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JUDGE KAPLAN'S CHAMBERS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----	X
UNITED STATES OF AMERICA,	:
	:
Plaintiff-Intervenor,	:
	: 13 Civ. 0055 (LAK)
v.	:
	:
YINGSHUN GARMENTS, INC., et al.,	: CONSENT ORDER
	:
Defendants.	:
	:
-----	X

WHEREAS, this Stipulation and Order of Settlement and Dismissal (the "Stipulation") is entered into by and between plaintiff-intervenor the United States of America (the "United States" or the "Government"), by its attorney Joon H. Kim, Acting United States Attorney for the Southern District of New York, and defendant Notations Inc. ("Notations"), through its authorized representative;

WHEREAS, Notations is a Pennsylvania corporation that maintains a principal place of business in New York, New York;

WHEREAS, Notations is a wholesaler of women's clothing, which involves purchasing women's garments from overseas manufacturers, causing those garments to be imported into the United States, and selling those garments to retail stores in the United States;

WHEREAS, a relator filed a complaint in the above-referenced action on or about January 3, 2013, and the United States intervened in the action on July 15, 2016, and filed a complaint-in-intervention on September 20, 2016, naming Notations as a defendant, among others;

WHEREAS, the United States amended its complaint on December 23, 2016 (the "United States' Complaint");

WHEREAS, the United States Complaint alleges that between 2009 and 2014, Notations violated the False Claims Act, 31 U.S.C. §§ 3729(c) and (g) (“FCA”), by causing false statements to be made to U.S. Customs and Border Protection (“CBP”) that were material to determining the amount of import duties owed on women’s clothing that Notations purchased and caused to be imported into the United States, and conspiring with certain other individuals and entities to perpetrate this fraudulent scheme (the “Covered Conduct”);

WHEREAS, the United States and Notations (collectively, the “Parties”) have reached a full and final, mutually agreeable resolution of the claims against Notations asserted arising out of the Covered Conduct;

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Notations agrees that the Court has subject matter jurisdiction over this action and consents to this Court’s exercise of personal jurisdiction over it.
2. Notations will pay to the United States damages in the amount of \$1 million (the “Settlement Amount”), as follows: an initial payment of \$250,000 will be made within 30 days of the Effective Date, and the remaining payments will be made in three installments of \$250,000, each one to be made by the first business day following the one-year anniversary of the prior payment. Notations shall make such payments by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney’s Office, Southern District of New York. In the event Notations fails to pay any portion of the Settlement Amount, following a failure to cure after five business days’ notice from the Government under Paragraph 20, Notations consents to entry of a judgment against it in the form attached hereto as Exhibit A.
3. Notations admits, acknowledges and accepts responsibility for the following facts:
 - a. In 2009, Notations began to purchase sweaters manufactured by Wuxi Yifeng Garments Co., Ltd. (“Wuxi Yifeng”), a company incorporated and

operating in the People's Republic of China. Notations transacted business with Wuxi Yifeng through Wuxi Yifeng's wholly owned U.S. subsidiary, Yingshun Garments, Inc. ("Yingshun"), which was located in New York. Yingshun was owned and run by the daughter of the owner of Wuxi Yifeng. Notations later transacted business with Yingshun's successor entities, Import Global Designs Inc. ("Import Global") and Olgrem LLC ("Olgrem").

- b. Virtually all of the sweaters that Notations purchased from Wuxi Yifeng were bought on a "Landed Duty Paid" ("LDP") or "Delivered Duty Paid" ("DDP") basis, meaning that the import duties owed to the United States and levied by CBP for those sweaters, which were manufactured in China by Wuxi Yifeng and imported to the United States by Yingshun or its successors, were to be paid by Yingshun or its successors, who would charge an all-in purchase price paid by Notations.
- c. For the majority of the sweaters Notations purchased from Wuxi Yifeng, Notations was billed by Wuxi Yifeng and made payment directly to Wuxi Yifeng in China. Yet Notations was aware that, for all of its transactions with Wuxi Yifeng, it was Yingshun, Import Global or Olgrem that was acting as the importer of record, whose legal obligations included making representations to CBP regarding, *inter alia*, the value of the sweaters and the corresponding amount of import duties owed on those sweaters, and paying all required import duties to CBP.

- d. Notations failed to take action in response to multiple warning signs that Yingshun, Import Global and Olgrem, with the assistance of Wuxi Yifeng, were undervaluing the sweaters purchased by Notations in representations to CBP and therefore were paying less in import duties than they should have been paying. Such warning signs included the fact that Wuxi Yifeng's commercial invoices lacked basic information such as the name and address of the invoice recipient, a problem that was flagged for Notations by its bank, but which did not prompt Notations to investigate the matter or request changes to Wuxi Yifeng's documentation.
- e. In all of its transactions with Wuxi Yifeng, and notwithstanding the above-referenced warning signs, Notations failed to verify that Yingshun's and its successors' procedures for importing sweaters conformed with the applicable laws, and failed to verify whether Yingshun, Import Global or Olgrem was filing truthful and accurate documents with CBP.

4. Notations agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Stipulation. Upon reasonable notice, Notations shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Notations further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

Additionally, Notations, at its own expense, shall maintain all of its currently existing paper and electronic documents relating to the Covered Conduct for a period of three years from the Effective Date.

5. Notations agrees to the following:
 - a. Notations agrees to implement, within 60 days of the Effective Date, a written customs compliance policy (the "Policy"), and Notations further agrees that, for a period of five years, on the anniversary of the Effective Date, it will provide the Government and CBP each year a letter signed by its CEO summarizing the implementation of, and all actions taken in furtherance of and any modifications to, the Policy. Upon implementation of the Policy, Notations shall provide a copy of the Policy to the Government and CBP.
 - b. Notations agrees to appoint one employee to 1) update the Policy as needed; 2) distribute the Policy at the time of its implementation, and thereafter at least annually, to all employees who communicate with suppliers of foreign-made garments, and to also distribute the policy to all new employees whose responsibilities are anticipated to include communicating with suppliers of foreign-made garments, for review and acknowledgement at the time of hiring; 3) respond to questions regarding the Policy from any employee, supplier, or other third party. The designated employee shall have a direct reporting line to the CEO or President regarding all matters related to the Policy.
 - c. The Policy will include provisions reasonably designed to ensure Notations' full compliance with applicable customs laws and regulations. The following provisions in subparagraphs (d) through (h) are among those that will be included in the Policy for this purpose.
 - d. The Policy will require Notations to distribute to suppliers of foreign-made garments acquired by Notations on an LDP basis an acknowledgment form indicating that the supplier acknowledges that all

import activity in connection with the LDP sale of the product to Notations will be in full compliance with applicable customs laws and regulations. The Policy also will also state that, if Notations comes to learn that a supplier is knowingly violating the customs laws, Notations will cease doing business with the supplier and report the conduct to CBP.

- e. The Policy will include instructions to Notations employees for identifying red flags for fraud in LDP transactions, and establish a duty to report any such red flags to Notations's management.
- f. Notations will periodically review the data published by the United States International Trade Commission available from the "USITC Interactive Tariff and Trade Web," <https://dataweb.usitc.gov>, as well as prevailing prices in the competitive market, to determine the prevailing average LDP price of products in the same classification and country of origin to those purchased from an LDP supplier.
- g. In the event that Notations, after a reasonable investigation, concludes that any red flags for fraud exist in an LDP transaction, including that the LDP price negotiated by Notations is substantially below the USITC average for the same classification and country of origin or the prevailing prices in the competitive market, Notations will promptly request explanatory information from the supplier regarding the transaction. If the supplier fails to provide the requested information within 30 days of the request, then Notations shall cease placing new orders with that supplier. If the information submitted by the supplier to Notations indicates that the supplier intends to make false statements to CBP or otherwise engage in fraud, Notations shall cease placing new orders with that supplier and shall report the conduct to CBP.
- h. Notations will maintain and/or utilize the services of a third party to maintain, for a period of not less than five (5) years, reports or documentation regarding the processes and analysis referenced in each of these sub-paragraphs.

6. Subject to the exceptions in Paragraph 7 below (concerning excluded claims), and Paragraph 12, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Stipulation or any payment made under this Stipulation), and conditioned upon Defendant's full payment of the Settlement Amount to the United States pursuant to Paragraph 2 and material performance of the other terms set forth herein, the United States releases Notations from any civil or administrative monetary claim the United States has for the Covered Conduct under the FCA; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; and the common law theories of payment by mistake, unjust enrichment, and fraud. For avoidance of doubt, this Stipulation does not release any individual or entity other than Notations.

7. Notwithstanding the release given in Paragraph 6 of this Stipulation, or any other term of this Stipulation, the following claims of the Government are specifically reserved and are not released by this Stipulation:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Any administrative liability;
- d. Any liability to the Government (or its agencies) for any conduct other than the Covered Conduct; and
- e. Any liability based on obligations created by this Stipulation.
- f. Notations waives and shall not assert any defenses it may have to any federal criminal prosecution or federal administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Stipulation bars a remedy sought in such federal criminal prosecution or

federal administrative action. Nothing in this Paragraph or any other provision of this Stipulation constitutes an agreement by the Government concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

8. Notations fully and finally releases the Government, and its agencies, officers, employees, servants, and agents, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Notations has asserted, could have asserted, or may assert in the future against the Government, and its agencies, officers, employees, servants, and agents, related to the Covered Conduct and the Government's investigation, prosecution and settlement thereof.

9. Notations has provided sworn financial disclosure statements ("Financial Statements") to the United States and the United States has relied on the accuracy and completeness of those Financial Statements in reaching this Stipulation. Notations warrants that the Financial Statements are complete, accurate, and current. If the United States learns of asset(s) in which Notations had an interest at the time of this Stipulation that were not disclosed in the Financial Statements, or if the United States learns of any misrepresentation by Notations on, or in connection with, the Financial Statements, and if such nondisclosure or misrepresentation changes the estimated net worth set forth in the Financial Statements by \$100,000 or more, the United States may at its option: (a) rescind this Stipulation and reinstate its suit based on the Covered Conduct, or (b) let the Stipulation stand and collect the full Settlement Amount plus one hundred percent (100%) of the value of the net worth of Notations previously undisclosed. Notations agrees not to contest any collection action undertaken by the United States pursuant to this provision, and immediately to pay the United States all reasonable costs incurred in such an action, including attorney's fees and expenses.

10. In the event that the United States, pursuant to Paragraph 9 (concerning disclosure of assets), above, opts to rescind this Stipulation, Notations agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the United States within 90 calendar days of written notification to Notations that this Stipulation has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on July 15, 2016.

11. Notations warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the United States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Stipulation, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Notations, within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Notations was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

12. If within 91 days of the Effective Date of this Stipulation or of any payment made under this Stipulation, Notations commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of Notations's debts, or seeking to adjudicate Notations as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian,

or other similar official for Notations or for all or any substantial part of Notations's assets,

Notations agrees as follows:

a. Notations's obligations under this Stipulation may not be avoided pursuant to 11 U.S.C. § 547, and Notations shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) Notations's obligations under this Stipulation may be avoided under 11 U.S.C. § 547; (ii) Notations was insolvent at the time this Stipulation was entered into, or became insolvent as a result of the payment made to the United States; or (iii) the mutual promises, covenants, and obligations set forth in this Stipulation do not constitute a contemporaneous exchange for new value given to Notations.

b. If Notations's obligations under this Stipulation are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the releases in this Stipulation and bring any civil and/or administrative claim, action, or proceeding against Notations for the claims that would otherwise be covered by the releases provided in Paragraph 6, above. Notations agrees that (i) any such claims, actions, or proceedings brought by the United States are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and Notations shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) Notations shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding that are brought by the United States within 90 calendar days of written notification to Notations that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on July 15, 2016; and (iii)

the United States has a valid claim against Notations, and the United States may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. Notations acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Stipulation.

13. Notations agrees to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Notations, its present or former officers, directors, employees, shareholders, and agents, in connection with:

- (1) the matters covered by this Stipulation;
- (2) the United States' civil investigation of the Covered Conduct;
- (3) the investigation, defense, and corrective actions undertaken by Notations in response to the United States' civil investigation of the Covered Conduct (including attorney's fees);
- (4) the negotiation and performance of this Stipulation; and
- (5) any payments Notations makes to the United States pursuant to this Stipulation, the attached Judgment, or any separate agreement, are unallowable costs for government contracting purposes ("Unallowable Costs").

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately

determined and accounted for by Notations, and Notations shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by Notations or any of its subsidiaries or affiliates.

- c. Treatment of Unallowable Costs Previously Submitted for Payment: Notations further agrees that within 90 days of the Effective Date of this Stipulation, it shall identify any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Notations or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. Notations agrees that the United States, at a minimum, shall be entitled to recoup from Notations any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment. Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Notations or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Notations or

any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

- d. Nothing in this Stipulation shall constitute a waiver of the rights of the United States to audit, examine, or re-examine Notations' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

14. This Stipulation is intended to be for the benefit of the Parties only. The Parties do not release any claims they may have against any other person or entity.

15. Any failure by the Government to insist upon full performance of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions, and the Government, notwithstanding that failure, shall have the right thereafter to insist upon the full performance of any or all provisions of this Stipulation.

16. This Stipulation is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Stipulation is the United States District Court for the Southern District of New York. For purposes of construing this Stipulation, it shall be deemed to have been drafted by each of the Parties and shall not, therefore, be construed against any party for that reason in any subsequent dispute.

17. Each party shall each bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Stipulation.

18. The undersigned counsel and other signatories represent and warrant that they are fully authorized to execute this Stipulation on behalf of the persons and entities indicated below.

19. This Stipulation may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Stipulation. Facsimiles of signatures or

scanned signatures shall constitute acceptable, binding signatures for purposes of this Stipulation.

20. Any notice pursuant to this Stipulation shall be in writing and shall be delivered by e-mail transmission, followed by postage-prepaid mail, to the following representatives:

To the Government:

Cristy Irvin Phillips
Assistant United States Attorney
United States Attorney's Office, Southern District of New York
86 Chambers Street, 3rd Floor
New York, NY 10007
Cristine.Phillips@usdoj.gov

To Notations:

Charles Michael, Esq.
Steptoe & Johnson LLP
1114 Avenue of the Americas
New York, NY 10036
cmichael@steptoe.com

21. The effective date of this Stipulation is the date upon which this Stipulation is entered by the Court (the "Effective Date").

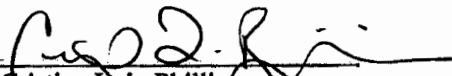
22. This Stipulation constitutes the complete agreement between the Parties. This Stipulation may not be amended except by written consent of the Parties.

23. All claims against Notations are hereby dismissed with prejudice, without costs or fees to either party; provided, however, that the Court shall retain jurisdiction over this Stipulation and each Party to enforce the obligations of each Party under this Stipulation.

For the United States

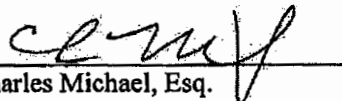
Dated: New York, New York
September 27, 2017

Joon H. Kim
Acting United States Attorney


By: 
Cristine Irvin Phillips
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007

For Notations:

Dated: New York, New York
September 26, 2017

By: 
Charles Michael, Esq.
Steptoe & Johnson LLP
1114 Avenue of the Americas
New York, NY 10036

Dated: New York, New York
~~September~~ 27, 2017
Oct. 2

SO ORDERED:

HONORABLE LEWIS J. KAPLAN
UNITED STATES DISTRICT JUDGE

EX. A — FORM OF JUDGMENT

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA *ex rel.*
XING WEI,

Plaintiff,

—*against*—

YINGSHUN GARMENTS, INC.,
GOLDEN TOO, INC., AR KNITWEAR, and
KBL GROUP INTERNATIONAL LTD,

Defendants.

13 Civ. 0055 (LAK)

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

—*against*—

YINGSHUN GARMENTS, INC.,
MARIE ROGERS, IMPORT GLOBAL
DESIGNS, INC., OLGREM LLC, and
NOTATIONS, INC.,

Defendants.

JUDGMENT

WHEREAS the United States of America (the “Government”) filed a complaint-in-intervention in the above matter that was duly served upon defendant Notations, Inc. (“Notations);

WHEREAS, on or about September __, 2017, Notations and the Government entered into a Stipulation and Order of Settlement and Dismissal (the “Stipulation”) resolving all claims against Notations, and filed such Order with the Court;

WHEREAS, on or about September __, 2017, the Court signed the Stipulation;

WHEREAS, Notations has failed to make a payment due on [DATE] of [AMOUNT] pursuant to the Stipulation;

NOW, THEREFORE, it is hereby ORDERED AND ADJUDGED as follows:

1. The United States shall have a judgment against Notations in the sum of _____ [unpaid amount owing, up to [SETTLEMENT TOTAL]]

Dated: New York, New York

[DATE]

HONORABLE LEWIS A. KAPLAN
UNITED STATES DISTRICT JUDGE