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 11 UNITED STATES OF AMERICA

12 UNITED STATES DISTRICT COURT
 13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 THOMAS VINCENT GIRARDI and
 18 CHRISTOPHER KAZUO KAMON,

19 Defendants.

No. CR 23-47-JLS

GOVERNMENT'S OPPOSITION TO
DEFENDANT GIRARDI'S EX PARTE
APPLICATION TO CONTINUE TRIAL DATE
FROM AUGUST 6, 2024 TO OCTOBER 8,
2024

20 Plaintiff United States of America, by and through its counsel
 21 of record, the United States Attorney for the Central District of
 22 California and Assistant United States Attorneys Scott Paetty and Ali
 23 Moghaddas, hereby files its opposition to defendant's ex parte
 24 application for an order continuing the trial date (Dkt. 274).

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MEMORANDUM OF POINTS AND AUTHORITIES

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2 After agreeing to seek no further continuances of the trial date
3 in this matter, and less than three weeks before the current trial
4 date that he stipulated to, defendant Thomas Vincent Girardi
5 ("defendant Girardi" or "Girardi") requests that this Court once
6 again delay his trial. Defendant's application raises no good cause
7 justifying an additional continuance and should be denied.

8 At the January 2024 status conference, this Court announced its
9 tentative ruling to set this case for trial on May 21, 2024. (Dkt.
10 161 at 4:10.) Thereafter, counsel for defendant Girardi began
11 requesting a vast array of additional discovery, much of it beyond
12 the ambit of Rule 16, including all communications contained on the
13 Girardi Keese server (dating back decades), all analyses prepared by
14 the bankruptcy trustee (or her agents) of the Girardi Keese financial
15 systems, including all the government's communications with the
16 trustee, all forensic images of computers at Girardi Keese, and all
17 forensic images of defendant Kamon's multiple phones and laptop. The
18 government produced and/or facilitated the production of all of these
19 materials (and more), while explicitly noting that "[b]y producing
20 such materials, we do not concede that . . . these materials
21 constitute Brady or Rule 16 information" and that "the government
22 does not . . . waive its right to object to any future requests to
23 continue the trial data as a result of this or other discovery
24 productions."

25 In March 2024, notwithstanding the government's assistance with
26 these discovery requests and the above admonition, the defense
27 requested a continuance to August 2024 in order to better prepare for
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1 trial.¹ The government begrudgingly agreed to this continuance, in
2 part, because defense counsel explicitly agreed that “defendants will
3 not seek further continuances of the trial date, and that no further
4 continuance should be granted, absent good cause and the existence of
5 new information not known as of the date of this stipulation[.]”
6 (Dkt. 184 at 5.) Now, notwithstanding their repeated
7 representations, and less than three weeks before the current trial
8 date, defendant has filed an ex parte application and several
9 “supplements” seeking more time. Defendant’s application raises
10 seven reasons why the Court should further continue this case;
11 however, none justify good cause warranting a continuance.

12 First, as articulated in the government’s briefing related to
13 its motion to admit evidence of defendant’s misappropriation of
14 settlement funds (Dkts. 214 & 267), the government’s representation
15 that it would present a streamlined case focused on the four
16 executions alleged in the indictment did not limit its ability to
17 present evidence of defendant’s misappropriation of client funds.
18 But even if it did, the government has consistently and clearly
19 stated to defense counsel that it reserved its right to introduce
20 other evidence, including in rebuttal, depending on the defense
21 theory, which has now directly put this evidence at issue. (See,
22 e.g., Ex. 3; see also Dkt. 267 at 6 (“[T]he fact that Girardi now

24 ¹ In negotiating this continuance, counsel represented that
25 “[a]s part of a compromise, we’re saying that four months is what we
26 need to get through this voluminous information. Why not give us
27 that already limited amount of time and take the issue off the
28 table?” Counsel further represented that “we can agree to no further
continuances absent something new plus good cause[.]” (See Ex. 1
attached hereto; see also Ex. 2 (email stating that “because we
(Girardi’s defense team) made an agreement with the government, we
will not ask for a continuance to the October date even though we may
want the additional time”).)

1 intends to present a contorted view of the facts necessitates that
2 the government be allowed to provide the jury with the full context
3 of defendant's actions").)

4 Second, that there are six outstanding pretrial motions pending
5 is not unusual, let alone a basis for more time. In fact, this
6 briefing schedule was agreed to by counsel for both defendants in the
7 prior stipulation for more time. (Dkt. 184 at 3.) This is hardly
8 the "good cause and the existence of new information not known as of
9 the date of this stipulation" justifying a further continuance.

10 Third, after having been provided a near identical, cut-and-
11 paste disclosure for Dr. Chui from her opinions in the competency
12 proceedings, the government repeatedly requested a supplement so that
13 it could meaningfully consider its options, "including retaining
14 [its] own expert and/or moving to limit/exclude Dr. Chui's
15 testimony." (See Exhibit 4.) After months of requesting a
16 supplement, defendant Girardi finally provided one in June, three
17 months after Dr. Chui's initial disclosure and weeks after the
18 government filed its motion to exclude Dr. Chui's testimony. (See
19 Dkt. 188.) After the Court denied the government's motion, the
20 government promptly served its disclosure for rebuttal testimony from
21 Dr. Darby, which like Dr. Chui's disclosure, largely mirrors his
22 opinions and testimony from the competency proceeding. Defendant
23 claims that he no longer has a meaningful opportunity to challenge
24 Dr. Darby's opinions. Setting aside that defendant has already
25 challenged Dr. Darby and his opinions in connection with the
26 competency proceedings, defendant's team of lawyers, who in less than
27 24 hours after receiving Dr. Darby's disclosure were able to prepare
28 and file his 15-page ex parte application for a continuance, are

1 clearly capable of filing a motion on shortened time to challenge Dr.
2 Darby ahead of the government's rebuttal case.²

3 Fourth, defendant's complaints regarding evidentiary
4 stipulations is a red herring. As an initial matter, the lack of any
5 stipulation as to the admissibility of exhibits is not a reason to
6 continue a trial date. Parties often proceed to trial without such
7 stipulations and simply lay foundation pursuant to the Federal Rules
8 of Evidence. But in this case, the government has been transparent
9 with the defense that it intends to seek evidentiary stipulations,
10 including stipulations regarding records produced by the trustee.
11 Indeed, it was the government who initially contacted the defense to
12 reach such agreement. In any event, as of this filing, the parties
13 have tentatively reached agreement on stipulations regarding the
14 admissibility of much of the parties' respective evidence.

15 Therefore, this too does not qualify as good cause for a continuance.

16 Fifth, counsel suggests the government has told witnesses that
17 it wished to be present for any conversations with the defense. This
18 is patently false. In witness interviews, the government often
19 advises witnesses that they may be contacted by the defense, and it
20 is the witnesses' choice whether they choose to accept, decline, or
21 ask that the government participate. That has been and will continue
22 to be the advisement provided to witnesses in this case, and is

24 ² Notably, in arguing the lack of prejudice for defendant's
25 failure to provide any supplemental disclosure for Dr. Chui,
26 defendant argued that "the near-exclusive focus of this case for
27 approximately a year was on mental-state evidence and expert
28 testimony," that the "government has already received a fulsome
disclosure from Dr. Chiu [sic] and had a chance to cross-examine
her," and that "any claims of prejudice would be baseless on this
record." (See Ex. 4 at 4.) These same arguments apply equally to
defendant should he choose to challenge Dr. Darby's proffered
testimony in the government's rebuttal case.

1 consistent with the admonition provided to witnesses in other cases
2 prosecuted by the government in this district. Despite the
3 government's request for the identities of the witnesses who have
4 purportedly said otherwise, counsel has refused. In any event, a
5 continuance is not an appropriate remedy for such allegations.

6 Sixth, this case does not present any unique "time-consuming
7 distractions from trial preparation." Indeed, defendants have
8 possessed the government's draft witness and exhibit lists for nearly
9 six months,³ the documents and legal theories at issue are not
10 complex, and, as referenced above, the parties have met and conferred
11 and reached agreements in principle on the admissibility of general
12 categories of documents for trial. Moreover, counsel's request for a
13 jury questionnaire -- made over the government's objection -- cannot
14 now serve as a basis for delay. (Dkt. 274 at 12 (claiming the jury
15 questionnaire will require a "substantial amount of time" to process
16 and review).) If counsel no longer wishes to use a jury

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18 ³ Defendant's latest supplement in support of his request for a
19 continuance goes too far and baselessly accuses the government of
20 gamesmanship. Among other things, defendant argues the government
21 should not be allowed to add exhibits to its list in advance of
22 trial. (See Dkt. 280.) However, defendant's claim is not based on
23 facts or common sense. Despite no rule or legal obligation to
24 provide the defense with its draft witness and exhibit lists, the
25 government did so as early as February 2024, noting expressly that it
26 reserved the right to supplement its list in advance of trial. (See
27 Exhibit 5.) With still three weeks until trial, the government has
28 provided a revised exhibit list that adds approximately 80 new
exhibits, half of which are related to Kamon's side fraud and mostly
images of checks and bank statements. Much of the remaining new
exhibits, many of which are spreadsheets, are simply underlying
sources of data supporting draft summary charts, which the government
intends to produce upon receipt of executed draft summary chart
agreements from the defense. Defendant's repeated claim that the
government is now broadening the scope of its case despite its
previous representations also ignores that much of this evidence is
to rebut the defendant's theories. Clearly the government must be
allowed to rebut defendant's tilted view of the evidence and nothing
in the government's prior representations precludes that.

1 questionnaire, the parties can proceed with traditional voir dire,
2 which has proved appropriate in countless other cases.

3 Seventh, and finally, whether any trial witnesses are "producing
4 or participating in a podcast," is beyond the government's control
5 and is hardly a reason to continue the trial date. Indeed, as the
6 defense acknowledges, this case has been "widely reported and
7 discussed," (Dkt. 186 at 1), and "presumably, the same witnesses will
8 be engaged in the same activities at any trial date" (Dkt. 274 at
9 12.) Furthermore, the government's intervention in a related civil
10 matter before scheduled depositions of the government's witnesses is
11 neither unusual nor improper. See, e.g., Keating v. Office of Thrift
12 Supervision, 45 F.3d 322, 324 (9th Cir. 1995). The government has
13 also produced recent witness memoranda and proffer letters, including
14 for at least one individual who is not expected to testify in this
15 case, and will continue to do so on a rolling basis. (See, e.g.,
16 Dkt. 275.) The defense has not articulated any prejudice from its
17 recent receipt of these materials, which largely track information
18 contained in prior filings and witness memoranda. In any event, the
19 government has advised the defense that it will begin producing agent
20 notes of witness interviews in lieu of formal memoranda between now
21 and trial, thereby minimizing the risk of further delay.⁴
22 Accordingly, these excuses too do not justify defendants' request for
23 more time.

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26 ⁴ Defendant's supplement also complains that the government's
27 recent productions include approximately 2,000 pages (Dkt. 280 at 3-
28 4), but fails to explain that approximately 700 of those pages relate
to defendant Girardi's tax filings that the government cited to in
its opposition to defendant's motion to suppress. The government
does not intend to use this material, or much of what else has been
recently produced, at trial.

1 For the foregoing reasons, the government respectfully requests
2 that this Court deny defendant's ex parte application for a
3 continuance of trial.⁵
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26 ⁵ The government submits that this ex parte application can be
27 denied on the papers with no further hearing. Of course, should the
28 Court intend to proceed with the hearing on July 19, 2024, the
government will appear and present further argument in support of its
opposition.