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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA *ex rel.* VERITY INVESTIGATIONS, LLC,

Plaintiff and Relator,

-against-

ALICE + OLIVIA, LLC,

Defendant.

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

-against-

ALICE + OLIVIA, LLC,

Defendant.

24 Civ. 5038 (AT)

COMPLAINT-IN-INTERVENTION OF THE UNITED STATES OF AMERICA

JURY TRIAL DEMANDED

Plaintiff the United States of America (the "United States" or the "Government"), by its attorney, Jay Clayton, the United States Attorney for the Southern District of New York, files this Complaint-in-Intervention against Alice + Olivia, LLC ("Defendant" or "Alice + Olivia"), and alleges as follows:

PRELIMINARY STATEMENT

1. This is a civil fraud action brought by the United States against Alice + Olivia to recover damages and civil penalties under the False Claims Act ("FCA"), 31 U.S.C. §§ 3729 *et seq.*, in connection with Alice + Olivia's application for and receipt of a Paycheck Protection Program ("PPP") loan for which it was ineligible. The United States also seeks to recover damages under the common law for payment by mistake of fact and unjust enrichment.

2. The PPP was a federal loan program overseen by the Small Business Administration ("SBA") to assist small businesses nationwide adversely impacted by the COVID-19 pandemic. Under the PPP, eligible businesses, could obtain SBA-guaranteed loans to spend on payroll costs and other specified business expenses.

3. In early 2021, the SBA permitted qualifying businesses that received an initial PPP loan to apply for a second PPP loan (a "Second-Draw PPP loan"). To obtain a Second-Draw PPP loan, applicants were required to certify, in their application, that they (both the applicant and its domestic and foreign affiliates) collectively employed 300 or fewer persons.

4. In January 2021, Alice + Olivia applied for and received a Second-Draw PPP loan of $2 million, all of which was later forgiven.

5. Alice + Olivia violated the FCA by knowingly presenting and making, or causing to be presented and made, false claims and statements in connection with its submission of its Second-Draw PPP loan application and forgiveness application. Specifically, Alice + Olivia falsely certified its eligibility for the Second-Draw PPP loan because Alice + Olivia (including its domestic and foreign affiliates) employed more than 300 employees and was thus ineligible for the loan it received.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over the Government's FCA claims pursuant to 31 U.S.C. § 3730(a) and 28 U.S.C. §§ 1331, 1345, and over the common law claims pursuant to 28 U.S.C. § 1345.

7. This Court may exercise personal jurisdiction over Alice + Olivia pursuant to 31 U.S.C. § 3732(a), which provides for nationwide service of process.

8. Venue is proper in this District under 31 U.S.C. § 3732(a) and 28 U.S.C. § 1391(b) because Alice + Olivia is located in and transacts business in this District.

THE PARTIES

9. Plaintiff is the United States of America and is suing on its own behalf and on behalf of the SBA, which, among other things, administered the PPP.

10. Alice + Olivia is a company headquartered in Secaucus, New Jersey, that operates clothing stores in New York City and in numerous other cities across the world.

BACKGROUND

I. The Paycheck Protection Program

11. On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") (Pub. L. 116-136) became law and provided emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus pandemic. SBA received funding and authority through the CARES Act to modify existing loan programs and establish a new loan program to assist small businesses nationwide adversely impacted by the COVID-19 emergency.

12. The CARES Act authorized loans to eligible small businesses struggling to pay employees and other business expenses as a result of the devastating effect of the COVID-19

pandemic.

13. Section 1102 of the CARES Act temporarily permitted the SBA to guarantee 100 percent of 7(a) loans under a new program titled the "Paycheck Protection Program."[1]

14. On April 24, 2020, the Paycheck Protection Program and Health Care Enhancement Act (Pub. L. 116-139) became law and provided additional funding and authority for the PPP. On June 5, 2020, the Paycheck Protection Program Flexibility Act of 2020 (Pub. L. 116-142) became law and modified certain provisions of the PPP, including provisions relating to the maturity of PPP loans, the deferral of PPP loan payments, and the forgiveness of PPP loans.

15. Under the PPP, businesses were required to spend loan proceeds on payroll costs, rent or mortgage expenses, or other specified business expenses.

16. The SBA delegated authority to third-party lenders to underwrite and approve the PPP loans. See 15 U.S.C. 636(a)(36)(F)(ii). To obtain a PPP loan, a qualifying applicant (through its authorized representative) was required to sign and submit a PPP loan application online through the lender's application platform.

17. In addition to other criteria, to be eligible for a first-draw PPP loan, a business was required to have 500 or fewer employees or to meet SBA employee-based size standards for the industry in which they operate.

18. The PPP loan application required the applicant (through its authorized representative) to acknowledge the rules applicable to the PPP program and make certain affirmative certifications to be eligible to obtain the PPP loan.

19. For example, applicants for PPP loans were required to certify in their PPP

[1] The 7(a) Loan Program is SBA's primary business loan program for providing financial assistance to small businesses. *See* SBA, *7(a) loans*, https://www.sba.gov/funding-programs/loans/7a-loans (last accessed Dec. 9, 2025). The program "provides loan guaranties to lenders that allow them to provide financial help for small businesses with special requirements." *Id.*

applications, among other things, that: "[t]he Applicant . . . employs no more than the greater of 500 employees or, if applicable, the size standard in number of employees established by the SBA"; "[t]he Applicant will provide to the Lender documentation verifying the number of full-time equivalent employees on the Applicant's payroll as well as the dollar amounts of" eligible expenses; and "[t]he information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects."[2]

20. On May 21, 2020, an Interim Final Rule was published that clarified that employees of foreign affiliates were to be included when a borrower calculated their total number of employees for purposes of determining PPP loan eligibility.[3]

21. In early 2021, the SBA permitted qualifying businesses that received an initial PPP loan to apply for a Second-Draw PPP loan. To be eligible for a Second-Draw PPP loan, borrowers were required to: (1) have previously received an initial PPP loan; (2) have no more than 300 employees; and (3) be able to demonstrate at least a 25% reduction in gross receipts between comparable quarters in 2019 and 2020.[4]

22. On March 3, 2021, the SBA published an updated "Frequently Asked Questions" document to its website regarding the PPP loan program.[5] Among other questions, the FAQ document addressed eligibility requirements for Second-Draw PPP loan applicants.[6] The FAQ document explained that an applicant is generally only eligible for a Second-Draw PPP loan "if it,

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[2] Paycheck Protection Program Borrower Application Form (Expiration Date: September 30, 2020), https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Application-3-30-2020-v3.pdf.

[3] Business Loan Program Temporary Changes; Paycheck Protection Program—Treatment of Entities with Foreign Affiliates, 85 Fed. Reg. 30835 (May 21, 2020), https://home.treasury.gov/system/files/136/Interim-Final-Rule-on-Treatment-of-Entities-with-Foreign-Affiliates.pdf.

[4] 15 U.S.C. 636(a)(37)(A)(iv).

[5] Small Business Administration, FAQ for PPP Borrowers and Lenders, https://www.sba.gov/sites/default/files/2021-03/PPPFAQs%203.2.21-508.pdf (March 3, 2021).

[6] *Id.* at 29.

together with its affiliates . . . employs no more than 300 employees."[7]

23. The SBA's FAQ further explained that "borrowers" were "required to apply SBA's affiliation rules under 13 C.F.R. 121.30(f)."[8] That regulation requires an applicant to include the employees of "all of its domestic and foreign affiliates" in its employee count.[9]

24. Borrowers were also required to count the number of its employees in accordance with 13 C.F.R. 121.106, which, in 2021, required borrowers to calculate the average number of employees (including the employees of its domestic and foreign affiliates) for each pay period for the preceding 12 calendar months.

25. An applicant for a Second-Draw PPP loan was required to certify in its application, among other things, that "the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects."

26. As with first draw PPP loans, once an entity submitted its Second-Draw PPP loan application to a lender, the participating lender processed the PPP loan application. If a Second-Draw PPP loan application was approved by the participating lender, it thereafter funded the PPP loan using its own monies, which were 100% guaranteed by the SBA.

27. After the lender processed and approved a borrower's Second-Draw PPP loan application, the lender submitted to the SBA the "Lender's Application - Paycheck Protection Program Loan Guaranty," applying for a guarantee on the loan. In that application, the lender certified that the borrower had made the required certifications regarding its eligibility. Therefore, if a borrower made misrepresentations on its PPP loan application, the borrower's false certifications caused the lender to submit a loan guarantee application to the SBA that contained

[7] *Id.* (emphasis added).
[8] *Id.* at 3.
[9] 13 C.F.R. 121.301(f)(8).

the borrower's false statement.

28. Congress provided for forgiveness of PPP loans. See 15 U.S.C. § 636m. To receive forgiveness, borrowers were required to submit signed loan forgiveness applications and documents containing the information and certifications in SBA Form 3508, 3508EZ, or a third-party lender equivalent. For example, applicants for PPP loan forgiveness were required to certify in their PPP loan forgiveness applications, among other things, that the "information provided in this application and the information provided in all supporting documents and forms is true and correct in all material respects."

II. The False Claims Act

29. The FCA establishes treble damages liability to the United States for an individual who, or entity that, "knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval," 31 U.S.C. § 3729(a)(1)(A); or "knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim," id. § 3729(a)(1)(B).

30. "Knowingly" is defined to include actual knowledge, reckless disregard, and deliberate ignorance. Id. § 3729(b)(1). No proof of specific intent to defraud is required. Id.

31. In addition to treble damages, the FCA also provides for assessment of a civil penalty for each violation or each false claim.

FACTUAL ALLEGATIONS

32. Alice + Olivia falsely certified that it was eligible for a Second-Draw PPP loan even though it had more than 300 employees, and improperly sought forgiveness for the Second-Draw PPP loan despite having been ineligible to receive the loan in the first instance. Had the SBA known that the total number of individuals employed by Alice + Olivia and its affiliates exceeded 300, the SBA would not have forgiven Alice + Olivia's Second-Draw PPP loan.

33. On or about January 21, 2021, Alice + Olivia submitted, through its authorized representative, an application for a Second-Draw PPP loan to HSBC Bank USA, National Association ("HSBC"). Alice + Olivia was approved for and received a Second-Draw PPP loan for $2,000,000.00.

34. Alice + Olivia, through its authorized representative, applied for forgiveness of its Second-Draw PPP loan in February 2022, and the Second-Draw PPP loan was ultimately forgiven in full, along with $24,111.11 in interest.

35. Alice + Olivia indicated on its Second-Draw PPP loan application that it had 293 employees. Alice + Olivia also certified, among other things, that the information provided in its application and supporting documents was true and accurate in all material respects.

36. Alice + Olivia represented, among other things, in its signed loan agreement with HSBC for the Second-Draw PPP loan dated February 3, 2021, that it had reviewed the rules in effect as of that date relating to Second-Draw PPP loans and was eligible for a Second-Draw PPP loan.

37. Alice + Olivia (together with its domestic and foreign affiliates) actually employed over 300 employees on average for each of the twelve calendar months prior to the date of its application. In fact, when Alice + Olivia applied for its Second-Draw PPP loan, it actually had 366 employees.

38. Moreover, when Alice + Olivia applied for PPP loan forgiveness in February 2022, it misrepresented in its application that it had only 271 employees at the time of its Second-Draw PPP loan application, and again certified, among other things, that the information provided in its application was true and correct in all material respects. However, Alice + Olivia knew or should have known that this representation was false and, in fact, Alice + Olivia had 366 employees at

the time that it applied for its Second-Draw PPP loan.

39. As result of Alice + Olivia's misrepresentations concerning its employee count and Second-Draw PPP loan eligibility, Alice + Olivia improperly secured $2 million in PPP funds that it was not entitled to receive.

FIRST CLAIM
Violations of the False Claims Act: Presenting False or Fraudulent Claims (31 U.S.C. § 3729(a)(1)(A))

40. The Government incorporates by reference each of the preceding paragraphs as if fully set forth herein.

41. Through the acts set forth above, Alice + Olivia knowingly presented, or caused to be presented, false or fraudulent claims for payment or approval, in violation of the FCA, 31 U.S.C. § 3729(a)(1)(A). Specifically, Alice + Olivia requested, received, and obtained forgiveness for a Second-Draw PPP loan by making material misrepresentations in Second-Draw PPP loan and forgiveness applications.

42. Alice + Olivia presented or caused to be presented these claims with deliberate ignorance or reckless disregard of whether or not they were false.

43. By reason of these false or fraudulent claims, the Government has been damaged in a substantial amount to be determined at trial and is entitled to recover treble damages plus a civil monetary penalty for each false claim.

SECOND CLAIM
Violations of the False Claims Act: Use of False Statements (31 U.S.C. § 3729(a)(1)(B))

44. The Government incorporates by reference each of the preceding paragraphs as if fully set forth herein.

45. Through the acts set forth above, Alice + Olivia made and used, or caused to be made and used, false records and statements material to the payment of false or fraudulent claims

by the SBA in violation of 31 U.S.C. § 3729(a)(1)(B). These false records and statements included the misrepresentations by Alice + Olivia in its Second-Draw PPP loan application and loan forgiveness application and the false certifications in these applications.

46. Alice + Olivia made, used, or caused to be made and used, these false records and statements with deliberate ignorance or reckless disregard of whether or not they were false.

47. By reason of the false records or statements, the Government has been damaged in a substantial amount to be determined at trial, and is entitled to recover treble damages plus a civil monetary penalty for each violation.

THIRD CLAIM
Payment by Mistake of Fact

48. The Government incorporates by reference each of the preceding paragraphs as if fully set forth herein.

49. The Government seeks relief against Alice + Olivia to recover monies paid under mistake of fact.

50. The lender acting on behalf of the SBA and the United States made payments based on the mistaken and erroneous belief that the Second-Draw PPP loan application included accurate information and that Alice + Olivia was eligible for the Second-Draw PPP loan. The Second-Draw PPP loan also was forgiven based on the mistaken and erroneous belief that the Second-Draw PPP loan forgiveness application included accurate information.

51. By reason of the foregoing, the Government has sustained damages in a substantial amount to be determined at trial.

FOURTH CLAIM
Unjust Enrichment

52. The Government incorporates by reference each of the preceding paragraphs as if fully set forth herein.

53. Through the acts set forth above, Alice + Olivia received PPP funds to which it was not entitled and therefore was unjustly enriched. The circumstances are such that, in equity and good conscience, Alice + Olivia should not retain those payments, the amount of which is to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, the Government respectfully requests that judgment be entered in its favor against Alice + Olivia as follows:

(a) On the First and Second Claims (FCA violations), for a sum equal to treble damages and civil penalties to the maximum amount allowed by law;

(b) On the Third and Fourth Claims (Payment by Mistake of Fact and Unjust Enrichment), a sum equal to the damages to the extent allowed by law; and

(c) Granting the Government costs and such further relief as the Court may deem proper.

Dated: New York, New York
January 24, 2026

JAY CLAYTON
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