by the danger of *unfair* prejudice, "Rule 403 is an extraordinary remedy which should be used only sparingly because it permits the trial court to exclude some concededly probative evidence." *Salmons Inc.*, 2011 WL 4828838 at *2 (quoting *United States v. Norton*, 867 F.2d 1354, 1361 (11th Cir. 1989)). That remains true when, as here, a criminal conviction is offered not just as impeachment under Rule 609 but is relevant as direct evidence of another non-propensity issue. *Salmons, Inc.* is instructive. In *Salmons Inc.*, the court denied a civil plaintiff's motion in limine to exclude its principal's 23 year old bank fraud conviction. *Id.* at *1. The court first ruled that the bank fraud conviction was admissible despite its age, noting the importance of the principal's testimony and noting the decreased risk of prejudice from admitting a conviction in a civil case as opposed to a criminal case. *Id.* at *1-2. It then turned to the issue for which the conviction was the direct evidence of:

> whether Defendant's alleged fraudulent conduct was the proximate cause of Plaintiff's damages. Specifically, Defendant argues that the conviction and bankruptcy show that there were valid reasons, other than [Defendant's conduct] why Plaintiff could not obtain funding from other lenders to cover its margin calls[.]

Id. at 3. The evidence was "undoubtedly probative" of Defendant's contrary explanation. *Id.* The district court noted that the Rule 403 inquiry is whether the evidence is *unfairly* prejudicial and found it was not. *Id.* In finding it was admissible as direct evidence, the Court noted that "Plaintiff itself has raised the issue" for which the conviction supplied an alternative explanation "and has directed the blame toward Defendant." *Id.* at *3.

Such is the case here. Plaintiffs deny that Project Veritas is a press organization, deny that its journalism is legitimate, and accuse it of acting with a tortious purpose instead of a newsgathering purpose. There are several permutations to these claims. First, whether the Project

Veritas Parties acted with a "tortious purpose" is a legal element of Plaintiffs' efforts to overcome the one-party consent rule otherwise applicable to investigative journalist Allison Maass's recording during her unpaid internship at Democracy Partners. Second, Plaintiffs' accuse the Project Veritas Parties of performing an "infiltration," committing "political hit jobs" on behalf of Donald Trump, engaging in "spying," and benefiting from a "criminal Russian conspiracy" (the latter is their way of saying that Project Veritas looked at the DNC emails published by WikiLeaks, just like any other press organization or person with an internet connection could and still can today). Third, Plaintiffs claim they were damaged because other entities that paid them for political consulting backed away as a result of what Plaintiffs' claim was an "infiltration" by Project Veritas.

The genesis of Project Veritas's reporting in "Rigging the Election" was when investigative journalist Christian Hartsock recorded Creamer associate Scott Foval in April 2016. The investigative journalist floated a "re-enfranchisement" plan to bring in out-of-state individuals to vote illegally. This was a hypothetical voter fraud scenario. Foval enthusiastically engaged with the voter fraud scenario, and brainstormed a variety of ways to make the voter fraud harder to detect. Some of Foval's suggested refinements of the hypothetical voter fraud including:

> - "You can prove conspiracy if there's a bus. If there are cars? It's much harder to prove." [D.E. 63-8] (CD) (PVA00013717 at 42:42-42:48).
>
> - "If there's enough money, you have people drive their POVs. Or, you have them drive rentals." *Id.* at 42:49-42:54.
>
> - "Well, you can't have them with Wisconsin license plates because rentals here? Most of them don't have Wisconsin license plates. But there's this thing called used car auction [. . . .] Used car auction, the titles belong to some unknown company – company cars." *Id.* at 43:00-43:20.
>
> - "So you use shells. Use shell companies. Cars come from one company, the paychecks come from another. There's no bus involved, so you can't prove it's en masse, so it doesn't tip people off. That's what I'm saying." *Id.* at 43:26-43:40.

> - "When I do this I think as an investigator first [. . . .] I used to do the investigations. I think backwards from how they would prosecute if they could, and then try to build out the method to avoid that [. . . .] If the car has a Wisconsin license plate and it's owned by a third entity, then it's much harder to prove that these people drove in from out of state, there's no bus involved so you can't prove conspiracy." *Id.* at 43;46-44;38.

[D.E. 63-8].

Having suggested these improvements to the voter fraud scenario he was presented with, Foval confidently opined that Creamer was the one behind the hypothetical voter fraud scenario, described Creamer as someone who "hatches these ideas" "on an ongoing basis," cited his close relationship with Creamer and his "dark hat" entity Democracy Partners, and stated that Creamer's philosophy was the same as his own. The Project Veritas Parties first learned about Creamer because of Foval's monologue:

> I know pretty closely who's advising [the investigative journalist's client] on that. I work with the same person. There is somebody who hatches these ideas to people like him on an ongoing basis . . . so Bob Creamer comes up with a lot of these ideas. I work with Bob Creamer one-to-one all the time. I'm the white hat, Democracy Partners is kind of a dark hat. I will probably end up being a partner there at some point, because our philosophy is actually the same.

[D.E. 63-8] (CD), PVA00013718 at 23:59-24:38. This prompted Project Veritas to begin its journalistic research as to Creamer. That same month, Project Veritas learned that "Robert Creamer is a convicted felon." *See* **Exhibit I**, 4/28/16 Email of R. Verney to J. O'Keefe. This was five months before investigative journalist Allison Maass started her unpaid internship with Democracy Partners.

Far from Plaintiffs' claims of a "tortious purpose" and the like, Project Veritas organically followed the threads of this news story to Creamer. That Creamer was a criminal political operative and historical bad actor emphasized the newsworthiness of the story Project Veritas pursued. What Project Veritas knew at the time about Creamer's felony convictions is admissible at trial to

demonstrate Project Veritas's newsgathering purposes and to rebut the arguments that Plaintiffs hinge their case on.

As in *Salmons Inc.*, *supra*, the inclusion of Creamer's convictions in "Rigging the Election" Part I is also relevant and admissible as direct evidence in rebutting Plaintiff's causation theory. The Court found that the evidence viewed in the light most favorable to Plaintiffs allowed them to survive summary judgment, but the testimony of AFSCME's Rule 30(b)(6) witness is clear. In terminating Strategic Consulting Group's contract, AFSCME was focused on the content reported in the news story: "the broader concern was just clearly, regardless of the circumstances that led to the video, the video in itself and the way it was released and the timing was a very unfortunate distraction, and we didn't want to be a party to it." [D.E. 63-11] at 78-79. Among the topics discussed in the video itself was Creamer's felony conviction and federal prison sentence. [D.E. 63-6] (CD), Part I at 4:01-4:20. As in *Salmons Inc.*, the Project Veritas parties are entitled to show how this is part of an alternative explanation of causation -- the correct one.

Conclusion

Creamer is a dishonest criminal. Justice dictates that the jury know and understand Creamer's criminal history. His felony convictions for bank fraud and tax crimes are highly probative of his lack of credibility. He has come into this Court staking his arguments on an alleged "tortious purpose" behind Project Veritas's recording, and chosen to frame his damages claims around AFSCME's reaction in the wake of "Rigging the Election" Part I.

Accordingly, the Project Veritas Parties request that the Court enter an Order that:

(1) Creamer's felony convictions are admissible as impeachment pursuant to Rule 609(b);

(2) Project Veritas's knowledge of Creamer's felony convictions prior to Allison Maass's unpaid internship is admissible as direct evidence of the Project Veritas Parties lack of "tortious purpose," and to show their journalistic purpose in gathering the news;

(3) The description of Creamer's criminal case in "Rigging the Election," Part I is admissible as direct evidence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that on April 16, 2020, I served the foregoing through the Court's electronic filing system which served a copy on all counsel of record.

/s/ Paul A. Calli
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