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8 Attorneys for Defendant,
9 EDWARD WISHNER

10
11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
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14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 JOEL BARRY GILLS and EDWARD
18 WISHNER,

19 Defendants.
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Case No. 2:14-CR-00712-SJO

**JOINT *EX PARTE* APPLICATION TO
CONTINUE SENTENCING OF
DEFENDANTS EDWARD WISHNER
AND JOEL GILLIS**

1 Defendant, Edward Wishner, by and through his counsel of record, Reuven L.
2 Cohen, and Defendant, Joel Gillis, by and through his counsel of record, James W. Spertus,
3 respectfully request that the Court continue the sentencing in this matter to December 14,
4 2015 at 9:00 a.m.

5 Respectfully Submitted,

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7 DATED: May 21, 2015

By: /s/ Reuven L. Cohen
Reuven L. Cohen
Dordi Williams Cohen, LLP

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10 Attorneys for Defendant
EDWARD WISHNER

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12 DATED: May 21, 2015

By: /s/ James W. Spertus
James W. Spertus
Samuel A. Josephs
Spertus, Landes & Umhofer, LLP

15 Attorneys for Defendant
16 JOEL GILLS
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DECLARATION OF REUVEN L. COHEN

I, Reuven L. Cohen, declare as follows:

1. I am counsel of record for Defendant Edward Wishner in this action.

2. Discovery in this case currently exceeds 137,000 pages. I understand that additional discovery is forthcoming.

3. Calculation of loss will be one of the key issues at sentencing. In this case, the loss calculation likely will prove particularly complex because the loss calculation requires calculating the amounts invested and deducting “payments to losing investors up to the amount of their investment.” *United States v. Van Alstyne*, 584 F.3d 803, 808 (9th Cir. 2009). Those amounts have not yet been calculated, and the data necessary to make those calculations is in the hands of the government and/or the Receiver. The Receiver has taken possession of the NASI records necessary to make these calculations, and Mr. Wishner and Defendant Joel Gillis, through counsel, have been attempting to gather the required data through requests to the Receiver. Separately, the government has indicated that it will produce its loss calculations shortly, but has yet to produce its calculations.

4. Mr. Wishner and Mr. Gillis continue to cooperate with both the government and the Receiver in order to mitigate losses. Both Mr. Wishner and Mr. Gillis have attended proffer sessions with the government. Mr. Gillis has travelled to San Diego to assist the Receiver in its efforts. Mr. Wishner has met with the Receiver at his office.

5. Mr. Wishner is seventy-six years old. He suffers from numerous health problems. In addition to his general practitioner, Mr. Wishner is under the care of a cardiologist, a neurologist, and a physical therapist. In March 2015, Mr. Wishner suffered a stroke.

6. I have conferred with James W. Spertus, counsel for Mr. Gillis, and Mr. Spertus agrees that a sentencing continuance is necessary in this case since the loss calculations are complex and the discovery in this case is voluminous, and Mr. Spertus has reviewed and approved this joint *ex parte* application.

