

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CASE NO. 1:12-cr-00080-RBW

UNITED STATES

v.

**ZIMMER BIOMET
HOLDINGS, INC.,**

Defendant.

GOVERNMENT’S MOTION TO DISMISS SUPERSEDING INFORMATION

Pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure, the United States of America, by and through undersigned counsel, hereby moves to dismiss the Superseding Information filed in the above-captioned case against defendant Zimmer Biomet Holdings, Inc. (“Zimmer Biomet”). In support of this motion, the Government states as follows:

1. On March 26, 2012, the Government filed an Information charging Biomet, Inc. with violating the anti-bribery and accounting provisions of the Foreign Corrupt Practices Act of 1977 (“FCPA”), 15 U.S.C. §§ 78dd-1, *et seq.*, and 78m. Dkt. No. 1.

2. On March 26, 2012, the Government also filed a deferred prosecution agreement (“DPA”) with Biomet, Inc., in which the Government deferred prosecution of Biomet, Inc. for a period of three years. Dkt. No. 2. Among other obligations, the DPA required Biomet, Inc. to cooperate with the Government’s investigation, to implement an enhanced compliance program, and to engage an independent compliance monitor for a period of at least 18 months. Biomet, Inc. was also required to pay a criminal monetary penalty of \$17,280,000 to the United States Treasury.

3. On March 13, 2015, the Government informed Biomet, Inc. that the DPA and the independent compliance monitor's appointment, which were set to expire on March 25, 2015, would be extended for an additional year. Dkt. No. 5.

4. On June 24, 2015, Zimmer Holdings, Inc. acquired Biomet, Inc., resulting in the newly formed entity, Zimmer Biomet, owning all of Biomet, Inc.'s shares. Dkt. No. 5.

5. On April 15, 2016, the Government notified Zimmer Biomet that Zimmer Biomet was in breach of the DPA in light of the company's compliance failures and the fact that additional FCPA violations had been discovered. Dkt. No. 11.

6. The Government and Zimmer Biomet subsequently negotiated an agreement to resolve the breach relating to the DPA and the new misconduct, including a DPA with Zimmer Biomet and a guilty plea by an indirect subsidiary of Zimmer Biomet.

7. On January 13, 2017, the Government filed a Superseding Information charging Zimmer Biomet with violating the internal controls provisions of the FCPA, 15 U.S.C. §§ 78m, 78ff(a). Dkt. No. 16.

8. On January 13, 2017, the Government also filed a deferred prosecution agreement ("ZB DPA") with Zimmer Biomet, in which the Government deferred prosecution of Zimmer Biomet for a period of three years. Dkt. No. 18. Among other obligations, the ZB DPA required Zimmer Biomet to cooperate with the Government's investigation, to implement an enhanced compliance program, and to engage an independent compliance monitor for a period of three years. Zimmer Biomet was also required to pay a criminal monetary penalty of \$17,400,000 to the United States Treasury.

9. In addition, JERDS Luxembourg Holding S.A.R.L., an indirect subsidiary of Zimmer Biomet, pleaded guilty on January 13, 2017, to an information charging it with causing

Biomet, Inc. to violate the books and records provisions of the FCPA, 15 U.S.C. §§ 78m, 78ff(a).
See United States v. JERDS Luxembourg Holding S.A.R.L., 1:17-cr-0007-RBW, Dkt. No. 1.

10. The ZB DPA provided that the Government would not continue the criminal prosecution against Zimmer Biomet and would move to dismiss the Superseding Information within six months of the expiration of the ZB DPA if Zimmer Biomet fully complied with all of its obligations, including its obligations to implement a compliance program reasonably designed and implemented to prevent and detect violations of the anti-corruption laws and its obligation to have the Chief Executive Officer and Chief Financial Officer certify to the Government that Zimmer Biomet had met its disclosure obligations pursuant to paragraph 6 of the ZB DPA . Dkt. No. 18.

11. On or about July 17, 2020, the independent compliance monitor certified, pursuant to paragraph 19 of Attachment D to the ZB DPA, that Zimmer Biomet's compliance program, including its policies and procedures, is reasonably designed and implemented to prevent and detect violations of the anti-corruption laws.

12. The ZB DPA expired on or about August 7, 2020.

13. On or about September 21, 2020, Zimmer Biomet's Chief Executive Officer and Chief Financial Officer certified to the Government that Zimmer Biomet had met its disclosure obligations pursuant to paragraph 6 of the ZB DPA.

14. Based on the information known to the Government, Zimmer Biomet has fully met its obligations under the ZB DPA, including full cooperation with the Government, implementation of an enhanced compliance program and procedures, and satisfaction of the terms of the provisions regarding the independent compliance monitorship. In addition, Biomet,

Inc. and Zimmer Biomet have made timely payment of the criminal monetary penalties associated with the DPA and the ZB DPA, respectively.

15. Because Zimmer Biomet has fully complied with all of its obligations under the ZB DPA, the Government has determined that dismissal of the Superseding Information with prejudice is appropriate. See Dkt. No. 18, ZB DPA ¶ 15. The Government has conferred with counsel for Zimmer Biomet, who concurs that dismissal is appropriate at this time.

For the foregoing reasons, the Government requests that this Motion to Dismiss Superseding Information be granted.

DANIEL S. KAHN
Acting Chief, Fraud Section

By: /s/ Jonathan P. Robell

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Dismiss Superseding Information was filed and served electronically using the Court's CM/ECF system, effecting service on all counsel of record.

/s/ Jonathan P. Robell

Trial Attorney
Criminal Division, Fraud Section
U.S. Department of Justice

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ORDER

This cause came before the Court on the United States' unopposed Motion to Dismiss Superseding Information (ECF No. 24). Having considered the Motion and being fully advised, it is hereby

ORDERED AND ADJUDGED that the Motion is **GRANTED**. The Superseding Information in this case (ECF No. 16) is hereby dismissed with prejudice.

SO ORDERED.

Date: February ____, 2021

REGGIE B. WALTON
United States District Judge

cc: All counsel of record