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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X
UNITED STATES OF AMERICA *ex rel.*
JOHANNA OLARTE,

Plaintiff,

v.

COMPLAINT-IN-INTERVENTION
OF THE UNITED STATES OF AMERICA

TEMPLE ST. CLAIR LLC; PAUL ENGLER;
JAMIE MCGRATH; and
TEMPLE ST. CLAIR CARR

15 Civ. 5015 (KPF)

Defendants.

X
UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

TEMPLE ST. CLAIR LLC,

Defendant.

X

Plaintiff, the United States of America, by its attorney, Geoffrey S. Berman, United States Attorney for the Southern District of New York, files this Complaint-In-Intervention, alleging upon information and belief as follows:

PRELIMINARY STATEMENT

1. The United States brings this Complaint-In-Intervention seeking damages and civil penalties against Temple St. Clair LLC (“Defendant”) under the False Claims Act, 31 U.S.C. §§ 3729 *et seq.*, based on Defendant’s knowing and fraudulent evasion of significant customs duties owed on jewelry imported from Italy, Thailand and Sri Lanka.
2. As set forth more fully below, the United States alleges that Defendant engaged in three different schemes to defraud the United States from customs duties: (1) from 2011 through 2016, Defendant underreported the actual value of the goods imported from Italy, Sri Lanka and Thailand in order to to pay a lower customs duty or obtain duty-free status, (2) from 2011 through 2016, Defendant’s senior leadership brought jewelry into the United States for commercial purposes without declaring it to United States Customs and Border Protection (“CBP”), thus unlawfully avoiding payment of customs duties; and (3) in 2017, Defendant failed to affix jewelry manufactured in Sri Lanka or Thailand with permanent markings, as required by law, that identified the jewelry’s country of origin at the time it entered the United States, and then sold the jewelry to retailers or consumers in the United States without markings identifying the country of origin, giving rise to a ten percent marking duty. As a result of Defendant’s fraudulent actions, it avoided paying substantial customs duties.

JURISDICTION AND VENUE

3. 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.

4. 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 a substantial part of the events or omissions giving rise to the claims occurred in this District.

PARTIES

5. Plaintiff is the United States of America.

6. Defendant Temple St. Clair LLC is a Delaware corporation with its principal place of business in New York, New York. It is a designer, manufacturer and importer of fine jewelry, and it sells its jewelry through its website or through retail stores in the United States.

7. Relator Joanna Olarte ("Relator") is a resident of New York. In 2014, Relator was employed by Defendant as a Senior Inventory Manager, in which capacity she prepared customs documents for the import and export of jewelry and loose gemstones.

BACKGROUND

8. 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. 19 U.S.C. § 1484(a)(1)(B); 19 C.F.R. § 141.0a(a).

9. The documents required to be filed with CBP include, among other things, (i) an entry summary (CBP Form 7501) that declares the value of the merchandise and the applicable duty

rate; and (ii) a commercial invoice that provides verification of the value of the merchandise. *See, e.g.*, 19 C.F.R. §§ 141.0a, 141.19(a), 141.81, 141.86(a), 142.3(a), 142.6(a). 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.

10. 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.

11. 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.

12. The United States has a trade program, the General System of Preferences (“GSP”), designed to provide preferential duty-free treatment for goods of certain beneficiary developing countries (or “BDCs”). Trade Act of 1974, Pub.L. 93-618, 88 Stat.1978 (Jan. 3, 1975), codified at 19 U.S.C. § 2461 *et. seq.* Sri Lanka and Thailand are among the beneficiary countries and were during the time period from 2008 to the present. *See, e.g.*, <https://ustr.gov/sites/default/files/gsp/Beneficiary%20countries%20March%202018.pdf>.

13. Articles produced in and imported from a beneficiary developing country may be eligible for duty-free entry under the GSP program if at least thirty-five percent of the value of the article is attributable to either materials or direct costs of processing operations performed in the beneficiary developing country. 19 U.S.C. §§ 2463(a)(2), (3).

14. Unless specifically excepted, “every article of foreign origin . . . imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article . . . will permit, in such a manner as to indicate to an ultimate purchaser in the United States the name of the country of origin of the article.” 19 U.S.C. § 1304.

15. Jewelry may be permanently marked by etching, or by affixing a tag in a conspicuous place and in a secure manner such that, that unless deliberately removed, the tag will reach the ultimate consumer. 19 C.F.R. § 134.44.

16. If an imported article is not properly marked with the country of origin at the time of importation, and such article is not exported, destroyed or properly marked under CBP’s supervision, the United States shall levy and collect a ten percent markings ad valorem duty. 19 C.F.R. § 1304(i). The duty is not to be construed as penal. *Id.* This duty “shall be deemed to have accrued at the time of importation.” *Id.*

17. 19 U.S.C. § 1484(a)(1) requires importers to provide CBP sufficient information to determine whether, among other things, goods may be released from CBP custody, and sufficient information to allow CBP to properly assess any duties on merchandise. Because mismarking gives rise to a duty accruing at the time of importation, section 1484(a)(1) requires importers to disclose that an item is mismarked.

DEFENDANT’S FRAUDULENT SCHEMES

A. Defendants Evaded Customs Duties by Undervaluing Items and Improperly Claiming Duty-Free Treatment

18. From January 2011 through July 2016, Defendant imported thousands of pieces of jewelry from Sri Lanka, Thailand and Italy.

19. During that time period, Defendant presented commercial invoices and entry summary forms (CBP Form 7501) declaring the value of the imported merchandise.

20. Pursuant to its scheme, however, Defendant repeatedly omitted the value of some of the components of its jewelry (also known as “assists”). The undeclared components included gemstones and “findings,” which are discrete parts of a piece of jewelry, such as clasps.

21. For example, when importing jewelry from Italy, Defendant repeatedly presented customs entry forms and commercial invoices that omitted the value of some components, such as gemstones, that Defendant had provided to create the items.

22. By failing to declare the value of those components to CBP, Defendant falsely claimed that the jewelry’s value was lower than its actual value. Because the applicable customs duty was a percentage of the declared value of the jewelry, Defendant’s scheme deprived the government of applicable duty on the undeclared portion of each item’s value.

23. When importing jewelry from Sri Lanka or Thailand, Defendant sought duty-free status under the GSP program by providing a Form 7501 to CBP that indicated each piece was eligible for duty-free status.

24. In order to qualify for duty-free status, Defendant repeatedly represented to CBP that at least thirty-five percent of the value of each item originated in Sri Lanka or Thailand, which were BDCs under the GSP duty-free program.

25. To obtain duty-free status, from 2011 to 2016, Defendant underreported the value of more than a thousand pieces of jewelry by failing to disclose the value of the assists as part of the total value of the merchandise on customs entry documents. By excluding the assists from each item’s value, the portion of the value attributable to the BDC was inflated. As a result, Defendant falsely claimed that at least thirty-five percent of the value of each item originated in the BDC, and thereby was able to obtain duty-free treatment for these pieces of jewelry.

26. For example, on April 11, 2013, Defendant stated on Customs forms and supporting documents that it was importing from Sri Lanka, via duty-free GSP status, a pendant manufactured per Defendant's specifications by W.M. De Silva Jewelers ("De Silva"). Customs documents declared the pendant had a value of \$472.00, based on metal costing \$314.00, a setting valued at \$13.00, and finishing valued at \$145.00.

27. However, for the same pendant, Defendant provided to the manufacturer crystals and diamonds (together, "gemstones") valued at \$1,272.60. Defendant fraudulently omitted these gemstones from customs documents and omitted their value from the declared item value.

28. These gemstones were sent by Defendant in the United States to De Silva in Sri Lanka for the specific purpose of manufacturing this (or a similar) pendant. Thus, the gemstones' country of origin for GSP purposes was the United States, not Sri Lanka.

29. Thus, even assuming that all the other components of the pendant were properly considered to have originated in Sri Lanka, the value created in Sri Lanka (\$472) was only about 27% of the true total value of the piece (\$472+\$1,272.60). The pendant therefore did not qualify for GSP treatment, since it did not meet the 35% threshold.

30. By failing to disclose the value of the assists that originated in the United States—the gemstones—Defendant improperly obtained GSP treatment and avoided paying the 5.5% duty that was properly owed on the true total value of this pendant. If Defendant had provided documentation with the full value of the piece, including the assist value, the United States would have assessed duty.

31. As another example, on May 23, 2014, Defendant imported a necklace from Sri Lanka, sought duty-free status under the GSP program, and declared the value to be \$1,610. But Defendant omitted the value of gemstones and findings provided by Defendant that totaled

\$5,060.06. Thus at most, only about 24% of the necklace's true value could have originated in Sri Lanka, and the item did not qualify for GSP treatment. Defendant's false documentation prevented the government from collecting the 5.5% duty properly owed on the full value of the item.

32. Defendant similarly failed to declare and include the assist value for thousands of other items. In more than a thousand cases, the failure to declare the assist value enabled Defendant to falsely claim GSP duty-free status for the items, depriving the government of duty properly owed.

33. The foregoing misstatements and omissions from customs documents were material. Had CBP known that Defendant was misstating items' values or omitting the value of components from customs documents, CBP would have assessed additional duty based on the true, complete value of each item and the true facts about whether each piece qualified for duty-free treatment. As a result of these misstatements and omissions, the United States lost substantial lawful customs duties.

B. Defendant's Employees Hand-Carried Goods to Avoid Customs Duties

34. From at least 2013 to 2016, employees of Defendant, including senior management, brought jewelry into the United States for commercial purposes without declaring it to CBP.

35. For example, when entering the United States from abroad, Defendant's employees repeatedly carried jewelry on their persons—including by wearing items—or in personal belongings when going through customs. This jewelry was being imported for Defendant's commercial use, but the employees did not declare it to CBP.

36. By failing to declare these items, Defendant's employees deprived the United States of duty properly owed on these items.

37. For example, in 2015, a member of Defendant's senior leadership hand-carried into the United States a pendant valued at approximately \$83,000.00, for Defendant's commercial purposes. By failing to declare that pendant to CBP, Defendant avoided paying approximately \$4,500.00 in customs duties properly owed to the United States.

38. Defendant's employees also carried gemstones into the United States for commercial use without declaring them.

39. Defendant's employees' failure to declare these items were material to the Government's assessment and collection of customs duties.

C. Defendant Did Not Properly Disclose to CBP that Its Items Were Improperly Marked and Avoided Its Obligations to Pay

40. In 2017, Defendant regularly imported jewelry that was manufactured in Sri Lanka and Thailand but was not permanently marked, at the time of importation, with its country of origin, contrary to the requirements of 19 U.S.C. § 1304 and its implementing regulations, 19 C.F.R. Part 134.

41. For example, in October 2017, Defendant imported numerous pieces of jewelry from Sri Lanka. At the time of importation, the jewelry was not engraved or tagged in a manner that would inform the ultimate purchaser of its country of origin.

42. Similarly, in November 2017, Defendant imported numerous pieces of jewelry from Thailand that, at the time of importation, did not have any engraving or tag affixed to the jewelry, informing the ultimate purchaser of its country of origin.

43. In comparison, Defendant regularly imported jewelry that was manufactured in Italy, and that jewelry was consistently engraved with a marking to indicate that it was made in Italy.

44. Only imported jewelry is required to be marked with its country of origin. Thus, for example, gold necklaces that Defendant made in the United States did not contain a marking with its country of origin.

45. Once jewelry was imported, Defendant did attach tags containing details about the jewelry, such as the karat rating of gold or type of gemstones. However, pursuant to its scheme, these tags did not state the country of origin of jewelry manufactured in Sri Lanka or Thailand. Because items made in Sri Lanka or Thailand were not engraved or marked in any other way with the country of origin, there was no way for a purchaser or the ultimate consumer to know where these items were manufactured.

46. In 2017, retailers were selling Defendant's jewelry that originated in Sri Lanka or Thailand with tags containing descriptive information affixed to each piece of jewelry. That same jewelry did not have any marking informing the ultimate purchaser that it originated in Sri Lanka or Thailand.

47. Defendant's failure to label items so that ultimate purchasers could know each item's country of origin violated 19 U.S.C. § 1304 and its implementing regulations. Pursuant to section 1304(i), these violations give rise to a ten percent ad valorem duty on each mismarked item. Pursuant to the same section, the duty is "deemed to have accrued at the time of importation." *Id.*

48. Because proper marking is a requirement of section 1304 and its implementing regulations, Defendant, who is in the business of importing jewelry for sale, was either actually or constructively aware of its requirements.

49. By failing to disclose to the United States that its items were not properly marked in violation of 19 U.S.C. § 1304, Defendant deprived the United States significant customs duties.

50. Under 19 U.S.C. § 1484(a)(1), Defendant was required to provide CBP, at the time of importation, sufficient information to permit CBP to determine whether the items could be released and to enable CBP to properly assess duties on the merchandise. Because mismarking incurs a 10% mismarking duty, section 1484(a)(1) includes the obligation to disclose that goods are not properly marked.

51. By failing to notify CBP that the items were not properly marked, Defendant knowingly concealed or avoided its obligation to pay the 10% mismarking duty.

52. Defendant has not paid the 10% mismarking duty it owes.

CLAIM FOR RELIEF

Violations of the False Claims Act
(31 U.S.C. § 3729(a)(1)(G))
Reverse False Claims

53. The Government incorporates by reference each of the preceding paragraphs as if fully set forth in this paragraph.

54. The Government seeks relief against Defendants under 31 U.S.C. § 3729(a)(1)(G).

55. As set forth above, Defendant knowingly made, used, or caused to be made or used false records and/or statements material to obligations to pay customs duties to the United States, and/or knowingly concealed or knowingly and improperly avoided or decreased obligations to pay customs duties to the United States.

56. The Government incurred losses in the form of customs duties underpaid by Defendant because of its wrongful and fraudulent conduct.

57. By virtue of the false records or statements made by Defendant, or by virtue of Defendant's knowing concealment or knowing and improper efforts to avoid or decrease their customs obligations, 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 Defendant 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
June 21, 2018

Respectfully submitted,

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Southern District of New York
Attorney for the United States

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