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DEC 13 2004

**CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**
BY _____
DEPT. CLERK

1 Jeffrey A. Dickstein, Bar Number 70638
2 Law Offices of Robert G. Bernhoft
3 207 E. Buffalo Street, Suite 600
4 Milwaukee, WI 53202
5 (414) 276-3333 telephone
6 Attorney for Joseph Banister

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**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

14 UNITED STATES OF AMERICA,) CR. No. S-04-435 WBS
15)
16 Plaintiff,)
17)
18 vs.)
19)
20 JOSEPH BANISTER, et al.,)
21)
22 Defendants.)
23)
24)
25)
26)
27)
28)

**DEFENDANT BANISTER'S REQUEST FOR FINDING
OF EXCLUDABLE TIME AND AFFIDAVIT OF
ATTORNEY JEFFREY A. DICKSTEIN IN SUPPORT THEREOF**

COMES NOW Defendant Joseph Banister and his trial counsel, Jeffrey A.

Dickstein, who submits this written request for finding of excludable time. In support thereof, they make the following showing:

1. Defendant Banister has filed concurrently herewith a motion to vacate the dates currently set for the filing of pre-trial motions, for the hearing on those motions and pre-trial conference, and the trial date, on the specific grounds that more time is necessary to analyze and review eighteen boxes of potential defense exhibits, discuss those documents with Defendant Banister, copy and provide relevant documents to the Government in reciprocal discovery, prepare Banister to testify, obtain third party tax records, interview twenty Government witnesses, and work around the schedule of four


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certified public accountants.

2. Excludable time under 18 U.S.C. § 3161(h)(8)(B)(iv) is requested from the date of the filing of the motion to vacate and re-set dates, December 13, 2004, through and including the new date set for the trial of this matter.

Dated: December 10, 2004.

The Law Office of Robert G. Bernhoft, S.C.

By: 
Jeffrey A. Dickstein
Attorney for Defendant Joseph Banister

Pursuant to this Court's Order Re Excludable Time, and without any waiver of the right to remain silent, or any other rights under the United States Constitution, Defendant Banister joins in this application for excludable time.

Dated: December 10, 2004

Joseph Banister

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certified public accountants.

2. Excludable time under 18 U.S.C. § 3161(h)(3)(B)(iv) is requested from the date of the filing of the motion to vacate and re-set dates, December 13, 2004, through and including the new date set for the trial of this matter.

Dated: December 10, 2004.

The Law Office of Robert G. Bernhof, S.C.

By: _____

Jeffrey A. Dickstein
Attorney for Defendant Joseph Banister

Pursuant to this Court's Order Re Excludable Time, and without any waiver of the right to remain silent, or any other rights under the United States Constitution, Defendant Banister joins in this application for excludable time.

Dated: December 10, 2004

Joseph R. Banister
Joseph Banister

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DECLARATION OF JEFFREY A. DICKSTEIN

I, Jeffrey A. Dickstein, declare as follows:

1. I am an attorney admitted to practice in the Eastern District of California.

2. I am an attorney of record for Defendant Joseph Banister, a defendant in this action, and will be lead counsel during the trial.

3. On December 9, 2004, I received eighteen boxes of documents from Banister, which documents were relied upon by Banister in arriving at his state of mind under which he acted as alleged in the indictment.

4. I must review each of those documents and discuss them with my client. My past experience is that it will take me several days to adequately review the contents of each box.

5. Thereafter, I must meet with my client and review those documents with him.

6. This is a tax case in which the tax loss is alleged because of removing co-defendant Al Thompson's employees from the tax rolls. To prepare to defend this allegation, as well as in order to prove the actual tax loss, Defendant will require access to third party tax records.

7. The names of the relevant employees of co-defendant Al Thompson are not known to Defendant Banister or his attorneys, and some time will be necessary to ascertain who those employees were in order to request their tax records through discovery.

8. Thereafter, more time will be necessary for the Government to obtain those records and provide them to Defendant Banister.

1 9. AUSA Twiss has indicated to your declarant that he intends to call twenty
2 government witnesses. Sufficient time is necessary to locate and interview those
3 witnesses.

4 10. Defendant Banister may call up to four certified public accountants to
5 testify on his behalf. Those four will be particularly busy and generally unavailable
6 during tax season.

7 11. Based upon the experience of your declarant, who has tried a number of
8 tax offense cases, and the nature of this case and number of documents to be dealt with, I
9 do not believe I, or my client, can be adequately prepared to defend without at least four
10 months of preparatory time, even with the exercise of due diligence.

11 12. I have discussed this matter with my client. His signature appears on the
12 Request for Excludable Time to which this declaration is attached, and he understands all
13 time requested for trial preparation will be excludable.

14 I declare under penalty of perjury that the foregoing is true and correct and that
15 this declaration was executed in Milwaukee, Wisconsin on December 10, 2004.

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Jeffrey A. Dickstein

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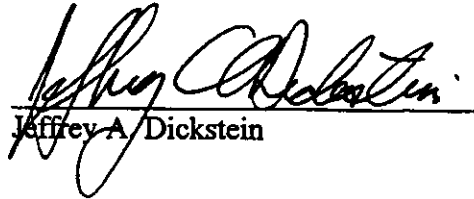
CERTIFICATE OF SERVICE

The undersigned, on this 10th day of December, 2004, caused the within and foregoing document to be mailed by first class mail, postage prepaid, to the interested parties and/or their counsel of record as follows:

Rachelle Barbour, Asst. Public Defender
801 I Street, 3rd Floor
Sacramento, CA 95814

AUSA Robert M. Twiss
501 I Street, Suite 10-100
Sacramento, CA 95814

Walter A. Thompson
Sacramento County Main Jail
651 I Street
Sacramento, CA 95814-2400


Jeffrey A. Dickstein