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*Attorneys for Ronald Grusd, and
 California Imaging Network, and Willows Consulting*

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

UNITED STATES OF AMERICA,)	CASE NO. 15CR2821-BAS
Plaintiff,)	
)	REPLY TO GOVERNMENT'S
vs.)	OPPOSITION TO DEFENDANTS'
RONALD GRUSD, et al.,)	MOTION FOR A CONTINUANCE
Defendants.)	
)	DATE: April 7, 2017
)	TIME: 10:00am

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

This motion is a reply to the Government's Response to DR. RONALD GRUSD, CALIFORNIA IMAGING NETWORK MEDICAL GROUP, AND WILLOWS CONSULTING COMPANY's, Motion for a Continuance. The defendants', by and through counsel, Thomas A. Mesereau, Jr., Esq. and Sharon Appelbaum, Esq., respectfully ask for a continuance until November 2017, for the commencement of trial to properly and adequately prepare.

Dated: April 4, 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. SETTLEMENT DISCUSSIONS**

2 As mentioned in the Government's Opposition motion, the defense entered into good faith
3 negotiations to resolve the case. To clarify, the defense did not reject the Government's plea agreement.
4 The Government stated their offer expired March 31, 2017. The defense, unfortunately, was unable to
5 resolve questions regarding restitution at the state level by that date.

6 As the Court is aware, there is a simultaneous state prosecution occurring and both prosecuting
7 agencies are cross-designated. Assistant United States Attorneys Fred Sheppard and Valerie Chu, who
8 were very professional in the discussions, represented to us that that they would be able to speak for
9 the state prosecutors to resolve both cases. That belief was cemented when (i) the deputy district
10 attorneys were not on the phone calls discussing the plea, (ii) Ms. Chu sent the paperwork for both the
11 federal plea agreement and state plea agreement, and (iii) the federal plea agreement seemed to include
12 by reference many points of the state plea agreement. The defense spent quite some time discussing a
13 disposition with the federal prosecutors to resolve questions unanswered on the face of the plea
14 agreement.

15 After a long discussion with Ms. Chu, she had answered the defense's questions regarding the
16 federal portion of the plea agreement. As for the state restitution issues, which were also a concern, Ms.
17 Chu did not feel she could adequately speak on that issue. She told us to reach out to the three (3)
18 Deputy District Attorneys on the state case. The defense immediately followed this advice and called
19 Mr. Ramirez on both numbers included in his email signature, an office number and a mobile number,
20 unfortunately neither was answered. Defense followed up with an email to speak regarding state
21 restitution and asking if either Mr. Ramirez, Mr. Philpott, or Ms. Palermo were available to speak briefly
22 on the issue. Mr. Ramirez answered by email, "We aren't available to talk. Restitution is based on what
23 was actually paid." See Exhibit A.
24

1 Unfortunately, the defense was unable to decipher exactly what was meant in terms of “what
2 was actually paid” whether that meant money allegedly paid to marketers, money the insurance
3 companies paid as claims, whether that was solely for counts in the plea agreement or other if it
4 included counts from the indictment, it was not clear and as such, the offer expired.

5 **II. PROTECTIVE ORDER**

6 In their Opposition motion, the Government calls the defense’s litigation of the protective
7 order “a litigation strategy.” Government Opposition motion at 2: 9. They state that the defense should
8 have accepted the discovery *while* litigating the protective order.

9 The defense would have welcomed that solution, but the Assistant United States Attorneys
10 would not allow it. Counsel personally spoke with Ms. Chu on the telephone about obtaining discovery
11 and was told the defense would not receive it until the protective order was signed, that sentiment was
12 followed up in an email on November 21, 2016. See Exhibit B. The phone call had been to avoid
13 litigating the issue in Court, but it was Ms. Chu who made it clear a motion would have to be filed.

14 Initially, the protective order proposed by the defense was signed by the Court. When that
15 occurred on December 13, 2016, the defense immediately asked for the discovery materials to be
16 brought to Court on December 19, 2016. Only at that time was the defense told to provide the
17 Government with a hard drive of our own that would take some time to be copied and encrypted. See
18 Exhibit C. We brought that with us to court and signed the protective order on December 19, 2017,
19 even after the Court ended up ultimately denying the defendants’ protective order requests.

20 Additionally, the scope of a protective order is commonly discussed and altered from its
21 original form in many state and federal cases.

22 **III.AMOUNT OF DISCOVERY**

23 Although the Government is correct that we provided a two-terabyte hard drive at their
24 request, stating that there is just under a half a terabyte of data on the drive that underestimates the

1 scope. The 431 gigabytes of data on the drive contain 148,883 files within 1,747 folders. See Exhibit D.
2 That is *not* the number of pages, as files are either documents with numerous pages or long recordings
3 that take time to listen to and transcribe.

4 Significantly, as Ms. Chu mentioned in an email about copying and encrypting the hard drive
5 taking some time, the defense had to copy the hard drive for parties included in the defense team who
6 had signed the protective order and each copy takes 13-15 hours to be made.

7 Once the New Year came, the complex indices found on the drive were examined and paper
8 copies of documentation printed. As a result, the Mesereau Law Group now holds approximately one
9 hundred (100) boxes of materials and that is approximately only one/fifth of the data on the hard drive
10 which the defense is currently reviewing and organizing. See Exhibit E.

11 The defense did inquire of the prosecution whether there was a way for the defense to
12 streamline the discovery review process, for instance, if the Government would tell in advance which
13 documents they would like to use for trial as exhibits or what had been used in the federal grand jury to
14 reach a true bill, but the Government directed the defense back the indices. [These indices are covered
15 by the protective order and so are omitted here but will be brought to the court appearance for the
16 Court's in camera review, should the Court choose to examine them.]

17 **IV. ADVICE OF COUNSEL**

18 The Government is incorrect in its assessment of the availability of materials for the advice of
19 counsel defense. The Government states in their Opposition motion that "discovery related to an
20 advice of counsel defense was in the Defendants' possession, meaning that such has been available for
21 review since counsel was retained in this manner." Government Opposition motion at 2: 10-11.
22 That is untrue.

23 First, when current counsel was retained, it was not immediately clear that an advice of counsel
24 defense would be raised. That was not decided until Government discovery had been reviewed and the

1 defense began speaking cursorily with an attorney the defendants had engaged on the topic of
2 marketing practices.

3 As we have discussed with the federal prosecutors, our clients spoke with several attorneys for
4 marketing advice. Many of those conversations resulted in emails and memoranda, many of which our
5 clients did not keep, but the attorneys may have. There is a process of having the attorney client
6 privilege waived and then being allowed to examine relevant documents from the attorneys, hence the
7 cursory discussions before the attorney client privileged was waived and then the work in getting the
8 documentation that would provide a defense.

9 Thus far, the defense has received documents from one (1) attorney and is in the process of
10 receiving documents from two (2), possibly three (3) other attorneys, but none have completed their
11 file transfer to the defense as of yet and we still would have to go through the files once received for
12 document review, to have the files copied, to have them catalogued, and finally to have them bates
13 stamped to turn over to the prosecution. This of course is happening simultaneously with the current
14 document review of the Government's discovery and the defense investigation.

15 **V. ATTORNEY TRIAL SCHEDULE**

16 The defendant is entitled to his attorney of choice to represent him in a trial of his choosing. If
17 an attorney is otherwise engaged in a trial on a case where another client will not waive time, then the
18 court should find good cause to change the trial date to a time when the defendant's attorney can be
19 available to represent him. Due to Mr. Mesereau's trial schedule, a trial would have to be postponed
20 until he is available.

21 Mr. Mesereau, lead counsel on this matter, will be in Alabama on a murder case between May 4,
22 2017 and May 15, 2017, wherein the trial will be conducted. Then starting in August, both Mr.
23 Mesereau and Ms. Appelbaum are set have a trial conference on August 2, 2017, in a violent crime case
24 in Santa Barbara, and to begin trial on August 9, 2017, wherein the trial is expected to last 4 to 6 weeks.

1 This August trial date was set when counsel appeared in court on March 15, 2017, after the original
 2 motion for a continuance in this case was filed.

3 VI. CONCLUSION

4 In order for the defense to be ready for this trial and be properly and adequately prepared, the
 5 defendants request a continuance in order to continue the review of the discovery, to continue to
 6 investigate certain information, to continue to locate and prepare witnesses for trial, to continue in the
 7 preparation of a defense and reciprocal discovery for trial, and to take such other further and necessary
 8 steps to adequately prepare defendants case for trial, and for such other and further relief as the Court
 9 may deem just and proper. *See United States v. Poston*, 902 F.2d 90 (1990) (denial of a continuance to
 10 allow new counsel to prepare implicates the right to counsel); *United States v. Lingo*, 740 F.2d 667 (1984)
 11 (five factors which trial court must consider in deciding motion for continuance are nature of case;
 12 diligence of party requesting continuance; conduct of party opposing continuance; effect of
 13 continuance on parties; and asserted need for continuance); 18 U.S.C. §3500.

14 As stated in the previous motion, a trial set before November 2017, would greatly disadvantage
 15 the defendants as they would not effectively and adequately be represented at trial.

16 DATED: April 4, 2017
 17 Santa Monica, CA

Respectfully submitted,

/s/ Sharon Appelbaum /s/

Sharon Appelbaum, Esq.

LAW OFFICES OF SHARON APPELBAUM

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Email: sharon@sharonappelbaumlaw.com

MESEREAU LAW GROUP

Thomas A. Mesereau, Jr.

Tel: (310) 651-9960 | Fax: (310) 772-2295

Email: mesereau@mesereaulaw.com

*Attorneys for Dr. Ronald Grisd, and
 California Imaging Network Medical Group, and
 Willows Consulting Group*

EXHIBIT A

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Sharon Appelbaum <sharon@sharonappelbaumlaw.com>

Grusd plea agreement

2 messages

Sharon Appelbaum <sharon@sharonappelbaumlaw.com>

Fri, Mar 31, 2017 at 2:54 PM

To: genaro.ramirez@sdcd.org
Cc: mesereau@mesereaulaw.com

Hi Genaro,

Turns out Valerie Chu can't answer our questions about state restitution. Do you John or Renee have a moment to talk?

Sharon Appelbaum, Esq.
Law Offices of Sharon Appelbaum
Licensed to practice in CA and NY
LA Office: 401 Wilshire Blvd., 12th Fl., Santa Monica, CA 90401
NY Office: 100 Church Street, 8th Fl., New York, NY 10007
Tel: [310.853.0829](tel:310.853.0829)
Fax: [213.402.2434](tel:213.402.2434)
Email: Sharon@sharonappelbaumlaw.com
Website: www.sharonappelbaumlaw.com
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Like us on Facebook: www.facebook.com/appelbaumlaw

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Ramirez, Genaro <genaro.ramirez@sdcd.org>

Fri, Mar 31, 2017 at 3:52 PM

To: Sharon Appelbaum <sharon@sharonappelbaumlaw.com>
Cc: "mesereau@mesereaulaw.com" <mesereau@mesereaulaw.com>

We aren't available to talk. Restitution is based on what was actually paid.

Sent from my iPhone

[Quoted text hidden]

EXHIBIT B

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Sharon Appelbaum <sharon@sharonappelbaumlaw.com>

**FW: US v Grusd - Joint Motion to Continue and Exclude Time
10.13.2016.docx**

Chu, Valerie (USACAS) <Valerie.Chu@usdoj.gov>

Mon, Nov 21, 2016 at 9:09 AM

To: Sharon Appelbaum <sharon@sharonappelbaumlaw.com>

Cc: "mesereau@mesereaulaw.com" <mesereau@mesereaulaw.com>, "Han, Caroline (USACAS)" <Caroline.Han@usdoj.gov>, "Sheppard, Fred (USACAS)" <Fred.Sheppard@usdoj.gov>

Counsel,

Where do we stand on this? We have been ready to give you discovery for weeks, but are awaiting your signed Protective Orders.

We are eager to set a trial date at our December 19 hearing.

Valerie H. Chu

Assistant United States Attorney

U.S. Attorney's Office, Southern District of California

880 Front Street, Suite 6293

San Diego, CA 92101

(619) 546-6750

(619) 546-0450

From: Sharon Appelbaum [mailto:sharon@sharonappelbaumlaw.com]

Sent: Monday, November 7, 2016 12:02 PM

To: Chu, Valerie (USACAS) <VChu@usa.doj.gov>

Cc: mesereau@mesereaulaw.com; Mullins, Stacey (USACAS) <SMullins@usa.doj.gov>; Han, Caroline (USACAS) <chan@usa.doj.gov>; Sheppard, Fred (USACAS) <fsheppard@usa.doj.gov>

Subject: Re: US v Grusd - Joint Motion to Continue and Exclude Time 10.13.2016.docx

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EXHIBIT C

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Sharon Appelbaum <sharon@sharonappelbaumlaw.com>

Amended protective order

4 messages

Sharon Appelbaum <sharon@sharonappelbaumlaw.com>

Tue, Dec 13, 2016 at 9:13 AM

To: "Chu, Valerie (USACAS) (Valerie.Chu@usdoj.gov)" <Valerie.Chu@usdoj.gov>, "Sheppard, Fred (USACAS)" (Fred.Sheppard@usdoj.gov)" <Fred.Sheppard@usdoj.gov>, "Han, Caroline (USACAS) (Caroline.Han@usdoj.gov)" <Caroline.Han@usdoj.gov>
Cc: Thomas Mesereau <mesereau@mesereaulaw.com>

Hello AUSA Chu,

Since Judge Bashant granted the amended protective order, both Mr. Mesereau and I will be signing it immediately. I will bring signed original copies for you and the Court on December 19th.

I have two requests:

- 1) The discovery that we have not yet received because you were waiting on us signing the protective order, can you bring that to court if possible on Monday, so that I may be able to pick it up at that time?
- 2) In your response to the protective order you say Exhibit A is the state court's protective order, but I did not see any attachment, could you email me that protective order? I only have an unsigned version from the state court's request for a protective order. I called Mr. Ramirez, but he didn't have a signed copy. Thank you.

I look forward to meeting you on Monday.

Sincerely,
Sharon Appelbaum, Esq.
Law Offices of Sharon Appelbaum
Licensed to practice in CA and NY
LA Office: 401 Wilshire Blvd., 12th Fl., Santa Monica, CA 90401
NY Office: 100 Church Street, 8th Fl., New York, NY 10007
Tel: 310.853.0829
Fax: 213.402.2434
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www.sharonappelbaumlaw.com
Follow us on Twitter: @appelbaumlaw
Like us on Facebook: www.facebook.com/appelbaumlaw

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Chu, Valerie (USACAS) <Valerie.Chu@usdoj.gov>

Tue, Dec 13, 2016 at 10:06 AM

To: Sharon Appelbaum <sharon@sharonappelbaumlaw.com>, "Sheppard, Fred (USACAS)" <Fred.Sheppard@usdoj.gov>, "Han, Caroline (USACAS)" <Caroline.Han@usdoj.gov>
Cc: Thomas Mesereau <mesereau@mesereaulaw.com>, "Mullins, Stacey (USACAS)" <Stacey.Mullins@usdoj.gov>

Ms. Applebaum,

We will be asking the Court to reconsider the ruling as to paragraph 8.

So that we can prepare to provide you the discovery, please supply a 2TB hard drive. You may provide it in person or have it mailed to Stacey Mullins, 880 Front Street, Suite 6293, San Diego, CA. It will need to be encrypted and then loaded with the discovery materials. I'm not sure how long that will take, given the upcoming holidays.

See attached. I will withdraw the motion and re-file with the attachment.

Regards,

Valerie H. Chu

Assistant United States Attorney

U.S. Attorney's Office, Southern District of California

880 Front Street, Suite 6293

San Diego, CA 92101

(619) 546-6750

(619) 546-0450

From: Sharon Appelbaum [mailto:sharon@sharonappelbaumlaw.com]
Sent: Tuesday, December 13, 2016 9:13 AM
To: Chu, Valerie (USACAS) <VChu@usa.doj.gov>; Sheppard, Fred (USACAS) <fsheppard@usa.doj.gov>; Han, Caroline (USACAS) <chan@usa.doj.gov>
Cc: Thomas Mesereau <mesereau@mesereaulaw.com>
Subject: Amended protective order

[Quoted text hidden]



Grusd, et al, protective order re discovery & GJ materials.pdf
69K

To: "Chu, Valerie (USACAS)" <Valerie.Chu@usdoj.gov>
Cc: "Sheppard, Fred (USACAS)" <Fred.Sheppard@usdoj.gov>, "Han, Caroline (USACAS)" <Caroline.Han@usdoj.gov>, Thomas Mesereau <mesereau@mesereaulaw.com>, "Mullins, Stacey (USACAS)" <Stacey.Mullins@usdoj.gov>

Logistical question,

If we are paying for and supplying our own hard drive, then at the end of the case, your proposal is that we just wipe it clean?

Sharon Appelbaum, Esq.
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Chu, Valerie (USACAS) <Valerie.Chu@usdoj.gov>

Tue, Dec 13, 2016 at 10:17 AM

To: Sharon Appelbaum <sharon@sharonappelbaumlaw.com>
Cc: "Sheppard, Fred (USACAS)" <Fred.Sheppard@usdoj.gov>, "Han, Caroline (USACAS)" <Caroline.Han@usdoj.gov>, Thomas Mesereau <mesereau@mesereaulaw.com>, "Mullins, Stacey (USACAS)" <Stacey.Mullins@usdoj.gov>

Yes.

From: Sharon Appelbaum [mailto:sharon@sharonappelbaumlaw.com]

Sent: Tuesday, December 13, 2016 10:13 AM

To: Chu, Valerie (USACAS) <VChu@usa.doj.gov>

Cc: Sheppard, Fred (USACAS) <fsheppard@usa.doj.gov>; Han, Caroline (USACAS) <chan@usa.doj.gov>; Thomas Mesereau <mesereau@mesereaulaw.com>; Mullins, Stacey (USACAS) <SMullins@usa.doj.gov>

Subject: Re: Amended protective order

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EXHIBIT D

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Seagate Backup Plus Drive (D:)

Name

Date modified

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ACTIVE

3/1/2017 8:13 PM

File folder

Grusd Properties

General Sharing Security Previous Versions Customize

Grusd

Type: File folder

Location: D:\

Size: 431 GB (463,466,395,111 bytes)

Size on disk: 431 GB (463,727,611,904 bytes)

Contains: 148,883 Files, 1,747 Folders

Created: Thursday, January 26, 2017, 9:53:56 AM

Attributes: ☒ Read-only (Only applies to files in folder)

☐ Hidden

Advanced...

OK

Cancel

Apply

M
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File folder
File folder
File folder
File folder
File folder
Compressed (zipped)..
DMG File
Application
PDF File

9,794 KB
147,752 KB
143,959 KB
1,089 KB

EXHIBIT E



