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 11 UNITED STATES OF AMERICA

12 UNITED STATES DISTRICT COURT

13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 MARK RIDLEY-THOMAS,

18 Defendant.

No. CR 21-00485-DSF-1

GOVERNMENT'S MOTION FOR ORDER
REQUIRING PRODUCTION OF
DEFENDANT'S WITNESS LIST

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 20
 21 Plaintiff United States of America, by and through its counsel
 22 of record, the United States Attorney for the Central District of
 23 California and Assistant United States Attorneys Lindsey Greer
 24 Dotson, Thomas F. Rybarczyk, and Michael J. Morse, hereby files the
 25 Government's Motion for Order Requiring Production of Defendant's
 26 Witness List.

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1 This motion is based upon the attached memorandum of points and
2 authorities, the files and records in this case, and such further
3 evidence and argument as the Court may permit.

4 Dated: March 18, 2023

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8 /s/ Thomas F. Rybarczyk
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 After the government presented its case-in-chief and rested on
3 March 17, 2023, it requested that defendant MARK RIDLEY-THOMAS
4 ("defendant") provide the government its witness list. Defendant
5 declined. When the government requested an order requiring defendant
6 to do so, this Court asked for legal support to impose such an order.
7 There is legal authority permitting the imposition of such an order,
8 as well as practical reasons to do so, namely, in promoting judicial
9 efficiency and reducing the unnecessary expenditure of this Court and
10 the jury's time. Just as important, defendant will suffer no
11 prejudice in providing such a list because the government has
12 concluded its case-in-chief. For these reasons, the government
13 requests that defendant produce his witness list by Monday, March 20,
14 2023, at 10:00 a.m.

15 First, the Federal Rules of Criminal Procedure grant district
16 courts the authority to order disclosure of defense witness lists
17 during trial. Federal Rules of Criminal Procedure 2 and 16(d)(1)
18 permits this Court to order disclosures that are not specifically
19 mentioned in the Rules of Criminal Procedure. See United States v.
20 W.R. Grace, 526 F.3d 499, 508-11 (9th Cir. 2008) (relying on Rules 2
21 and 16 to uphold district court decision requiring the government to
22 disclose its witness list prior to the start of trial). While the
23 W.R. Grace court indicated it did not "decide whether or to what
24 extent the defense can be compelled to disclose a list of its
25 witnesses before trial," id. at 509 n. 7 (emphasis added), there is
26 no sound legal or practical basis not to order a defendant to produce
27 his witness list now -- at the start of his defense case during
28 trial. Further supporting this Court's authority to order the

1 production of defendant's witness list is Federal Rule of Criminal
2 Procedure 57(b), which provides, in relevant part, that "[a] judge
3 may regulate practice in any manner consistent with federal law,
4 these rules, and the local rules of the district." Pursuant to this
5 rule, "[c]ourts have (at least in the absence of legislation to the
6 contrary) inherent power to provide themselves with appropriate
7 instruments required for the performance of their duties." United
8 States v. Ray, 375 F.3d 980, 993 (9th Cir. 2004) (quoting In re
9 Peterson, 253 U.S. 300, 312 (1920)). There is no rule or law
10 preventing the Court from ordering the defendant to disclose his
11 witness list here. Indeed, it is well within this Court's discretion
12 to do so. This Court has used this discretion to impose a rule in
13 its standing order that defendant must disclose his witness list to
14 the Court by, at the very latest, the start of the defense case,
15 which has begun now that the government rested its case and defendant
16 requested additional time to present its first witness. There is no
17 legal reason preventing the Court from ordering defendant to disclose
18 that same list to the government now.

19 **Second**, practical reasons exist for requiring defendant to
20 produce his witness list now that the government has rested its case-
21 in-chief. If defendant discloses his witness list now, it will allow
22 the parties to flush out any legal issues in advance of testimony,
23 including allowing the parties to brief the scope of a witness's
24 testimony so that the Court has adequate time to review the papers.
25 The current plan would mean that the government would have less than
26 24 hours to review defendant's proposed witnesses for the next day,
27 which may necessitate the government filing a motion late that same
28 day. This Court then will have little time to review the

1 government's motion. By requiring the defendant to produce his
2 witness list by Monday, March 20, these issues can be properly
3 presented to the Court and not hashed out at lengthy sidebars, which
4 will only result in the unnecessary expenditure of more of this Court
5 and the jury's time. No witness illustrates this problem more than
6 Sebastian Ridley-Thomas's doctor. The government inquired on March
7 13, 2023, if defendant intended to call a medical professional and if
8 so, what the nature and scope of that person's testimony would be.
9 Defendant has not responded. It is well-settled that medical
10 professionals must be qualified as an expert when testifying to any
11 opinion formed outside their course of treatment for the patient at
12 issue. See Goodman v. Staples The Off. Superstore, LLC, 644 F.3d
13 817, 826 (9th Cir. 2011). Under the current plan, the government has
14 no idea if defendant even intends to call such a witness. Waiting to
15 the last-minute to brief this issue puts the government and the Court
16 at a disadvantage. Such gamesmanship is unnecessary, particularly
17 where the government has rested.

18 **Third**, there is no prejudice to defendant by requiring him to
19 produce his witness list at this point. The government has rested
20 its case, and defendant has made his opening statement. There are no
21 concerns with revealing "defense strategy." It is pure gamesmanship,
22 especially where defendant has represented that he plans to present a
23 week-long case. Such gamesmanship should not be rewarded, especially
24 when it comes at the sacrifice of the unnecessary expenditure of this
25 Court and the jury's time.

26 For all these reasons, the government respectfully requests that
27 the defendant produce his witness list by Monday, March 20, 2023, at
28 10 a.m.