IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, Plaintiff, vs. TIMOTHY DEFOGGI, Defendant.	**8:13CR105** **MEMORANDUM AND ORDER**

This matter is before the court on defendant's objection, Filing No. 177, to the findings and recommendation ("F&R"), Filing No. 168, of the magistrate judge, denying his motion to dismiss, Filing No. 138. The indictment in this case charges the defendant with knowingly engaging in a child exploitation enterprise, in violation of 18 U.S.C. § 2252A(g) (Count I); conspiracy to advertise child pornography, in violation of 18 U.S.C. § 2251(d)(1) and (e) (Count II); conspiracy to distribute child pornography, in violation of 18 U.S.C. § 2252A(a)(2) and (b)(1) (Count III); and knowingly accessing a means or facility of interstate commerce to view child pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B) (Counts IV-VII). *See* Filing No. 1. Additionally, the indictment alleges forfeiture of any property used to commit or promote the commission of the crimes alleged in the indictment. The magistrate judge held a hearing on June 5, 2014. Pursuant to 28 U.S.C. § 636(b)(1)(A), this court conducts a de novo review of the magistrate judge's F&R to which the defendant objects. Having done so, the Court finds the magistrate judge's findings and recommendation is correct in all respects and adopts it in its entirety.

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The Court has carefully reviewed the facts and procedural process as set forth by the magistrate judge. The Court determines these findings are correct in all respects and adopts them in their entirety herein. Accordingly, the Court need not reiterate them here.

The defendant filed a motion to dismiss arguing his speedy trial rights have been violated pursuant to the Sixth Amendment to the United States Constitution and 18 U.S.C § 3161. Filing No. 138. The magistrate judge concluded there has been no speedy trail violation in this case.

> Defendant objects contending that:
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> 1. Fifteen months have passed since the Defendant was indicted and nearly fourteen months since his initial appearance and arraignment. The Eighth Circuit has held that such a delay is "presumptively prejudicial". See *United States v. Erenas-Luna*, 560 F.3d 772, 776 (8th Cir. 2009)(citing *United States v. Jeanetta*, 533 F.3d 651, 656 (8th Cir. 2008).
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> 2. Bringing the Defendant to trial was unnecessarily delayed by the 6 ½ months it took the Government to produce a forensic analysis.
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> 3. Trial has been further delayed while the Government attempts to secure a witness currently residing in a foreign country.

Filing No. 138. The Court finds the magistrate judge correctly analyzed each of these contentions. First, the magistrate judge concluded that the defendant initially signed an affidavit waiving his speedy trial rights, allowing for the gathering of additional forensics. The magistrate judge also noted that this case has been designated as complex, with the potential of 14 defendants and large quantities of evidence. Additionally, the magistrate judge determined that the defendant's counsel asked for and received additional extensions of time. Further, defendant's counsel withdrew in

January, 2014, and the magistrate judge appointed new counsel which further delayed trial in this case. Finally, the defendant has filed multiple motions to suppress, dismiss, compel, sever and in limine, further delaying his trial. The Court agrees with the magistrate judge that for all of these reasons there is no speedy trial violation, and the Court concurs with the magistrate judge in all respects.

THEREFORE, IT IS ORDERED:

1. Defendant's motion to dismiss, Filing No. 138, is denied.

2. Defendant's objections, Filing No. 177, to the F&R of the magistrate judge are overruled.

3. The F&R of the magistrate judge, Filing No. 168, is adopted in its entirety.

Dated this 4th day of August, 2014.

BY THE COURT:

s/ Joseph F. Bataillon
United States District Judge