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1 Defendant Scott Spear, through counsel, moves this Court *in limine* to preclude the
2 Government from eliciting testimony, making statements, or arguing that certain lawful
3 activities are unlawful or presumed to involve prostitution.

4
5 **Proposed Order:**

6 The Government is precluded from eliciting testimony, making statements, or
7 arguing that the following lawful activities are unlawful or presumed to involve prostitution
8 or are not protected by the First Amendment:

- 9
- 10 a) Licensed escort services;
 - 11 b) Dating advertising that complies with Arizona law regarding the same;
 - 12 c) Licensed massage services; and
 - 13 d) Adult advertising, including escort, massage and dating advertisements that are
14 facially lawful are not protected by the First Amendment.

15
16 **Escort Services:**

17 Escort services in Arizona are legal and defined in A.R.S. §13-1422 as follows:
18 “Escort means a person who for consideration agrees or offers to act as a companion, guide
19 or date for another person or who agrees or offers to privately model lingerie or to privately
20 perform a striptease for another person.” The licensing of escorts is left to each city. Escort
21 agencies and advertising are regulated by A.R.S. §9-500.10.

22
23 **Massage Services:**

24 Massage services, and the advertising thereof, are also expressly legal in Arizona
25 and are regulated by Title 32, Chapter 42 of the Arizona Revised Statutes.
26

1 **Online Dating Services:**

2 Online dating services are likewise expressly legal in Arizona and are governed by
3 A.R.S. §44-7151, *et seq.* This includes advertising by dating services.
4

5 There are no statutory or other legal authorities that give rise to any presumptions
6 of prostitution regarding escorts, online dating sites and massage services.

7 **Ev. Rule 401 and 403:**

8 Since each of the above services are legal in Arizona, any testimony or suggestion
9 by the Government that any of these services are really just fronts for prostitution, or that
10 the jury should presume as such, is legally and factually incorrect, thereby negating any
11 probative value and relevance under Ev. Rule 401. Even if the Court went beyond Rule 401
12 and applied a 403 analysis, the result would be the same. Because the activities are legal,
13 any assertion to the contrary would be incorrect and lack any probative value. Further, the
14 resulting prejudice to these Defendants would be unfair because the activities are in fact
15 legal.
16
17

18 Finally, the First Amendment protects truthful commercial speech (advertisements)
19 about a lawful product, no matter how tasteless and excessive it sometimes may seem to
20 some people. *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 116 S. Ct. 1495, 134 L.
21 Ed. 2d 711 (1996).
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23 Undersigned counsel attempted to discuss the Government's position on this Motion
24 both by telephone and email, but the Government has not yet responded.
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RESPECTFULLY SUBMITTED this June 8, 2023.

/s/ Eric W. Kessler
Eric W. Kessler, Esq.
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Attorneys for Defendant Spear

DATED: June 8, 2023

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3 /s/ David Eisenberg
4 David Eisenberg
5 Attorney for Defendant Andrew Padilla

6 DATED: June 8, 2023

Joy Bertrand Esq., LLC

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8 /s/ Joy Malby Bertrand
9 Joy Malby Bertrand
10 Attorney for Defendant Joye Vaught

11 **CERTIFICATE OF SERVICE**

12
13 I hereby certify that on June 8, 2023, I electronically transmitted the attached
14 document to the Clerk's Office using the CM/ECF system for filing and transmittal of a
15 Notice of Electronic Filing to the CM/ECF registrants who have entered their appearance
16 as counsel of record.
17

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19 s/ Eric W. Kessler
20 Eric W. Kessler, Esq.
21 Attorney for Defendant Spear
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