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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

16 UNITED STATES OF AMERICA,

17 Plaintiff,

18 v.

19 MICHAEL JOHN AVENATTI,

20 Defendant.
 21

SA CR No. 19-061-JVS

GOVERNMENT'S SUBMISSION REGARDING
 DEFENDANT MICHAEL JOHN AVENATTI'S
 REPRESENTATION ISSUES

Hearing Date: May 7, 2019
 Hearing Time: 10:00 a.m.
 Location: Courtroom of the
 Hon. James V. Selna

22
 23 In advance of the status conference scheduled for May 7, 2019,
 24 in United States v. Michael John Avenatti, SA CR No. 19-061-JVS,
 25 plaintiff United States of America, by and through its counsel of
 26 record, the United States Attorney for the Central District of
 27 California and Assistant United States Attorneys Julian L. André and
 28 Brett A. Sagel, hereby submits the following statement setting forth

1 the government's position regarding defendant MICHAEL JOHN AVENATTI's
2 representation issues. As set forth therein, the government submits
3 that if defendant has not yet retained counsel to represent him in
4 this matter, the Court should order defendant to fill out a financial
5 affidavit, immediately appoint counsel to represent defendant, and,
6 if appropriate, order defendant to contribute some or all of the
7 costs of his representation.


8 This submission is based upon the attached memorandum of points
9 and authorities, the files and records in this case, and such further
10 evidence and argument as the Court may permit.

11 Dated: May 6, 2019

Respectfully submitted,

12 NICOLA T. HANNA
United States Attorney

13 LAWRENCE S. MIDDLETON
14 Assistant United States Attorney
Chief, Criminal Division

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 Defendant MICHAEL JOHN AVENATTI ("defendant") is charged in a
3 36-count indictment with wire fraud; willful failure to pay over
4 withheld payroll taxes; endeavoring to obstruct the administration of
5 the Internal Revenue Code; willful failure to file tax returns; bank
6 fraud; aggravated identity theft; and making false declarations and
7 providing false testimony in bankruptcy proceedings. (CR 16 (the
8 "Indictment").) After defendant appeared for his post-indictment
9 arraignment ("PIA") without counsel (CR 23), this Court scheduled a
10 status conference for May 7, 2019, to address defendant's
11 representation issues. (CR 22.) As of the date of the instant
12 filing, the government has received no notice or other information
13 indicating that defendant has retained counsel or otherwise resolved
14 his representation issues.

15 If defendant appears at the status conference without counsel,
16 the Court will undoubtedly inquire as to how defendant intends to
17 proceed. The government, however, does not believe that there is any
18 valid reason why defendant has yet to resolve his representation
19 issues and is concerned that defendant will seek to use such issues
20 to unnecessarily delay this prosecution. Thus, if defendant appears
21 without counsel, regardless of defendant's explanation as to why he
22 has yet to obtain counsel, the government believes the appropriate
23 course of action would be for the Court to immediately appoint
24 counsel to represent defendant going forward.

25 First, the trial in this matter is currently set for June 4,
26 2019. (CR 23.) With the initial trial date only four weeks away, it
27 is critical that defendant be represented by counsel immediately so
28

1 that this prosecution can proceed in a timely and appropriate
2 fashion.

3 Second, there is a strong public interest in ensuring that this
4 case proceed to trial as soon as possible. The Indictment alleges
5 that the victims of the wire fraud counts in this case have lost
6 millions of dollars as a result of defendant's fraudulent conduct;
7 they have a statutory right to have this case proceed and these
8 allegations be resolved without unnecessary delay. 18 U.S.C.
9 § 3771(7). Indeed, one of defendant's alleged victims, Client 1, had
10 been dependent on defendant for basic living expenses for the last
11 four years and recently lost his Supplemental Security Insurance
12 benefits as a result of defendant's conduct. (See Indictment
13 ¶ 7(j).) Additionally, the public's interest in a speedy trial is
14 particularly heightened here because a number of other cases
15 involving defendant will likely be delayed pending resolution of this
16 prosecution. These cases include, among others, the separate
17 extortion-related criminal charges pending against defendant in the
18 Southern District of New York, United States v. Avenatti, No. 1:19-
19 MJ-2927 (S.D.N.Y) (the "SDNY Prosecution"),¹ and a civil judgment-
20 debtor case involving defendant's law firm pending in this district,
21 In re Eagan Avenatti, No. 8:18-CV-1644-VAP (C.D. Cal.) (the
22 "Judgement-Debtor Case").

23 Third, defendant has already had a substantial period of time to
24 resolve his representation issues in this matter. Defendant made his
25

26
27 ¹ The government understands that defendant has not yet
28 retained counsel to represent him in the SDNY Prosecution either. On
or about April 25, 2019, defendant waived his right to be charged by
information or indictment for an additional 30 days so that he could
obtain counsel. See SDNY Prosecution, Dkt. 7.

1 initial appearance in this case six weeks ago on March 25, 2019. (CR
2 13; CR 15.) Defendant made his initial appearance in this district
3 on April 1, 2019, and had retained counsel representing him at that
4 time. (CR 10.) The indictment in this case was filed on April 10,
5 2019, nearly one month ago. (CR 16.) Indeed, at PIA defendant
6 stated that he was in the process of "finalizing" his representation.

7 Defendant also appears to have the financial wherewithal to
8 retain counsel. Defendant is currently represented by retained
9 counsel in other litigation matters. See, e.g., In re The Trial
10 Group, LLP a/k/a Eagan Avenatti, LLP, No. 8:19-BK-10822-CB (C.D.
11 Cal.); In re Eagan Avenatti, No. 8:18-CV-1644-VAP (C.D. Cal.).

12 Defendant recently stated in a nationally-televised interview on CNN
13 that he is "not broke" and is not having any money problems.² See
14 Sara Sidner, After a year in the spotlight, Michael Avenatti claims
15 "I've been humbled", CNN (Apr. 27, 2019, 5:19 p.m.),
16 [https://www.cnn.com/2019/04/26/politics/michael-avenatti-](https://www.cnn.com/2019/04/26/politics/michael-avenatti-humbled/index.html)
17 [humbled/index.html](https://www.cnn.com/2019/04/26/politics/michael-avenatti-humbled/index.html). The government also understands that as recently
18 as April 2019 defendant was renting a luxury condominium for
19 approximately \$11,000 per month.

20 Additionally, on April 26, 2019, the Friday before defendant's
21 Monday PIA, defendant posted the following message on Twitter.com:
22 "Please note that I will be severely limiting my tweets regarding
23 either criminal case as we prepare for trial across the coming months
24 or more. I am very fortunate to have some of the best lawyers in

25
26 ² To the extent defendant's public statements are accurate,
27 defendant should be required to make a full contribution for any
28 legal services that have been or will be provided to him by appointed
counsel. To the extent these public statements are inaccurate, there
is no reason why defendant should not seek the immediate appointment
of counsel.

1 America advising me." Defendant's failure to retain counsel by PIA,
2 or to date, would appear to signify that defendant either does not
3 have the resources to obtain counsel, or is not retaining counsel for
4 purposes of delay. Because there does not appear to be any valid
5 reason why defendant has been unable to resolve his representation
6 issues thus far, there is no reason for the Court to delay appointing
7 counsel if defendant appears at the status conference without
8 counsel.

9 Finally, the government is concerned that defendant will use his
10 representation issues to delay this prosecution unnecessarily.
11 Defendant has a pattern and practice of using delay tactics to avoid
12 responsibility for his conduct. For example, as alleged in the
13 Indictment, defendant repeatedly sought to lull his former legal
14 clients in an effort to prevent them from discovering that he had
15 embezzled their money. (See Indictment ¶ 7.) Similarly, defendant
16 repeatedly sought to impede and obstruct an Internal Revenue Service
17 ("IRS") collection action relating to defendant's company, Global
18 Baristas US LLC ("GBUS"), in an effort to avoid having to pay to the
19 IRS the payroll taxes that GBUS had withheld from its employees
20 paychecks. (See Indictment ¶¶ 10-26.)

21 Defendant has also repeatedly sought to delay civil or
22 bankruptcy proceedings in which defendant and/or defendant's law
23 firm, Eagan Avenatti LLP ("EA LLP"), were involved. Most recently,
24 on March 7, 2019, defendant filed a bankruptcy petition on behalf of
25 EA LLP in In re The Trial Group, No. 8:19-BK-10822-CB. This petition
26 appears to have been filed for the specific purpose of delaying a
27 judgment debtor exam of defendant that had been scheduled for March
28 8, 2019, in the Judgment-Debtor Case. Defendant, however, did not

1 have authorization to file such a petition because in February 2019
2 defendant stipulated to the appointment of a receiver who had
3 complete authority to oversee EA LLP's business affairs, including
4 the decision to file for bankruptcy. In re Eagan Avenatti, No. 8:18-
5 CV-1644-VAP, Dkt. No. 53 (Feb. 12, 2019). The Honorable Catherine E.
6 Bauer, United States Bankruptcy Judge, dismissed the bankruptcy
7 petition for this very reason and issued an Order to Show Cause to
8 determine whether defendant should be sanctioned for this conduct,
9 which Judge Bauer scheduled for May 8, 2019.³ In re The Trial Group
10 LLP, No. 8:19-BK-10822, Dkt. Nos. 35, 39.

11 In conclusion, the government submits that if defendant appears
12 at the statue conference without counsel the appropriate course of
13 action would be for the Court to order defendant to submit a
14 financial affidavit, immediately appoint counsel to represent
15 defendant in this matter, and, if appropriate, order defendant to
16 contribute some or all of the costs of his representation. If
17 defendant later obtains retained counsel, retained counsel can be
18 substituted in to represent defendant at that time. Although the
19 government recognizes that defendant has a right to be represented by
20 retained counsel if he so choses, defendant should not be allowed to
21 delay this case indefinitely while he resolves his representation
22 issues.

25
26 ³ On April 17, 2019, defendant filed a motion to stay the
27 contempt proceedings and the May 8, 2019, Order to Show Cause hearing
28 pending resolution of this criminal prosecution. In re The Trial
Group LLP, No. 8:19-BK-10822, Dkt. No. 45. As of the date of the
instant filing, defendant's motion to stay was still pending before
the bankruptcy court. As noted above, defendant is represented by
retained counsel in the bankruptcy proceedings.