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VIA ECF

The Honorable James Donato
United States District Court for the Northern District of California
450 Golden Gate Avenue
Courtroom 11, 19th Floor
San Francisco, CA 94102

Re: *United States of America v. Matsuo Electric Company Limited*,
Case No. 17-cr-00073-JD

Dear Judge Donato:

Matsuo Electric Company Limited (Matsuo) respectfully submits this letter brief in response to the Court's Order re: Speedy Trial Act, 18 U.S.C. § 3161. (Dkt. 40.) For the reasons set forth below, Matsuo understands the time period between May 24 and October 25, 2017, was excluded pursuant to 18 U.S.C. § 3161(h)(1)(G) while the Court was considering the parties' plea agreement.

Relevant Background

The Government filed an Information against Matsuo on February 8, 2017. (Dkt. 1.) The parties executed a written Rule 11(c)(1)(C) plea agreement as of February 7, 2017. (Dkt. 12-2, 35.) On May 24, 2017, Matsuo made its initial appearance and was arraigned before Magistrate Judge Spero. (Dkt. 16.)

Also on May 24, 2017, Matsuo appeared before this Court for a plea and sentencing hearing. After remarks from counsel for the Government and Matsuo, the Court stated "I'm not ruling out, of course, the possibility that the 695,000 [dollars] spread over six payments is the right outcome, but I don't have enough information to make that determination. So I'm going to decline to take the plea or impose the sentence today." (5/24/17 Transcript at 20:5-9.) The Court asked the parties to submit "more facts supporting the proposed amount, timing and due dates for the recommended fine in order to approve [the plea agreement] as currently structured," (Dkt. 21), and subsequently issued a text order "set[ting] the continued plea and sentencing hearing" for a later date. (Dkt. 26.)

The continued plea and sentencing hearing was ultimately set for October 25, 2017. (See Dkt. 26, 29, 31.) During the period from May 24 to October 25, 2017, Matsuo assembled and prepared the information supporting the installment payment plan for the Court's

consideration. During this time period, counsel for Matsuo and the Government communicated in order to prepare the information desired by the Court.¹ On October 18, Matsuo lodged under seal with the Court its sentencing memorandum and two affidavits and supporting exhibits (*see* Dkt. 33), and the Government filed its sentencing memorandum and declaration (Dkt. 34), all in further support of the plea agreement and proposed sentence.

On October 25, Matsuo appeared before the Court for the change of plea hearing, which the Court noted was “a continuation of the prior change of plea from May 24th of this year. (10/25/17 Transcript at 3:19-20.) The Court accepted Matsuo’s plea of guilty to a violation of 15 U.S.C. § 1, as set forth in the same February 7, 2017, plea agreement under consideration at the May 24 hearing (*see id.* at 11:3-5), but deferred on whether to accept the parties’ plea agreement or to impose a sentence. The Court referred Matsuo to the Probation Office for preparation of a Pre-sentence Report and scheduled a continued sentencing hearing on February 28, 2018. (Dkt. 37.) The Government then raised the issue of excluding time under the Speedy Trial Act, and the Court discussed certain Speedy Trial Act issues with the parties. (10/25/17 Transcript at 21:7-22:24; Dkt. 37.) Thereafter, in an Order dated October 27, the Court required Matsuo “to advise the Court what it considers to be an appropriate course of action” for the Court to consider in granting an excludable continuance under the Speedy Trial Act. (Dkt. 40.)

Discussion

Under the Speedy Trial Act, trial must commence within 70 days from the date the information or indictment was filed, or from the date the defendant appears before an officer of the court in which the charge is pending, whichever is later. 18 U.S.C. § 3161(c)(1). On motion of the defendant, the information shall be dismissed “[i]f a defendant is not brought to trial within the time limit required by section 3161(c) as extended by section 3161(h).” 18 U.S.C.A. § 3162. Here, the Information was filed February 8, 2017, and Matsuo made its initial appearance on May 24. Hence, Matsuo’s appearance on May 24 triggered the 70-day Speedy Trial Act time period.

The Speedy Trial Act provides that certain periods of delay “*shall be excluded* in computing the time” and, thus, do not count in computing whether the 70-day deadline has run. 18 U.S.C. § 3161(h) (emphasis added). One such pretrial delay resulting in time periods being automatically excluded is “delay resulting from consideration by the court of a proposed plea agreement to be entered into by the defendant and the attorney for the Government.” 18 U.S.C. § 3161(h)(1)(G); *see United States v. Shellef*, 756 F. Supp. 2d 280, 288-89 (E.D.N.Y. 2011), *aff’d*, 718 F.3d 94 (2d Cir. 2013) (“Some of the exclusions are automatic, without any judicial findings. *See* 18 U.S.C. §§ 3161(h)(1)-(h)(6). [. . .] Other exclusions are only triggered by judicial actions or orders. [. . .] *See* 18 U.S.C. § 3161(h)(8)(A) (re-codified at Section 3161(h)(7)(A));² *United States v. Santiago-Becerril*, 130 F.3d 11, 20 (1st Cir. 1997) (certain

¹ Matsuo’s counsel referred to these communications when describing the continued “good faith plea negotiations” at the October 25 hearing. (10/25/17 Transcript at 22:9-10.)

² As this Court correctly pointed out, (Dkt. 40), retrospective exclusions under 18 U.S.C. § 3161(h)(7)(A) are not permissible. *See United States v. Kelly*, 45 F.3d 45, 47 (2d Cir. 1995) (“[T]he district court’s nunc pro tunc ‘ends of justice’ finding was ineffective to toll the speedy

periods of delay under 18 U.S.C. § 3161(h)(1) “automatically trigger[] an exclusion of time” and specifically analyzing “pretrial motion” grounds for exclusion of time).

Matsuo understands that Section 3161(h)(1)(G) is applicable here. In *United States v. Solorzano-Rivera*, 368 F.3d 1073 (9th Cir. 2004), the Ninth Circuit confirmed that “certain periods of delay shall be excluded when computing [time limits], including “delay resulting from consideration by the court of a proposed plea agreement.” *Id.* at 1077 (citing 18 U.S.C. § 3161(h)(1)(I) (re-codified at 18 U.S.C. § 3161(h)(1)(G)). There, the Ninth Circuit held that the period of time from October 8, 2002, when Solorzano entered his guilty plea, until January 21, 2003, when the district court accepted Solorzano’s withdrawal of that plea, was properly excluded under 18 U.S.C. § 3161(h)(1)(I). *Id.* at 1077. The Ninth Circuit reasoned that “the proposed plea agreement was before the district court for ‘consideration’ as of October 8, 2002, when Solorzano entered it. Solorzano moved to withdraw the plea on January 8, 2003, and the court granted his motion on January 21, 2003. At that time, the period of exclusion ended—the plea agreement was no longer under consideration by the court.” *Id.*

In addition, the court in *United States v. Rector*, 598 F.3d 468, 472 (8th Cir. 2010), reasoned as follows:

On July 3, 2008, the parties furnished the district court with the written plea agreement, reflecting that Rector had waived the indictment and agreed to plead guilty to the information. A change of plea hearing was scheduled for July 23, 2008. [¶] The district court found such time excludable pursuant to § 3161(h)(1)(G). That section provides that for the exclusion of a period of time attributable to “[a]ny period of delay resulting from other proceedings concerning the defendant, including . . . delay resulting from consideration by the court of a proposed plea agreement to be entered into by the defendant and the attorney for the Government” 18 U.S.C. § 3161(h)(1)(G). [. . .] [W]e hold that the district court properly excluded the time between July 1 and July 23, 2008, from the speedy trial calculation pursuant to § 3161(h)(1)(G).

Here, as of May 24, Matsuo had signed a plea agreement, and the parties had submitted the written plea agreement to the Court for consideration. The Court deferred deciding whether to approve the plea agreement on May 24 and continued the plea and sentencing hearing to afford the parties time to address the Court’s concerns and provide additional information in support of the recommended installment payment plan set forth in the plea agreement. During the period between May 24 and October 25, the parties conferred regarding that supporting information and submitted that information to the Court on October 18 for consideration at the October 25 hearing.

trial clock.”). Under Section 3161(h)(7)(A), certain pretrial delays are only excludable if they serve the “ends of justice.” Section 3161(h)(7)(A) states that an “ends of justice” exclusion is valid only if the district court “sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.* at § 3161(h)(7)(A).

Because the Court recognized that the October 25 hearing was a “continuation” of the May 24 hearing (*see* 10/25/17 Transcript at 3:19-20), the proposed plea agreement was under “consideration” by the Court between May 24 and October 25, when the Court accepted Matsuo’s guilty plea. Thus, Matsuo understands the time period between May 24 (its initial appearance) and October 25 (the date its guilty plea was accepted) was excluded from calculating the Speedy Trial Act 70-day time limit for trial.

Respectfully submitted,



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BL/dd

cc: All Counsel via ECF

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