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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHEASTERN DIVISION**

**United States of America,
Plaintiff,**

vs.

**Alfred Leon Longie,
Defendant.**

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**ORDER SETTING
DATE FOR RETRIAL**

Criminal No. 2:08-cr-61

On October 23, 2008, Defendant was convicted by a jury on Count Two of the Indictment, which charged him with Abusive Sexual Contact in violation of 18 U.S.C. § 2244(a)(3). The jury was hung as to Count One, which charged him with Sexual Abuse of a Minor in violation of 18 U.S.C. § 2243(a), and the Court subsequently declared a mistrial on that count.

Under the Speedy Trial Act, if the defendant is to be tried again following the declaration of a mistrial, the trial shall commence within 70 days from the date the action occasioning the retrial becomes final. 18 U.S.C. § 3161(e). However, the periods of delay set forth in 18 U.S.C. § 3161(h) are still excluded from the 70-day time limitation, including an ends-of-justice continuance under § 3161(h)(8).

At a status conference held on October 30, 2008, the Court discussed with the parties the potential retrial dates on the calendar within 70 days of the date of the mistrial, all of which were in November or December 2008. Defendant requested a trial date in January 2009, and he waived his right to a speedy trial orally and on the record. The Court accepted that waiver, and the Court further concluded that a trial date in January was appropriate to provide the parties with sufficient time to both prepare for retrial and pursue the possibility of settling this case without a trial.

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If the court finds that the ends of justice served by granting a continuance outweigh the best

interest of the public and the defendant in a speedy trial, the resulting period of delay is excluded from computation of the time within which a defendant's trial must be commenced. 18 U.S.C. § 3161(h)(8)(A). An ends-of-justice continuance may be justified on the grounds that one side needs more time to prepare for trial. *United States v. Dota*, 33 F.3d 1179, 1183 (9th Cir. 1994) (citing 18 U.S.C. § 3161(h)(8)(B)(iv)).

Here, the Court finds that the ends of justice served by granting the continuance outweigh the best interest of the public and the Defendant in a speedy trial. Counsel for both parties require additional time to prepare for retrial in this matter, as well as to pursue the possibility of settlement.

The Court concludes that failure to grant a continuance would deny counsel for both parties the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

The Court hereby continues Defendant's retrial on Count One of the Indictment to Tuesday, January 20, 2009, in Grand Forks, North Dakota. The Court will hold a final pretrial conference with counsel at 9:30 a.m., and jury selection will begin at 10:00 a.m. The pretrial motions deadline is continued to Friday, December 19, 2008. **IT IS ORDERED** that the period of delay commencing from the date of this Order until the date of the trial shall be excluded from the calculation of time for purposes of the Speedy Trial Act, 18 U.S.C. § 3161.

IT IS SO ORDERED.

Dated this 31st day of October, 2008.

/s/ Ralph R. Erickson

Ralph R. Erickson, District Judge
United States District Court