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UNITED STATES OF AMERICA

9 UNITED STATES DISTRICT COURT

10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,  
12 Plaintiff,  
13 v.  
14 MARK WAYNE SALLING,  
15 Defendant.

No. CR 16-363-GHK

STIPULATION REGARDING REQUEST FOR  
(1) CONTINUANCE OF STATUS  
CONFERENCE AND (2) FINDINGS OF  
EXCLUDABLE TIME PERIODS PURSUANT  
TO SPEEDY TRIAL ACT

CURRENT STATUS CONFERENCE

Date: November 7, 2016  
Time: 2:00 p.m.  
Courtroom: Hon. George H. King

[PROPOSED]  
STATUS CONFERENCE

Date: January 23, 2017  
Time: 2:00 p.m.  
Courtroom: Hon. George H. King

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22 Plaintiff, the United States of America, by and through its  
23 counsel of record, the United States Attorney for the Central  
24 District of California and Assistant United States Attorney David M.  
25 Herzog, and defendant Mark Wayne Salling ("defendant"), both  
26 individually and by and through his counsel of record, Michael J.  
27 Proctor, Esq., hereby stipulate as follows.  
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1           1.     The indictment in this case was filed and made public on  
2 May 27, 2016. Defendant first appeared before a judicial officer of  
3 the court in which the charges in this case were pending on June 3,  
4 2016. The Speedy Trial Act, 18 U.S.C. § 3161, originally required  
5 that the trial commence on or before August 12, 2016. On June 3,  
6 2016, United States Magistrate Judge Rozella A. Oliver set the trial  
7 date for July 12, 2016, and set a status conference for June 27,  
8 2016.

9           2.     Defendant is released on bond pending trial. The parties  
10 estimate that the trial in this matter will last approximately 3-5  
11 days.

12           3.     This Court held a status conference in this matter on June  
13 27, 2016. Defendant appeared in person with his counsel of record.  
14 Upon the request of defendant through counsel, the Court vacated the  
15 trial date and set a further status conference for September 19,  
16 2016, at 2:00 p.m. The Court subsequently continued the status  
17 conference to November 7, 2016, at 2:00 p.m.

18           4.     Defendant is charged with violations of 18 U.S.C.  
19 §§ 2252A(a) (2) and (a) (5) (b): Receipt and Possession of Child  
20 Pornography. The government has produced discovery to the defense,  
21 including approximately 100,000 pages of reports, photographs, and  
22 forensic examination results. The government also has in its  
23 possession several digital devices containing images of child  
24 pornography, which the government has made available for defendant's  
25 review pursuant to the Adam Walsh Act, 18 U.S.C. § 3509 et seq. Mr.  
26 Proctor has indicated that the defense will seek to personally  
27 examine the images of child pornography and digital media evidence in  
28 the government's possession at a mutually convenient time and place,

1 in a manner that complies with the Adam Walsh Act. The government  
2 has advised the defense to contact the case agents to make  
3 arrangements for conducting this inspection and has provided contact  
4 information.

5 5. On November 1, 2016, Mr. Proctor informed government  
6 counsel that the defense has been endeavoring to locate a computer  
7 forensic expert to examine defendant's digital media, which is in the  
8 government's possession pursuant to the Adam Walsh Act. Mr. Proctor  
9 informed government counsel that the defense has recently hired such  
10 an expert and is now in a position to conduct the defense's digital  
11 review.

12 6. Mr. Proctor represents that the defense has been conducting  
13 an ongoing investigation into the facts of the case, as well as the  
14 personal history and characteristics of the defendant. The defense's  
15 investigation has expanded in scope beyond what the defense  
16 originally anticipated when the Court set the prior status  
17 conference. The defense is also preparing evidence of mitigation  
18 that the defense anticipates presenting to the government in an  
19 effort to resolve this case without proceeding to trial.

20 7. Mr. Proctor has informed the government that the defense  
21 will also be filing a separate document under seal and *in camera* to  
22 set forth additional bases for (a) the defense's request for  
23 additional time to review the evidence and (b) the requested  
24 continuance.

25 8. Mr. Proctor represents that additional time is necessary to  
26 confer with defendant, continue conducting the defense's independent  
27 investigation of the case, obtain and prepare mitigation evidence,  
28 conduct and complete additional legal research including for

1 potential pre-trial motions, review the discovery and potential  
2 evidence in the case, and prepare for trial in the event that a  
3 pretrial resolution does not occur. Mr. Proctor represents that  
4 failure to grant the continuance would deny him reasonable time  
5 necessary for effective preparation, taking into account the exercise  
6 of due diligence. Accordingly, defendant and defense counsel  
7 represent that the defense will not be prepared to proceed to trial  
8 prior to January 23, 2017, and request that the Court continue the  
9 current status conference from November 7, 2016, to January 23, 2017,  
10 at 2:00 p.m.

11 9. Mr. Proctor has conferred with defendant regarding  
12 defendant's rights under the Speedy Trial Act. Defendant represents  
13 that he understands his rights under the Speedy Trial Act and that he  
14 knowingly and voluntarily waives those rights and agrees to the  
15 continuance of the status conference from November 7, 2016, to  
16 January 23, 2017, and the continued vacation of the trial date.  
17 Defendant further believes that failure to grant the continuance will  
18 deny him continuity of counsel and adequate representation.

19 10. The government does not object to the continuance.

20 11. The requested continuance is not based on congestion of the  
21 Court's calendar, lack of diligent preparation on the part of the  
22 attorney for the government or the defense, or failure on the part of  
23 the attorney for the Government to obtain available witnesses.

24 12. For purposes of computing the date under the Speedy Trial  
25 Act by which defendant's trial must commence, the parties agree that  
26 the time period of November 7, 2016, to January 23, 2017, inclusive,  
27 should be excluded pursuant to 18 U.S.C. §§ 3161(h)(7)(A),  
28 (h)(7)(B)(i), and (h)(7)(B)(iv) because the delay results from a

1 continuance granted by the Court at defendant's request, without  
2 government objection, on the basis of the Court's finding that: (i)  
3 the ends of justice served by the continuance outweigh the best  
4 interest of the public and defendant in a speedy trial; (ii) failure  
5 to grant the continuance would be likely to make a continuation of  
6 the proceeding impossible, or result in a miscarriage of justice; and  
7 (iii) failure to grant the continuance would unreasonably deny  
8 defendant continuity of counsel and would deny defense counsel the  
9 reasonable time necessary for effective preparation, taking into  
10 account the exercise of due diligence.

11 13. Nothing in this stipulation shall preclude a finding that  
12 other provisions of the Speedy Trial Act dictate that additional time  
13 periods be excluded from the period within which trial must commence.  
14 Moreover, the same provisions and/or other provisions of the Speedy  
15 Trial Act may in the future authorize the exclusion of additional  
16 time periods from the period within which trial must commence.

17 IT IS SO STIPULATED.

18 Dated: November 2, 2016

Respectfully submitted,

19 EILEEN M. DECKER  
United States Attorney

20 LAWRENCE S. MIDDLETON  
21 Assistant United States Attorney  
22 Chief, Criminal Division

23 /s/ David M. Herzog  
24 DAVID M. HERZOG  
Assistant United States Attorney

25 Attorneys for Plaintiff  
26 UNITED STATES OF AMERICA  
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1 I am defendant MARK WAYNE SALLING's attorney. I have carefully  
2 discussed every part of this stipulation and the continuance of the  
3 trial date with my client. I have fully informed my client of his  
4 Speedy Trial rights. To my knowledge, my client understands those  
5 rights and agrees to waive them. I believe that my client's  
6 decisions (a) to agree to a continuance of the status conference from  
7 November 7, 2016, to January 23, 2017 and (b) to give up the right to  
8 be brought to trial earlier than January 23, 2017, are informed and  
9 voluntary decisions.

10  
11 Michael J. Proctor 11.3.16  
12 MICHAEL J. PROCTOR KMS Date  
13 Attorney for Defendant  
14 MARK SALLING

15 I have read this stipulation and have carefully discussed it  
16 with my attorney. I understand my Speedy Trial rights. I  
17 voluntarily agree to the continuance of the status conference in this  
18 case from November 7, 2016, to January 23, 2017. I also voluntarily  
19 agree to the continuing vacation of the trial date, and give up my  
20 right to be brought to trial earlier than January 23, 2017. I  
21 understand that I will be ordered to appear in the Courtroom of the  
22 Honorable George H. King, United States District Judge, which will be  
23 in the new Federal Courthouse, located at 350 West 1st Street, Los  
24 Angeles, California, 90012, at 2:00 p.m. on January 23, 2017.

25  
26 MWS 11/3/16  
27 MARK WAYNE SALLING Date  
28 Defendant