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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

16 UNITED STATES OF AMERICA,
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Plaintiff,
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v.
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MICHAEL JOHN AVENATTI,
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Defendant.
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No. CR 19-061-JVS

GOVERNMENT'S POSITION RE FURTHER
 TRIAL PROCEEDINGS AND REPLY TO
 DEFENDANT'S OPPOSITION TO
 GOVERNMENT'S EX PARTE APPLICATION
 FOR (1) CONTINUANCE OF TRIAL DATES
 AND (2) FINDINGS OF EXCLUDABLE
 TIME PERIODS PURSUANT TO SPEEDY
 TRIAL ACT

**PROPOSED TRIAL DATE (Counts 11-18;
 20-36) :**

Feb. 21, 2023

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1 **I. BACKGROUND**

2 On June 15, 2022, plaintiff United States of America, by and
3 through its counsel of record, the United States Attorney for the
4 Central District of California and Assistant United States Attorneys
5 Brett A. Sagel and Rane A. Katzenstein, filed an *ex parte*
6 application seeking entry of an order: (1) continuing the trial dates
7 on Counts 1 to 10 of the Indictment to July 26, 2022, and on Counts
8 11 to 36 of the Indictment to February 21, 2023; and (2) finding
9 excludable time from the otherwise applicable periods within which
10 the Speedy Trial Act required the trials to begin. (CR 954.)

11 On June 16, 2022, defendant pleaded guilty to Counts 5, 8-10,
12 and 19 of the Indictment. (CR 955.) The Court set September 19,
13 2022, as the date for sentencing. (*Id.*) The government stated that
14 it did not intend to proceed to trial on Counts 1-4 and 6-7 and would
15 promptly inform the Court of its position regarding trial on Counts
16 11-18 and 20-36.

17 On June 17, 2022, defendant filed an opposition to the
18 government's *ex parte* application to continue the trial dates. (CR
19 957.)

20 **II. GOVERNMENT'S POSITION RE FURTHER TRIAL PROCEEDINGS**

21 The sentencing guidelines and the law pertaining to relevant
22 conduct and the law addressing restitution for harms caused by scheme
23 offenses, such as the wire fraud offenses to which defendant has
24 pleaded guilty, will allow the Court to impose a sentence on Counts
25 5, 8-10 and 19 that addresses the full scope of defendant's criminal
26 conduct. Such a sentence would obviate the need for a trial on the
27 remaining counts. Accordingly, the government expects to move to
28 dismiss the remaining counts of the Indictment after sentence is

1 imposed. In the interim, however, the government requests that the
2 Court grant the government's *ex parte* application to continue the
3 trial on Counts 11-18 and 20-36 to February 21, 2023, and enter
4 excludable time findings to support the continuance.

5 **III. REPLY TO DEFENDANT'S OPPOSITION TO THE GOVERNMENT'S *EX PARTE***
6 **APPLICATION FOR CONTINUANCE OF THE TRIAL ON COUNTS 11-18, 20-36**

7 Defendant contends that the Court should deny a continuance on
8 Counts 11-18 and 20-36 because a trial on those counts is barred by
9 the Speedy Trial Act. Defendant is wrong.

10 The Indictment was filed on April 10, 2019. The Speedy Trial
11 Act required trial to begin within 70 days, i.e., by June 19, 2019.
12 The Court has already found that the period from June 4, 2019,
13 through May 10, 2022, is excluded from the 70-day calculation. (CR
14 39, 66, 126, 171, 386, 804.) The period of excludable time extends
15 to June 17, 2022, the date on which the Court entered its order
16 vacating the date for the trial of Counts 1-10, pursuant to 18 U.S.C.
17 § 3161(h)(1)(B), because the delay results from trial with respect to
18 other charges against defendant, and to the date upon which the Court
19 disposes of defendant's pending pre-trial motions, pursuant to 18
20 U.S.C. § 3161(h)(1)(D), because it constitutes a delay resulting from
21 a pretrial motion, from the filing of the motion through the prompt
22 resolution of the motion.¹

24 ¹ On September 29, 2021, defendant filed a motion *in limine* to
25 exclude expert testimony of John Drum and request for a *Daubert*
26 hearing. (CR 833.) On October 11, 2021, defendant filed a motion for
27 an order to show cause re civil contempt and finding of contempt; and
28 motion to compel discovery, alleging failures to produce records
relevant to, among other matters, John Drum and the finances of Eagan
Avenatti. (CR 851.) Both motions are relevant to Counts 11-18 and
20-36 in that that raise challenges to the government's financial
analyst (John Drum) and the completeness of the government's

(footnote cont'd on next page)

1 Defendant's contention that the pending motions do not provide a
2 basis for excludable time because the Court has vacated the hearing
3 on the motions *in limine* (CR 957 at 6) is without merit. To the
4 extent defendant is suggesting that the Court has vacated the motions
5 themselves rather than the hearing on the motions, defendant is
6 incorrect. The Court's intention only to suspend proceedings on the
7 motions rather than to resolve them by vacating the motions
8 themselves is clear from the Court's order that defendant's "[r]eply
9 to contempt motion [CR 851] is suspended at this time." (CR 955.)
10 The on-going pendency of the motions results in excludable time. See
11 *United States v. Medina*, 524 F.3d 974, 979 (9th Cir. 2008) ("[T]he
12 district court must exclude time while the motion is pending even if
13 the court ultimately does not hold a hearing or rule on the
14 motion."); *United States v. Gorman*, 314 F.3d 1105, 1115 (9th Cir.
15 2002) (holding that the district court properly excluded the nearly
16 10-month period between defendant's filing of a motion to exclude
17 evidence and the defendant's entering of a guilty plea even though
18 the court never ruled on the suppression motion).

19 The government's *ex parte* application also demonstrates that the
20 period of October 12, 2021, to February 21, 2023, inclusive, should
21 be excluded pursuant to 18 U.S.C. §§ 3161(h)(7)(A), (h)(7)(B)(i), and
22 (h)(7)(B)(ii) because the ends of justice served by the continuance
23 outweigh the best interest of the public and defendant in a speedy
24 trial; failure to grant the continuance would be likely to make a
25 continuation of the proceeding impossible, or result in a miscarriage
26 of justice; and the case is so unusual and so complex, due to the

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disclosures of information pertaining to Eagan Avenatti, LLP's
overall finances and financial position.

1 nature of the prosecution, that it is unreasonable to expect
2 preparation for pre-trial proceedings or for the trial itself within
3 the time limits established by the Speedy Trial Act. Defendant's
4 objection -- that the government has only "provid[ed] boilerplate
5 language" (CR 957 at 6) -- again lacks merit. The government's ex
6 parte application noted that over a million pages of discovery as
7 well as numerous digital devices have been produced in discovery, and
8 Counts 11-18 and 20-36 charge various tax fraud offenses arising in
9 connection with defendant's own individual tax obligations and the
10 tax obligations of various entities defendant controlled, which
11 offenses span approximately ten years and involve substantial
12 financial records and transactions; bankruptcy fraud charges; and
13 bank fraud and identity theft charges. (CR 956 at 7.)

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