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7 **UNITED STATES DISTRICT COURT**
8 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 v.

12 MICHAEL JOHN AVENATTI,

13 Defendant.
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SA CR No. 19-061-JVS

DEFENDANT’S MOTION FOR A TRIAL
CONTINUANCE OR, IN THE
ALTERNATIVE, SIGNIFICANT *VOIR*
DIRE BY THE COURT RELATING TO
COVID-19 AND THE DELTA VARIANT

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16 Defendant MICHAEL JOHN AVENATTI (“Mr. Avenatti”) by and through his
17 counsel of record, H. Dean Steward, hereby files his Motion for a Trial Continuance or,
18 in the Alternative, Significant *Voir Dire* by the Court Relating to Covid-19 and the Delta
19 Variant.
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21 Dated: July 19, 2021

Respectfully submitted,

22 /s/ H. Dean Steward
23 H. DEAN STEWARD

24 Attorney for Defendant
25 MICHAEL JOHN AVENATTI
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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3 **I. INTRODUCTION AND FACTUAL BACKGROUND**

4 The risks due to Covid-19 and the Delta variant in particular have skyrocketed in
5 the United States and in the Central District since *voir dire* began in this case on July 13,
6 2021. Local and national health officials are raising alarms regarding the impending
7 health crisis because the Delta variant is widely understood to be dramatically more
8 transmissible, severe and deadly than prior variants of the virus.¹ *See, e.g.*, “L.A. County
9 coronavirus spike hits alarming levels, with 10,000 infected in a week, as Delta variant
10 spreads” Los Angeles Times, July 19, 2021. Further, as the Court recently noted, the
11 vaccine is “no silver bullet” – one can still get the virus and suffer serious health
12 problems and even death from the infection.

13 Over this past weekend (July 17 and 18), due to the alarming rise in cases and the
14 associated health risks, Los Angeles County implemented an indoor mask mandate. The
15 rate of new Covid-19 cases has increased 300% since July 4 according to the county
16 health department. Hospitalizations in the county due to Covid-19 have doubled from
17 last month. The daily test positivity rate in Los Angeles County has risen from .5% on
18 June 15 to 3.7% last week - an increase of over 7x. Los Angeles County is now
19 recording more than 10,000 cases a week – a pace not seen since March. The infection
20 rate on the day that the county was re-opened, June 15, went from an average of 173 new
21 cases a day to the most recent seven-day period that ended last week with 1,077 new
22 cases. On Sunday, 1,635 new cases were reported. The data for this week promises to
23 be even worse, especially because the Delta variant spreads much more rapidly and
24 infects many more age groups than prior variants. Further, the county just surpassed the

25 ¹ All indications are that the Delta variant affects a broader cross-section of the
26 community and results in far more serious illness than prior variants. Additionally, the
27 true effectiveness of the vaccines against the Delta variant is presently unknown; reports
28 of vaccinated individuals contracting the virus have begun to surface with greater
frequency over the last two weeks.

1 threshold to have “high” community transmission of the disease, the worst tier as defined
2 by the U.S. Centers for Disease Control and Prevention. *See, e.g.*, “Amid new LA
3 County mask mandate, concerning COVID trend shows no sign of abating,” abc7.com,
4 July 19, 2021; “People unvaccinated against Covid-19 risk the most serious virus of their
5 lives, expert says,” cnn.com, July 19, 2021; “The Delta variant is so contagious, those
6 unprotected will likely get it, a Trump administration FDA chief says,” cnn.com, July
7 18, 2021.

8 The data from Orange County is equally concerning. The most recent data from
9 last week shows that the daily case average has more than tripled over the prior two
10 weeks. Only fourteen days prior, the daily average of new cases was about 48. The
11 figure last Tuesday stood at 150, with a similar rise in hospitalizations. And it is
12 expected that when the data on the Orange County Health Care dashboard is updated
13 tomorrow from the last update almost a week on July 13, the increase in infections will
14 be even more dramatic. Hospitalizations and deaths in the county are also rising. Indeed,
15 it is widely understood and agreed that illness and death from the virus will increase
16 dramatically in the county in the days and weeks ahead. There are few, if any, experts
17 who are predicting anything other than significantly rising cases and deaths in the days
18 and weeks ahead.

19 A jury has yet to be impaneled in this case, which involves a trial that is expected
20 to last at least one month and involve approximately 25-30 witnesses, including
21 witnesses travelling from outside of the Central District. One prospective juror was sent
22 home on Friday due to health concerns and illness² - others are sure to follow.

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27 ² It is unknown whether she has been diagnosed with the Covid-19 virus, but if so, she
28 may have infected other members of the venire, which could have obvious disastrous
effects.

1 **II. ARGUMENT**

2 **A. The Trial Should Be Continued**

3 Simply put, it makes little sense to proceed with impaneling a jury for a month-
4 long trial, in the middle of a health crisis that is widely expected, by all reasonable
5 experts, to grow exponentially worse in the days and weeks ahead. The health risks to
6 the Court, its staff, the jurors, witnesses, attorneys and the Defendant³ are simply too
7 great and not worth the difference between trying this case now versus mere months
8 from now. Further, the prejudice to the government associated with a delay is negligible
9 compared to the significant health risks attendant with proceeding with the trial and the
10 likely prejudice to the defendant if the trial proceeds as scheduled.

11 The risks are especially dangerous because of the fact that the virus and the Delta
12 variant often spread by way of asymptomatic transmission, meaning that a person can
13 carry and spread the virus without ever knowing they have the virus and without ever
14 exhibiting any symptoms. In reality, this means that a person can be present in court or
15 among other jurors, have no symptoms, and yet infect numerous other people that she or
16 he comes into contact with.

17 Moreover, Mr. Avenatti is entitled to a fair trial before a jury undistracted by a
18 health crisis that threatens their health and safety. Proceeding with a trial at this juncture
19 literally risks lives - unnecessarily. It also risks the defendant suffering severe prejudice
20 as a result of jurors who are most interested in getting to any verdict as quickly as
21 possible as opposed to the right verdict after a measured, deliberative process. Rushing
22 through a trial and deliberations because a deadly virus is infecting the community and
23 spreading like wildfire is not consistent with fundamental due process.

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³ The risks to Mr. Avenatti's health associated with contracting the virus have been well
27 documented for the Court and supported by expert declaration. *See, e.g.*, Declaration of
28 board-certified infectious disease specialist Dr. F. Ramzi Asfour (under seal) [Dkt. No.
280].

1 Mr. Avenatti was recently sentenced to 30 months in federal prison in connection
2 with the Nike related case; he is required to self-surrender on September 15. He is
3 currently on home confinement, under severe restrictions imposed by this Court. He has
4 never been found to be a flight risk, let alone a serious flight risk. He has been on home
5 confinement for over a year with no issues or violations. And the Pre-Trial Services
6 Agency recently reported to the Court that he is not a danger to the community or a flight
7 risk. As a result, there is little risk that a brief delay will result in any real prejudice to
8 the government associated with Mr. Avenatti not being available for trial once the risk
9 has subsided. Further, if this motion is granted, Mr. Avenatti is prepared to waive his
10 speedy-trial rights in connection with any continuance and provide a knowing, voluntary,
11 and intelligent waiver of such rights.

12 **B. In The Alternative, The Court Should Conduct Significant *Voir Dire***
13 **Regarding the Covid-19 Virus, the Delta Variant, the Associated Risks**
14 **and the Associated Concerns of the Venire**

15 In the event the Court denies the continuance request, Mr. Avenatti respectfully
16 requests, pursuant to Fed. R. Crim. P. 24(a), that the Court conduct significant *voir dire*
17 of the venire regarding the Covid-19 virus, the Delta variant, the associated risks, and the
18 associated concerns of the venire. It is vital to Mr. Avenatti's ability to obtain a fair trial
19 and his right to due process that the Court and the parties be assured that the current and
20 looming health crisis will in no way affect the ability to seat a random, fair cross-section
21 of community and also ensure a fair trial.

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1 **III. CONCLUSION**

2 For each of the reasons stated herein, Mr. Avenatti respectfully requests that the
3 Court grant a continuance and delay the trial. In the alternative, Mr. Avenatti requests
4 that the Court conduct significant *voir dire* regarding the issues identified above.

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6 Dated: July 19, 2021

Respectfully submitted,

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8 /s/ H. Dean Steward
H. DEAN STEWARD

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10 Attorney for Defendant
MICHAEL JOHN AVENATTI

CERTIFICATE OF SERVICE

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2 I, H. Dean Steward, am a citizen of the United States, and am at least 18 years of
3 age. My business address is 17 Corporate Plaza, Suite 254 in Newport Beach, California
4 92660. I am not a party to the above-entitled action. I have caused, on July 19, 2021,
5 service of the:
6

7 DEFENDANT’S MOTION FOR A TRIAL CONTINUANCE OR, IN THE
8 ALTERNATIVE, SIGNIFICANT *VOIR DIRE* BY THE COURT RELATING TO
9 COVID-19 AND THE DELTA VARIANT

10 on the following party, using the Court’s ECF system:

11 AUSA BRETT SAGEL AND AUSA ALEXANDER WYMAN
12

13 I declare under penalty of perjury that the foregoing is true and correct.

14 Executed on July 19, 2021

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16 /s/ H. Dean Steward

17 H. Dean Steward
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