

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Criminal Case No. 14-CR-000398-WJM

UNITED STATES OF AMERICA,

Plaintiff,

v.

BURTON WAGNER,

Defendant.

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**UNOPPOSED MOTION FOR ADDITIONAL ENDS OF JUSTICE CONTINUANCE OF  
MOTIONS DEADLINES AND TRIAL DATE**

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The United States of America, by United States Attorney John F. Walsh, and through the undersigned Assistant United States Attorney, hereby respectfully files this Unopposed Motion for Additional Ends of Justice Continuance, to include a continuance of currently set motion deadlines and trial dates. In support of this motion, the United States states as follows:

1. On November 4, 2014, the Court granted a motion by the parties for an ends of justice continuance on grounds of complexity (Dkt. No. 16). The Court excluded from the Speedy Trial Clock all days from the Order until March 4, 2015, set a motions deadline date of April 6, 2015, and a trial date of May 4, 2015 (Dkt. No. 17).

2. On February 12, 2015, for reasons previously presented in the above mentioned complexity motion, (Dkt. No. 15), the parties requested an additional ends of justice continuance, (Dkt. No. 25), citing that the case involves new and emerging technology, is unique and complex because it involves novel questions of law and fact, and may be a case of first impression. The undersigned also noted that the review and

analysis of digital evidence obtained in the investigation would be extremely time consuming and complicated for both parties.

3. On February 13, 2015, the Court granted the motion for ends of justice continuance (Dkt. No. 26), excluding time from March 4, 2015, until May 4, 2015. By separate Order (Dkt. No. 27), the Court set a Status Conference for May 21, 2015, a motions filing deadline of June 1, 2015, and a jury trial to commence on June 29, 2015.

4. Since the Court's Order granting the continuance, the parties have been diligently progressing to resolve the case without further litigation, communicating telephonically and in writing on a weekly, and sometimes daily, basis. The process of negotiating a disposition suitable to both parties has been time consuming and difficult, due to the novelty of the case, and the unique nature of the disposition being negotiated.

5. Although the undersigned is very confident that the parties will be able to resolve this case without further litigation or additional expenditure of government and judicial time and resources, the parties strongly agree that more time is needed to accomplish this task. As a consequence of progressing to such a disposition, in the event that the parties are unable to reach a mutually agreeable settlement, despite good faith efforts to do so, proceeding forward with the current motion filing deadline and trial date in this case would deny the parties the reasonable time necessary for effective and adequate preparation for pretrial proceedings and for the trial itself within the timelines set forth in Section 3161, even considering the ends of justice continuances previously granted by the Court. This is particularly true because of the unique and complex nature of this case, which involves new and emerging technology and novel questions of law and fact, and may be a case of first impression.

6. Pursuant to Title 18, United States Code, Section 3161(h)(7)(B)(ii) and (iv), the parties respectfully request an additional 45 days of excludable time from May 4, 2015, and a commensurate continuance of the motions deadline date and trial date, following the excludable time. In the alternative, the parties would respectfully request an additional 45 days of excludable time from May 4, 2015, with a status hearing in June to set new motion deadlines, a motions hearing, and a trial date.

7. In further support of this motion, the United States addresses the factors articulated in United States v. West, 828 F.2d 1468, 1449-70 (10th Cir. 1987):

a. The United States has exercised diligence in collecting, organizing, and producing the evidence in this case, and the parties have been negotiating a settlement of the case in good faith.

b. If this motion is granted, it is likely that the continuance will accomplish the purposes underlying the need for the continuance.

c. Defendant, through his counsel, concurs in the granting of this motion as noted below; the United States does not believe that such a continuance will inconvenience the parties or witnesses; and allowing the parties sufficient time to complete the above mentioned tasks would save judicial resources by providing the parties the time necessary to resolve the case without further litigation.

d. Without the requested continuance, the United States believes that the parties would be prejudiced because proceeding under the normal time limits would deny counsel for the defendant and the United States the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

7. The United States has conferred with Mr. Klein, counsel for defendant, and is authorized to inform the Court that the defendant concurs in the granting of this motion. The parties do not make this request in order to delay the case or for any improper purpose, but for the reasons articulated above. Therefore, the parties respectfully request that the Court grant this motion and set any status hearing, pretrial motion filing deadlines and/or trial dates in accordance with this request. In addition, because Mr. Klein is located in Los Angeles, California, in the event that the Court requires a hearing on this motion, Mr. Klein requests that he be permitted to appear by telephone.

Dated this 4th day of May, 2015.

Respectfully submitted,

JOHN F. WALSH  
United States Attorney

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 4, 2015, I electronically filed the foregoing Response with the Clerk of the Court using CM/ECF, which will send notification of such filing to all counsel of record:

All counsel of record

s/ Michele R. Korver  
MICHELE R. KORVER  
Assistant United States Attorney