

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA
ex rel. PAUL PIETSCHNER,

Plaintiff,

V.

KATHRYN PETRALIA; ROBERT
FROHWEIN; and SPENCER ROBINSON,

Defendants.

[illegible]

Civil Action No.: 4:21-cv-110-SDJ

**THE UNITED STATES OF AMERICA’S UNOPPOSED MOTION TO EXTEND
DEADLINE TO FILE INTERVENTION COMPLAINT**

The United States of America, by and through the undersigned counsel, hereby files this unopposed motion to extend its deadline to file its Complaint in Intervention, from November 25, 2024, through and including December 26, 2024, of the period during which the Government may continue good faith settlement discussions with one or all Defendants. Relator Paul Pietschner (“Relator”) has been contacted through his attorney and concurs in relief requested.

I. INTRODUCTION

This is an action filed under the *qui tam* provisions of the False Claims Act (“FCA”), 31 U.S.C. § 3730(b), brought by Relator on behalf of the United States against Defendants Kabbage, Inc., Robert Frohwein, Kathryn Petralia, and Spencer Robinson. Relator filed the Complaint *in camera* and under seal and served the United States Attorney’s Office on or about February 10, 2021. On August 27, 2024, the Court ordered the United States to file its Complaint in Intervention as to Defendants Robert Frohwein, Kathryn Petralia, and Spencer Robinson by November 25, 2024. (Docket #35). The United States now respectfully requests that this Court allow a brief

thirty-day extension of time to file its Intervention Complaint, extending its deadline from November 25, 2024 to December 26, 2024, so that the Government may continue good faith settlement discussions with one or all Defendants. Government counsel respectfully submits that good cause exists for the United States' request for a brief extension of the filing deadline.

II. BACKGROUND

Relator alleges Defendants submitted and caused the submission of false claims in connection with Paycheck Protection Program ("PPP") loans approved and processed by Defendant Kabbage Inc. Congress enacted the PPP as part of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") to provide loans fully guaranteed by the United States Small Business Administration ("SBA") to eligible small businesses impacted by the coronavirus pandemic and COVID-19. Defendant Kabbage originated and processed PPP loans on behalf of two other PPP lenders. According to Relator, Defendant Robert Frohwein was co-founder and CEO of Kabbage. Defendant Kathryn Petralia served as co-founder and President of Kabbage. Defendant Spencer Robinson served as Kabbage's Head of Strategy and was substantially involved in Kabbage's participation in PPP. Relator alleges each Defendant knowingly caused the submission of fraudulent PPP loan and loan forgiveness applications.

Specifically, Relator alleges Defendants engaged in the following fraudulent conduct in connection with PPP loans: (1) misleading borrowers as to the COVID relief money available to them and encouraging borrowers to apply for loans even though they did not have a business or had no intention of applying for PPP loans; (2) intentionally ignoring reports of suspicious activity with respect to PPP loan applications; (3) submitting PPP loan applications without having conducted the basic loan application checks, such as social security number checks, customer identity checks, or requesting W-2s to support unverified payroll data; (4) failing to implement

Bank Secrecy Act/Anti-Money Laundering controls to verify borrowers' banks to which PPP funds were being sent as required by the National Automated Clearing House Association to combat fraud; and (5) depositing funds into accounts that were not owned or controlled by eligible business owners. As a result of Kabbage's false certifications, Relator claims, the Government disbursed millions of dollars in PPP loan processing fees to Kabbage and forgiveness and guaranty payments related to the fraudulent PPP loans that it approved.

On May 7, 2024, the United States entered into a settlement with Kabbage, Inc. (now KServicing Wind Down Corp.) to resolve allegations made by Relator on behalf of the United States. On May 9, 2024, the United States filed its Notice of Partial Intervention for Purposes of Settlement as to Defendant Kabbage, Inc. only. (Docket #28). Therefore, the United States and Relator moved to dismiss Kabbage, Inc. only.

On August 26, 2024, the United States filed its Notice of Intervention, informing the court of its intention to proceed with this *qui tam* action as to Defendants Robert Frohwein, Kathryn Petralia, and Spencer Robinson. (Docket #34). On August 27, 2024, the Court entered an order, ordering the United States to file its Complaint by November 25, 2024. (Docket #35).

III. ARGUMENT

Trial courts have broad discretion in extending filing deadlines when good cause exists. *See, e.g., Macklin v. City of New Orleans*, 293 F.3d 237, 240 (5th Cir. 2002) (extending filing deadlines for the city not a violation of the other party's right to equal protection under the law in the summary judgment context); *Monterrosa-Flores v. Bible*, 2018 WL 7291383 at *1 (W.D. Tex. Nov. 8, 2018) (granting motion to extend deadlines in a scheduling order when good cause permits, there is no substantial reason to deny the request, and it is in the interest of justice).

Good cause exists to briefly extend the Government's deadline to file its Complaint in Intervention. Certain of the defendants has recently requested the opportunity to engage in settlement discussions. Thus far, the Government feels that the parties have made progress, and the requested brief extension would allow these discussions to continue before suit is filed. Granting the requested thirty-day extension will promote conservation of the court's and the parties' resources and could streamline litigation by potentially eliminating any settling parties from the case. The Government further submits that the parties will not be prejudiced by this brief extension.

Relator does not oppose the proposed extension and concurs with the relief sought herein.

IV. CONCLUSION

WHEREFORE PREMISES CONSIDERED, the United States respectfully requests that this Court grant this motion and enter an order extending the United States' deadline to file its Complaint in Intervention to December 26, 2024.

Respectfully submitted,

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**ATTORNEYS FOR THE
UNITED STATES OF AMERICA**

CERTIFICATE OF SERVICE

I hereby certify that November 22, 2024, I caused copies of the United States of America's Unopposed Motion to Extend Deadline to File Intervention Complaint, and proposed order, to be served by email on:

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Because this action is under seal pursuant to 31 U.S.C. §§ 3729–3733, Defendants have not been served with copies of the foregoing Motion.

/s/ Betty Young
BETTY YOUNG

CERTIFICATE OF CONFERENCE

I hereby certify on the 22nd of November 2024, I complied with the meet and confer requirements of Local Rule CV-7(h) as to Relator's counsel, and Relator concurred in the relief sought by this Motion. Since Defendants have not been served, Defendants were not contacted.

/s/ Betty Young
BETTY YOUNG