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7 *Attorneys for Ronald Grusd*

8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 UNITED STATES OF AMERICA,) CASE NO. 15CR2821-BAS
Plaintiff,)
11 vs.) **MOTION FOR A CONTINUANCE**
RONALD GRUSD, et al. . . .)
12 Defendants.) DATE: April 7, 2017
TIME: 10:00am

13 TO THE HONORABLE JUDGE CYNTHIA BASHANT, TO LAURA E. DUFFY, UNITED
14 STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF CALIFORNIA, AND HER
REPRESENTATIVES, AND COUNSEL FOR CO-DEFENDANTS:

15 Please take notice that on April 7, 2017, in the courtroom of the Honorable Judge Cynthia
16 Bashant or as soon thereafter as may be heard, the defendants, DR. RONALD GRUSD,
17 CALIFORNIA IMAGING NETWORK MEDICAL GROUP, AND WILLOWS CONSULTING
18 COMPANY, by and through counsel, Thomas A. Mesereau, Jr. and Sharon Appelbaum, Esq., will
19 move the Court for a continuance of the trial date. During the last court appearance, it was discussed
20 that the parties would commence trial on June 6, 2017. For the reasons stated below, that will not be
21 sufficient time for the defense to prepare and we ask for a continuance until November 2017, for the
commencement of trial.

22 Dated: March 2, 2017
Santa Monica, CA

Respectfully submitted,
/s/ Sharon Appelbaum /s/
Sharon Appelbaum, Esq.
Attorney for Dr. Ronald Grusd, and
California Imaging Network Medical Group, and
Willows Consulting Group

1 **I. BACKGROUND**

2 This motion is being electronically filed at a term of the Court, held at the United States District
3 Courthouse at 221 West Broadway, San Diego, CA on March 2, 2017, for an Order granting the
4 Defendants, DR. RONALD GRUSD, CALIFORNIA IMAGING NETWORK MEDICAL GROUP,
5 AND WILLOWS CONSULTING COMPANY, a continuance of the trial herein for a reasonable
6 period of time to give counsel adequate time to prepare.

7 Although current counsel’s notice of appearance was granted in mid-October 2016, due to
8 issues with the Government’s protective order and the amount of discovery having to be handled in
9 digital form, defense counsel was not in receipt of the discovery materials until the end of the
10 December 2016.

11 The Government told the defense to bring a two (2) terabyte hard drive to the December 19,
12 2016, court appearance. The defense complied and after protective order issues were resolved during
13 the appearance, the Government took custody of the drive, subsequently, made a digital copy of the
14 discovery, and mailed the hard drive back to the defense shortly before the holidays. As a frame of
15 reference, a two (2) terabyte hard drive can hold over a million documents and/ or hours and hours of
16 recordings.

17 After examining the hard drive in early January and locating the indices created by the
18 Government in the major file folders, the defense team began listening and reviewing. It was
19 determined that many documents needed to be printed for easier access. The defense is currently
20 reviewing and analyzing the various documents and recordings, but due to the sheer amount of
21 documentation and recordings, this process will take months.

22 The Government has not given the defense an exhibit list or indicated which of the million plus
23 files they intend to present to the jury at trial; it is imperative that the defense review all documentation
24 and recordings in order to be sufficiently and appropriately prepared to effectively and adequately

1 represent the client. As the review is being accomplished, areas in need of investigation are being
2 determined for proper trial preparation. We will need to complete our investigation, locate, speak with
3 and prepare witnesses for trial.

4 Additionally, the defense has recently learned of a defense that should be examined and raised
5 at trial. The defense believes that there is a valid advice of counsel defense and has recently been
6 allowed to speak to various lawyers that the Defendants consulted with on the topic of marketing by
7 doctors and the legality of certain actions. The defense has only in the last week been allowed to speak
8 with these attorneys and is planning to conduct a document review and document production of the
9 various attorneys' files to provide the Government and the co-defendant with reciprocal discovery for
10 trial. That said, to date, the defense has not been allowed to look at the files yet and is in the process of
11 planning the document production and review.

12 On March 1, 2017, Mr. Mesereau contacted the Government regarding the need for a
13 continuance due to the volume of discovery and the advice of counsel defense that will be raised at
14 trial. On March 2, 2017, counsel contacted Donald J. Calabria, counsel for co-defendant, Gonzalo
15 Paredes, and notified him about our request for a continuance and the advice of counsel defense we
16 plan to raise at trial. He was unopposed to the request for a continuance.

17
18 **I. LEGAL ARGUMENT**

19 As stated in the background portion of this motion, defendants, DR. RONALD GRUSD,
20 CALIFORNIA IMAGING NETWORK MEDICAL GROUP, AND WILLOWS CONSULTING
21 COMPANY, by and through counsel, Thomas A. Mesereau, Jr. and Sharon Appelbaum, request a
22 continuance in order to review discovery, investigate certain information, locate and prepare witnesses
23 for trial, prepare a defense and reciprocal discovery for trial, and to take such other further and
24 necessary steps to adequately prepare defendant's case for trial, and for such other and further relief as

1 the Court may deem just and proper. *See United States v. Poston*, 902 F.2d 90 (1990) (denial of a
2 continuance to allow new counsel to prepare implicates the right to counsel); *United States v. Lingo*, 740
3 F.2d 667 (1984) (five factors which trial court must consider in deciding motion for continuance are
4 nature of case; diligence of party requesting continuance; conduct of party opposing continuance; effect
5 of continuance on parties; and asserted need for continuance); 18 U.S.C. §3500.

6 The defense did not receive the discovery in this case from the Government until the end of
7 December because of issues with the protective order. The Government did not turn over the
8 discovery until the protective order was in place. Once received, the defense has been diligent in sorting
9 through the sheer amount of paperwork in this complex case and spending hours and hours of listening
10 to recordings. However, there is just too much data to review in the short time frame for the trial date
11 currently set by the Court. The subject matter alone makes this case a complex matter.

12 Having only had the discovery for two (2) months, counsel is now aware that the time
13 consuming nature of the review will not be completed by the proposed trial date of June 6, 2017. That
14 date does not provide the defense with enough time to conduct the investigation needed to ascertain
15 certain facts, to meet with and gather files from the various attorneys the defendants consulted with on
16 marketing issues, to provide reciprocal discovery to the Government, and to locate and prepare
17 witnesses for the trial. A trial set before November 2017, would greatly disadvantage the defendants as
18 they would not effectively and adequately be represented at trial.

19
20 DATED: March 2, 2017
21 Santa Monica, CA

Respectfully submitted,
/s/ Sharon Appelbaum /s/
Sharon Appelbaum, Esq.

1 **III. DECLARATION OF COUNSEL, SHARON APPELBAUM, IN SUPPORT OF**
2 **MOTION FOR A CONTINUANCE**

3 I, Sharon Appelbaum, state:

- 4 1. That the trial of this case has been set for June 6, 2017.
- 5 2. That in mid-October 2017, the defendants retained the services of Thomas A. Mesereau, Jr. of
6 the Mesereau Law Group as lead counsel, and Sharon Appelbaum, of the Law Offices of
7 Sharon Appelbaum, as Mr. Mesereau's co-counsel, to represent them.
- 8 3. That the United States Attorney's Office for the Southern District of California would only turn
9 over discovery after a protective order was signed by the defense.
- 10 4. That the defense voiced objection to that particular protective order and this issue was litigated
11 between counsel's first appearance on the case and the court date of December 19, 2016.
- 12 5. That on that court date in December 2016, the defense gave a 2 terabyte hard drive to the
13 Government for them to copy the digital discovery.
- 14 6. That the Government copied and sent the drive back to the defense around the holidays at the
15 end of the year.
- 16 7. That the defense has been diligent in reviewing the discovery which contains approximately
17 millions of pages and hours upon hours of recordings and still has not made a sufficient dent in
18 the review. The Government has not given the defense a proposed trial exhibit list or indicated
19 how counsel should direct their review of the materials in effect making it imperative for the
20 defense to thoroughly analyze all materials on the drive.
- 21 8. That the defense has recently discovered a valid advice of counsel defense that must be
22 presented on behalf of the defendants for advice received by defendants regarding marketing
23 legalities.
- 24 9. That in order to properly prepare and present the defense, counsel must meet with and gather
files from the various attorneys the defendants consulted with and produce many of these files
to the Government in advance of trial.
10. That investigation, location, and preparation of witnesses must also be conducted to effectively
and adequately represent the clients during trial.
11. That Mr. Mesereau contacted the Assistant United States Attorneys prosecuting this case and
alerted them to this request for a continuance and the advice of counsel defense to be raised at
trial.
12. That counsel has contacted the attorney for co-defendant, Gonzalo Paredes, Donald J. Calabria,
and he is not opposed to this motion for a continuance.

1 13. Defendants have exercised their rights to obtain counsel who they believe will benefit them
2 most at a trial on this case.

3 14. Counsel is already diligently preparing for trial and reviewing the voluminous documentation,
4 notes of investigation, witness interviews, billing statements, prior testimony, recordings, and
5 state Grand Jury exhibits in the current period allotted by the Court.

6 I declare under penalty of perjury that the foregoing is true and correct.

7 DATED: March 2, 2017
8 Santa Monica, CA

LAW OFFICES OF SHARON APPELBAUM

/s/ Sharon Appelbaum /s/

Sharon Appelbaum, Esq.

1 **IV. CONCLUSION**

2 WHEREFORE, in light of the volume and complexity of the discoverable material, the defense
3 that needs to be explored and reciprocal discovery collected and given to the Government, counsel
4 respectfully requests that this case be continued until November 2017, to give defense counsel an
5 adequate and fair opportunity to prepare the defense of this case.

6
7 DATED: March 2, 2017
8 Santa Monica, CA

Respectfully submitted,

9 /s/ Sharon Appelbaum /s/
10 Sharon Appelbaum, Esq.
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22 *Attorneys for Dr. Ronald Grusd, and*
23 *California Imaging Network Medical Group, and*
24 *Willows Consulting Group*

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF CALIFORNIA

3	UNITED STATES OF AMERICA,)	CASE NO. 15CR2821-BAS
	Plaintiff,)	
)	
4	vs.)	CERTIFICATE OF SERVICE
)	
5	RONALD GRUSD, et al...,)	
	Defendants.)	
6	_____)	

7 IT IS HEREBY CERTIFIED THAT:

8 I, Sharon Appelbaum, am a citizen of the United States and am at least eighteen years of age.
9 My business address is 401 Wilshire Blvd., 12th Floor, Santa Monica, CA 90401. I am not a party to the
10 above-captioned action. I have filed with the Court and caused service of the MOTION FOR A
11 CONTINUANCE on the parties listed on ECF by electronically filing the foregoing with the Clerk of
12 the District Court using its ECF System, which electronically notifies them.

13 I declare under penalty of perjury that the foregoing is true and correct.

14	Executed on March 2, 2017.	<u>/s/ Sharon Appelbaum /s/</u>
15	Santa Monica, CA	Sharon Appelbaum, Esq.