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9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,

Case No. CR 14-712-SJO

12 Plaintiff,

**RENEWED JOINT EX PARTE  
APPLICATION TO CONTINUE  
SENTENCING FOR DEFENDANTS  
JOEL GILLIS AND EDWARD  
WISHNER; DECLARATION OF  
SAMUEL A. JOSEPHS**

13  
14 vs.

15 JOEL BARRY GILLIS,

16 Defendant.  
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19 TO THIS HONORABLE COURT AND ALL PARTIES OF RECORD,  
20 PLEASE TAKE NOTICE THAT defendant Joel Barry Gillis, by and through his  
21 attorneys of record, James W. Spertus and Samuel A. Josephs, and Edward  
22 Wishner, by and through his counsel of record, Reuven L. Cohen, hereby  
23 respectfully renew their request that the Court continue sentencing in this matter to  
24 December 14, 2015 at 9:00 a.m., or another date that is convenient for the Court,  
25 based on new facts that were unknown when the first application for a continuance  
26 was filed.

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1 This *ex parte* application is based on the attached Declaration of Samuel A.  
2 Josephs.

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4 DATED: August 18, 2015 SPERTUS, LANDES & UMHOFFER, LLP

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6 \_\_\_\_\_  
7 James W. Spertus  
8 Samuel A. Josephs  
9 Attorneys for Joel Barry Gillis

10 DATED: August 18, 2015 DORDI WILLIAMS COHEN, LLP

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13 /s/ Reuven L. Cohen

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15 Reuven L. Cohen  
16 Attorneys for Edward Wishner  
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DECLARATION OF SAMUEL A. JOSEPHS

I, SAMUEL A. JOSEPHS, hereby state and declare as follows:

1. I am an attorney duly licensed to practice before this Court and am counsel for Defendant Joel Barry Gillis. I submit this declaration in support of Mr. Gillis’s renewed *ex parte* application to continue sentencing in this matter to December 14, 2015, at 9:00 a.m., or another date that is convenient for the Court.

2. On August 12, 2015, Mr. Gillis and Mr. Wishner filed a joint *ex parte* application to continue sentencing from September 21, 2015 to December 14, 2015. Mr. Gillis and Mr. Wishner requested the continuance based primarily on their need for more time to develop the facts necessary to challenge the government’s loss analysis. The government opposed the request on August 12, 2015, and the Court denied the request. In opposition to the request for a continuance, the government declared to the Court on August 12, 2015, as follows:

[T]o the extent that defendants are now claiming that they have not had sufficient time to complete an analysis of investors who qualify as net winners, that contention is similarly meritless. ***Defendants were provided with a complete set of all investor files by the end of January 2015, as well as with a complete set of all pertinent bank records by no later than April 29, 2015.*** Defendants nowhere explain in their request for an additional 3-month continuance of the sentencing hearing what efforts they have made to calculate net gains to investors based on the records that have already been produced, and why they need an additional three months to review records they have had for a substantial period of time.

Declaration of Paul Stern, pp.4:24-5:6 (Docket No. 71-1). The government also represented to the Court that the defense was provided with a complete set of all investor files by the end of January 2015, as well as with a complete set of all pertinent bank records by no later than April 29, 2015. The day after making this

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1 representation to the Court, the government produced an additional production  
2 containing nearly 8,000 pages of financial discovery relevant to sentencing issues  
3 and loss analysis. The defense received the nearly 8,000 pages of new discovery on  
4 August 17, 2015. In addition, Mr. Gillis and Mr. Wishner are presently reviewing  
5 files located at the Receiver's office.

6         3. In its supporting declaration opposing the original request for a  
7 continuance, the government neglected to tell the Court that, while it had previously  
8 produced bank records and investor files, it did not disclose its loss analysis or  
9 theories of loss to Mr. Gillis and Mr. Wishner until *May 29, 2015*. Immediately  
10 after receiving the government's loss analysis, on *June 2, 2015*, the defense sent the  
11 government a letter seeking clarification of certain items and asking for additional  
12 records. Among other items, the defense requested: (1) a breakdown of what  
13 percentage of each investor's total investment constituted re-investment of money  
14 previously paid to that investor, since those amounts do not represent actual loss;  
15 and (2) the amounts that "net winners" profited. The government has not produced  
16 either of these requested items. As to the first item, the government informed the  
17 defense that it does not consider such information to be relevant to sentencing, and  
18 as to the second item, on *August 10, 2015*, the government informed the defense it  
19 was still in the process of obtaining information pertaining to the net winners.

20         4. The government has the burden of proving loss. *See United States v.*  
21 *Barnes*, 125 F.3d 1287, 1290 (9th Cir. 1997). In their original request for a  
22 continuance, Mr. Gillis noted that more time is needed to gather facts relevant to  
23 two reasons why the government has not carried its burden of proving loss. First,  
24 "payments to losing investors up to the amount of their investment do not count as  
25 losses." *United States v. Van Alstyne*, 585 F.3d 803, 818 (9th Cir. 2009). To date,  
26 the government has not provided the defense with any payments NASI made to  
27 individual investors by way of any entity that individual investor owned and  
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1 operated. Mr. Gillis and Mr. Wishner are currently reviewing the investor files at  
2 the Receiver's office in San Diego, California, which consists of approximately  
3 forty-two boxes of files. Mr. Gillis and Mr. Wishner have identified numerous  
4 examples of payments from NASI that were not credited to investors the  
5 government claims lost money. There are approximately 1,300 investor files Mr.  
6 Gillis and Mr. Wishner are reviewing and will therefore be reviewing these files and  
7 collecting the relevant information for the remainder of the week.

8         5. Mr. Gillis and Mr. Wishner renew their request for a brief sentencing  
9 continuance so that they can adequately prepare for sentencing. The government  
10 has produced hundreds of thousands of pages of documents relevant to the loss  
11 analysis in this case, and it continues to produce bank records and financial  
12 statements to the defense despite telling the Court otherwise. In addition, the  
13 government did not produce its loss analysis, on which it bears the burden of proof,  
14 until May 29, 2015. Not until that time was the defense in a position to begin  
15 analyzing the government's loss theories and able to start identifying facts that  
16 undercut the government's calculations. Mr. Gillis and Mr. Wishner, through their  
17 counsel, have been communicating with the government throughout this period of  
18 time, which has included diligently identifying deficient areas of production and  
19 requesting information from the government that is highly relevant to sentencing.  
20 The government has not only failed to provide much of that information, but it has  
21 continued to produce thousands of pages of documents to the defense while rushing  
22 forward to sentencing. In light of the volume of materials that have been produced  
23 and the ongoing review Mr. Gillis and Mr. Wishner are currently undertaking, the  
24 defense is not in a position to have sentencing position papers filed by September 7,  
25 2015, and a sentencing hearing on September 21, 2015. A brief continuance is  
26 requested.

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1           6.       On August 18, 2015, I emailed Assistant United States Attorneys  
2 Ranee Katzenstein and Paul Stern regarding the instant *ex parte* application. The  
3 government stated its position as follows: “The government does not oppose a brief  
4 continuance of no more than four weeks to afford defendants additional time to  
5 complete their analysis of financial records, including records recently obtained by  
6 the government and provided to defendant; however, for the reasons set forth in the  
7 opposition to defendant’s request for continuance, which the government filed on  
8 August 12, 2015 (Docket No. 71), the government opposes any lengthier  
9 continuance which would only serve to delay the proceedings and impede the  
10 vindication of the victims’ rights.”

11           7.       It should be noted that the government waited approximately three  
12 months to charge this case by way of Information after my colleague, James  
13 Spertus, informed the government that Mr. Gillis was willing to accept  
14 responsibility.

15           I declare under penalty of perjury under the laws of the State of California  
16 and the United States that the foregoing facts are true and correct.  
17 Executed this 18th day of August, 2015, at Los Angeles, California.

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19 Dated: August 18, 2015

Respectfully submitted,



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Samuel A. Josephs

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