

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
**Chief Judge Philip A. Brimmer**

Criminal Case No. 21-cr-00198-PAB

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. KBM GROUP, LLC,

Defendant.

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**ORDER**

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This matter is before the Court on the Joint Notice of Agreement and Motion for Deferral of Prosecution [Docket No. 3] filed on June 14, 2021. The parties jointly move the Court to enter an order deferring all proceedings in this case for 30 months and excluding 30 months from the time calculate under the Speedy Trial Act. *Id.* at 1.

On June 11, 2021, the government filed an Information against defendant for conspiracy to commit mail and wire fraud by knowingly facilitating the sale of consumer data to clients engaged in fraud. Docket No. 1 at 1. The government and defendant have reached an agreement wherein, in return for completing its obligations under the agreement, the government will defer prosecution for 30 months and dismiss the criminal charge with prejudice at the end of the term, so long as defendant has not breached the agreement. Docket No. 3 at 5. The government retains the sole discretion to determine whether defendant has breached the agreement. *Id.* For its part, the agreement requires defendant to (1) admit relevant facts and accept

responsibility; (2) implement a corporate compliance program, report on its compliance to the government, and cooperate with ongoing government investigations; and (3) pay victim compensation penalties totaling \$42,000,000, to be administered by a third-party claim administrator that defendant bears the costs of, but who reports to the government. *Id.* at 4-5.

The motion implicates the Speedy Trial Act of 1974, codified at 18 U.S.C. §§ 3161-3174. Specifically, the motion implicates 18 U.S.C. § 3161(h), which provides in relevant part:

The following periods of delay shall be excluded . . . in computing the time within which the trial of any such offense must commence:

. . . .

(2) Any period of delay during which prosecution is deferred by the attorney for the Government pursuant to written agreement with the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct.

18 U.S.C. § 3161(h)(2). The Speedy Trial Act serves two distinct interests: first, to protect a defendant's right to a speedy indictment and trial, and second, to serve the public interest in ensuring prompt criminal prosecutions. *United States v. Williams*, 511 F.3d 1044, 1047 (10th Cir. 2007). The Act requires that a defendant's trial commence within 70 days after his indictment or initial appearance, whichever is later. See 18 U.S.C. § 3161(c)(1); *Zedner v. United States*, 547 U.S. 489, 497 (2006). Certain periods of delay are excluded and do not count toward the 70-day limit. See 18 U.S.C. § 3161(h)(1)-(8).

"[T]he question of whether to exclude the duration of the DPA from the speedy

trial clock hinges on a determination of whether the Court approves the DPA.” *United States v. Clem*, 422 F. Supp. 3d 1105 , 1114 (N.D.W. Va. 2019) (quoting *United States v. HSBC Bank USA, N.A.*, 2013 WL 3306161, at \*3 (E.D.N.Y. July 1, 2013)). The Second Circuit and D.C. Circuit have both adopted the following interpretation of the Court’s role in a deferred prosecution agreement (“DPA”):

[W]e hold that § 3161(h)(2) authorizes courts to determine that a DPA is *bona fide* before granting a speedy trial waiver—that is, that the DPA in question is genuinely intended to “allow[ ] the defendant to demonstrate his good conduct,” § 3161(h)(2), and does not constitute a disguised effort to circumvent the speedy trial clock. See [*United States v. Fokker Servs. B.V.*, 818 F.3d [733,] 744–45 [(D.C. Cir. 2016)] (adopting this interpretation). As the D.C. Circuit reasoned in *Fokker*, such an interpretation accords with the ordinary distribution of power between the judiciary and the Executive in the realm of criminal prosecution. See *id.* at 738, 741–45.

*United States v. HSBC Bank USA, N.A.*, 863 F.3d 125, 138 (2d Cir. 2017).

The Court finds that the DPA in this case is *bona fide*. The agreement imposes a significant monetary fine, requires ongoing compliance measures by defendant, and there is no indication that the DPA is an attempt to circumvent the speedy trial clock. See Docket No. 3 at 5.

For the foregoing reasons, it is

**ORDERED** that the Joint Notice of Agreement and Motion for Deferral of Prosecution [Docket No. 3] is **GRANTED**. It is further

**ORDERED** that all proceedings and deadlines are stayed for 30 months from the date of this Order. It is further

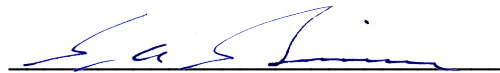
**ORDERED** that, pursuant to 18 U.S.C. § 3161(h)(2), 30 months are excluded in computing the time within which the trial of offenses relating to this matter must

commence. It is further

**ORDERED** that the parties are to file a joint status report not later than 30 days prior to the conclusion of the term of the Deferred Prosecution Agreement.

DATED June 29, 2020.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "Philip A. Brimmer", is written over a horizontal line.

PHILIP A. BRIMMER  
Chief United States District Judge