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Counsel for Defendant Mail Merge 2

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

San Francisco DIVISION

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| UNITED STATES OF AMERICA, Plaintiff, v.Mail Merge 1 Mail Merge 2, Defendant. |

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| **Case No.:** CR Mail Merge 3–Mail Merge 4 MAIL MERGE 5 -INITIALS |
| MOTION TO CONTINUE ALL COURT APPEARANCES UNTIL AFTER MAY 1, 2020 |
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As of the date of this motion, the President has declared a national public health emergency,[[1]](#footnote-1) and the Governor of the State of California has declared a public health emergency throughout the state,[[2]](#footnote-2) both in response to the spread of the Coronavirus Disease 2019 (COVID-19). The Centers of Disease Control and Prevention (CDC) and other health authorities have advised people to take precautions to reduce the exposure to COVID-19 and to slow the spread of the disease. An important part of the CDC recommendations is social distancing: keeping an appropriate physical distance between people, and particularly in public settings.[[3]](#footnote-3)

To ensure the health and safety of the defendant through social distancing, undersigned counsel hereby moves the Court to cancel all in-court hearings before May 1, 2020. Undersigned counsel further moves the Court to set the matter on for status on a date after May 1, 2020.

If videoconferencing becomes available before May 1, 2020, undersigned counsel preserves the right to move the Court to add the matter to the Court’s calendar for a videoconference appearance. Defense counsel will work with government counsel to determine an acceptable date for any videoconference hearing.

Undersigned counsel moves the Court to exclude time under the Speedy Trial Act until the next court appearance, after May 1, 2020. *See* 18 U.S.C. § 3161(h)(7)(A).

Undersigned counsel agrees that the ends of justice served by ordering this continuance outweighs the best interest of the public and this defendant’s right to a speedy indictment or trial, and merits this exclusion of time. Undersigned counsel will convey this continuance motion to the defendant and will attempt to meet as soon as possible, but because of limitations created by the COVID-19 pandemic counsel cannot secure the client’s consent before filing this motion. *See, e.g.,* *United States v. Lynch*, 726 F.3d 346, 354-55 (2d Cir. 2013) (“[A] motion for a continuance under this section may be granted ‘at the request of the defendant *or* his counsel,’ 18 U.S.C. § 3161(h)(7)(A) (emphasis added), which indicates that an attorney may make such a request without obtaining his client’s approval.”) (emphasis in original); *see id.* (“[T]he STA does not include the defendant’s consent among the factors a court must consider in weighing whether the ends of justice would be served by granting a continuance. 18 U.S.C. § 3161(h)(7)(B). We find persuasive the reasoning of the Sixth Circuit in *United States v. Stewart*, in which a defendant objected to the district court’s grant of a continuance because the defendant ‘never provided his written consent, which was required by the district court’s Pretrial Order and was specifically ordered when the court granted the motion.’ 628 F.3d 246, 254 (6th Cir. 2010). The court rejected the defendant’s claim, reasoning that a defendant’s consent is not a statutory requirement under the Speedy Trial Act.”); *see also United States v. Gates*, 709 F.3d 58, 66 (1st Cir. 2013) (holding that, “in the ordinary course and within the confines of the STA exclusion provisions, defense counsel has the power to seek an STA continuance without first informing his client or obtaining his client’s personal consent.”); *United States v. Herbst*, 666 F.3d 504, 510 (8th Cir. 2012) (“We agree with the Sixth Circuit that the plain language of section 3161(h)(7)(A) “does not require a defendant’s consent to the continuance ‘if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.’ ”) (quoting *United States v. Sobh*, 571 F.3d 600, 603 (6th Cir. 2009); citing *Stewart*, 628 F.3d at 254); *United States v. Hallock*, 454 Fed. App’x 545, 546 (9th Cir. 2011) (unpublished) (holding that “scheduling matters, including the need for a continuance, are an attorney’s prerogative and may be decided without client approval” and that the STA “permits a court to grant a continuance ‘at the request of the defendant *or* his counsel,’ suggesting the defendant’s express consent is not required before one can be granted.”) (emphasis in original).

Therefore, for the above reasons the defense moves the court to vacate all court proceedings, set a status hearing after the May 1, 2020 date, to allow the parties to seek a hearing before that date if videoconferencing becomes available, and to exclude time until the new date under the Speedy Trial Act.

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| Dated: | March 15, 2020 | Respectfully submitted, |
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|  | Steven G. Kalar |
|  | Federal Public Defender |
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|  |  /S |
|  | Northern District of California |

1. *See Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak*, https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/ (Mar. 13, 2020). [↑](#footnote-ref-1)
2. *See Governor Newsom Declares State of Emergency to Help State Prepare for Broader Spread of COVID-19*, https://www.gov.ca.gov/2020/03/04/governor-newsom-declares-state-of-emergency-to-help-state-prepare-for-broader-spread-of-covid-19/ (Mar. 4, 2020). [↑](#footnote-ref-2)
3. *See generally* Centers for Disease Control and Prevention, *Coronavirus (COVID-19)*, https://www.cdc.gov/coronavirus/2019-ncov/index.html (updated frequently); California Dep’t of Public Health, https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx (updated daily); *see also* Office of Governor, Executive Order N-25-20 (Mar. 12, 2020). [↑](#footnote-ref-3)