

PREET BHARARA
United States Attorney for the
Southern District of New York
By: KIRTI VAIDYA REDDY
Assistant United States Attorney
86 Chambers Street, Third Floor
New York, New York 10007
Telephone Nos. (212) 637-2751
Facsimile No. (212) 637-2786
kirti.reddy@usdoj.gov

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA *ex rel.*

REDACTED - Under Seal

Plaintiff,

v.

MOTIVES, INC., MOTIVES FAR EAST,
RICHARD STOTTER, and BARRY BLITSTEIN,

Defendants.

COMPLAINT-IN-INTERVENTION
OF THE UNITED STATES OF AMERICA

13 Civ. 9030 (GBD)

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

MOTIVES, INCORPORATED, MOTIVES
FAR EAST, and MOTIVES CHINA LIMITED,

Defendants.

X

The United States of America (the "Government"), by its attorney, Preet Bharara, United States Attorney for the Southern District of New York, files this Complaint-In-Intervention against Motives, Incorporated, Motives Far East and Motives China Limited (collectively, "Defendants"), alleging as follows:

PRELIMINARY STATEMENT

1. The Government brings this Complaint-In-Intervention seeking damages and civil penalties against Motives, Incorporated, Motives Far East, and Motives China Limited under the False Claims Act, 31 U.S.C. §§ 3729 *et seq.*, based on Defendants' knowing and fraudulent evasion of millions of dollars of customs duties owed on apparel imported from 2009 through 2013. As part of their scheme, to defraud the United States of customs duties, Defendants employed two sets of invoices to pay overseas manufacturers from whom they imported apparel, which enabled them to grossly understate the value of their imports to U.S. Customs and Border Protection or, previously, its predecessor agency, the U.S. Customs Service (collectively, "CBP"), a component of the U.S. Department of Homeland Security. By concealing the total value of payments they made to manufacturers, Defendants understated the value of the imported apparel and avoided paying millions of dollars in customs duties each year.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the claims brought under the False Claims Act pursuant to 31 U.S.C. § 3730(a), and 28 U.S.C. §§ 1331, 1345, as well as pursuant to the Court's general equitable jurisdiction.

3. Venue is appropriate in this District pursuant to 31 U.S.C. § 3732(a) and 28 U.S.C. § 1391(b) and 1391(c) because Motives, Incorporated is located in this district, and a substantial part of the events or omissions giving rise to the claims occurred in this District.

PARTIES

4. Plaintiff is the United States of America.
5. Defendant Motives, Incorporated is a New York corporation with its principal place of business in Manhattan. It is an Importer of Record for apparel companies in the United States that import clothing from overseas. Motives, Incorporated also acts as a sales representative for Motives Far East and Motives China Limited.
6. Defendant Motives Far East is a foreign manufacturer of apparel that is incorporated in Hong Kong. Its principal places of business are China, Vietnam and Cambodia.
7. Defendant Motives China Limited is a foreign manufacturer of apparel, with its principal places of business in Hong Kong and China.
8. Motives, Incorporated, Motives Far East, and Motives China Limited are affiliated companies with a common ownership.

9. REDACTED - Under Seal

REDACTED - Under Seal

FACTS

A. Customs Duties

10. All merchandise imported into the United States is required to be "entered," unless specifically excepted. 19 C.F.R. § 141.4(a); 19 U.S.C. § 1484. "Entry" means, among other things, that an importer or its agent must file appropriate documents with an officer of CBP that allows CBP to assess the customs duties due on the merchandise being imported into the United States. 19 C.F.R. § 141.0a(a).

11. The documents required to be filed with CBP in order to complete entry include, among other things: (i) a bill of lading or air waybill; (ii) a commercial invoice; and (iii) an entry summary (CBP Form 7501). *See, e.g.*, 19 C.F.R. §§ 141.11, 141.19(a), 141.81, 141.86(a), 142.3(a), 142.6(a).
12. Pursuant to 19 U.S.C. § 1484, the entity serving as “importer of record” is assigned the responsibility of paying the duty and using reasonable care in making and providing accurate documentation to CBP. An importer of record is responsible for ensuring that the imported goods comply with the local laws, filing a completed duty entry and associated documents with the CBP, and paying the import duties and other taxes on those goods assessed by CBP.
13. Generally, the importer is required to deposit estimated duties with CBP at the time of entry. 19 U.S.C. § 1505; 19 C.F.R. § 141.101. The amount of customs duty owed is equal to the value of the imported merchandise multiplied by the applicable duty rate.
14. The value or approximate value of the imported merchandise must be declared in the commercial invoice and entry summary. Federal law provides that every importer must file a declaration stating that the values set forth on these documents are accurate. 19 U.S.C. § 1485.
15. The entry summary form includes a declaration that “the statements in the documents herein filed fully disclose to the best of my knowledge and belief the true prices, values, quantities . . . and are true and correct . . . [and that the declarant] will immediately furnish to the appropriate CBP officer any information showing a different statement of facts.” CBP Form 7501.

B. Defendants’ Fraudulent Scheme

16. To avoid the payment of customs duties, Defendants conspired with clothing wholesalers that import garments into the United States (“Importers”) to fraudulently underpay customs

duties owed to the Government by making false representations in entry documents filed with CBP about the value of the imported merchandise.

17. Pursuant to the scheme, Importers created two sets of invoices: one which undervalued the garments and was presented to CBP for calculation of the appropriate duty, and the second which reflected the actual value of the garments.

18. The invoices in the first set - the commercial invoices - were typically shipped by foreign garment manufacturers, including Motives Far East and Motives China Limited, with the apparel, and then presented by Motives, Incorporated to CBP. The commercial invoices contained information identifying the number of and type of garments, their style numbers, country of origin, and final destination. The commercial invoices were used to prepare entry summary forms, which in turn were used to calculate the appropriate duty owed on the imported items. The commercial invoices, however, represented only a portion of what the Importers actually paid the foreign garment manufacturers and thus understated the value of the imported goods.

19. The second set of invoices - sometimes called "debit notes" or "cost sheets"- reflected the difference between what the Importers actually paid Motives Far East and Motives China Limited and the commercial invoices. The debit notes or cost sheets were invoices prepared by Defendants and reflected a flat charge per garment set, typically \$2.50. The Importers instructed Defendants and their agents to deduct these amounts prior to calculating the duty on their orders. The Importers did not disclose to CBP the amount they paid to Defendants pursuant to debit notes, thus understating the value of the apparel they imported, and accordingly, reducing their obligation to pay duty.

20. For example, in an email from March 2009, between Motives Far East and an Importer, Motives Far East inquired as to how they should calculate the duty for their order. The Importer responded that they should classify the pieces separately and “deduct \$2.50 from total (make \$2.50 per set as debit note),” confirming that the Importer was paying Motives Far East \$2.50 per item that it recorded separately and concealing it for the purpose of calculating the duty.

21. On another occasion, in an email dated June 2, 2009, between Motives Far East and an Importer, an Importer instructed Motives Far East to deduct the cost of buttons used in making the garment. The email, however, also separately instructed Motives Far East to deduct \$2.50 per piece from the total and then to calculate the duty.

22. Further, in emails dated May 11, 2011 to May 18, 2011, between Defendants and an Importer, Motives China Limited discussed with the Importer whether it should deduct \$2.50, \$3.00 or \$4.00 per garment for the purpose of calculating duties.

23. From 2009 to 2013, Defendants prepared debit notes or cost sheets to give Importers deductions on nearly all of the apparel that they imported.

24. Over the years, Defendants prepared debit notes with increasing deductions, at the direction of Importers, reflecting a debit note amount from \$1.00 to more than \$3.00 per garment to offset the increasing cost of labor overseas. As the amount of the debit note or cost sheet increased, Defendants expressed concern about the increased risk of their scheme.

25. In one instance, in an email dated August 21, 2013, between Motives Far East and an Importer, a representative from Motives Far East requested that they not be pushed into taking a greater deduction on the total value of the garment because they were afraid of getting “in trouble” with CBP.

26. Defendants used these fraudulent invoices with the intention and expectation that the Government would reasonably rely on the deflated values stated on the fraudulent invoices.
27. Defendants' fraudulent invoices and resulting entry summaries were material to the Government's assessment and collection of customs duties.
28. By knowingly submitting the fraudulent invoices to CBP, and by not disclosing the amounts Importers actually paid pursuant to debit notes, Importers doing business with Defendants paid less than the amount of customs duties actually owed to CBP since at least 2009.
29. Between 2009 and 2013, Defendants created numerous debit notes to record the difference between the actual value of garments and the value stated on the commercial invoice. The debit note or cost sheet was not contained in the Entry Package prepared for the purpose of calculating duty.
30. In total, the Government estimates that Defendants underpaid customs duties by millions of dollars over the last ten years.

CLAIM FOR RELIEF

Violations of the False Claims Act
(31 U.S.C. § 3729(a)(7) (2006), and as amended, 31 U.S.C. § 3729(a)(1)(G))
Reverse False Claims

31. The Government incorporates by reference each of the preceding paragraphs as if fully set forth in this paragraph.
32. The Government seeks relief against Defendants under Section 3729(a)(7) of the False Claims Act, 31 U.S.C. § 3729(a)(7) (2006), and, as amended, Section 3729(a)(1)(G) of the False Claims Act, 31 U.S.C. § 3729(a)(1)(G).

33. As set forth above, Defendants knowingly made, used, or caused to be made or used false records and/or statements to conceal, avoid, or decrease obligations to pay or transmit money or property, in the form of customs duties, to the United States.

34. The Government incurred losses in the form of customs duties underpaid by Defendants because of their wrongful and fraudulent conduct.

35. By virtue of the false records or statements made by Defendants, the Government suffered damages and therefore is entitled to treble damages under the False Claims Act, to be determined at trial and a civil penalty as required by law for each violation.

WHEREFORE, the Government respectfully requests that judgment be entered in its favor and against Defendants as follows:


1. Treble the Government's damages in an amount to be determined at trial, such civil penalties as are required by law, and an award of costs pursuant to 31 U.S.C. § 3729(a); and
2. Such further relief as is proper.

Dated: New York, New York
July 11, 2016

Respectfully submitted,

PREET BHARARA
United States Attorney for the
Southern District of New York
Attorney for the United States

By:


KIRTI VAIDYA REDDY
Assistant United States Attorney
86 Chambers Street, 3d Floor
New York, NY 10007
Tel.: (212) 637-2751
Fax: (212) 637-2786
Email: Kirti.reddy@usdoj.gov