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U S DISTRICT COURT SDNY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA *ex rel.*
MICHAEL KRIGSTEIN,
Plaintiff,

v.

SIOUNI and ZARR CORPORATION;
DANNY & NICOLE; DANNY & NICOLE,
INC.; DANA KAY; DANA KAY, INC.;
ALAN HAKIMIAN; AFSHIN HAKIMIAN;
ABC CORP. (1-10); and individuals 1-10,

Defendants.

**COMPLAINT-IN-INTERVENTION
OF THE UNITED STATES OF
AMERICA**

11 Civ. 4247 (CM)

Jury Trial Demanded

ECF Case

UNITED STATES OF AMERICA,
Plaintiff-Intervenor,

v.

DANA KAY, INC. and SIOUNI & ZAR
CORPORATION,

Defendants.

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 Dana Kay, Inc. ("Dana Kay") and Siouni & Zar Corporation d/b/a/ "Danny & Nicole" ("Siouni & Zar") (collectively, "Defendants"), alleging as follows:

PRELIMINARY STATEMENT

1. The Government brings this Complaint-In-Intervention seeking damages and penalties against Dana Kay and Siouni & Zar 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 women's apparel imported over the past decade. 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, a component of the U.S. Department of Homeland Security ("CBP"). By concealing the total value of payments it made to manufacturers, Defendants fraudulently understated the value of the imported apparel and avoided paying hundreds of thousands 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 Dana Kay and Siouni & Zar are both located in this

District and because 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. Relator Michael Krigstein ("Relator") is a resident of New Jersey. Relator has been employed as a garment cutter at Dana Kay since 2006.
6. Defendant Dana Kay is a New York corporation with its principal place of business in Manhattan. Dana Kay is a wholesaler of women's apparel and regularly sells its apparel to retail stores such as J.C. Penney, Ann Taylor, Dress Barn, and Sears.
7. Defendant Siouni & Zar is also a New York corporation with its principal place of business in Manhattan and a wholesaler of women's apparel.
8. Dana Kay and Siouni & Zar are affiliated companies with a common ownership.

FACTS

A. Customs Duties

9. 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 United States Customs and Border Protection or, previously, its predecessor agency, the U.S. Customs Service (collectively, "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).
10. 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 (3) 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). 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.

11. 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.

12. The entry summary thus 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.

13. Dana Kay and Siouni & Zar, like many other importers, use a customs broker to assist them in clearing goods for entry by preparing the entry summary and other necessary paperwork and calculating taxes and duties. The customs broker completes the entry summary based on information provided by the importer. Dana Kay and Siouni & Zar primarily use UTi as their customs broker.

B. Defendants' Fraudulent Scheme

14. To avoid the payment of customs duties, the Defendants perpetrated identical fraudulent schemes. Pursuant to the scheme, Defendants employed two different sets of invoices for paying garment manufacturers versus reporting those payments to CBP. The invoices in the

first set –the commercial invoices– are typically shipped by the garment manufacturer with the apparel, then presented by the customs broker to CBP.

15. The commercial invoices contain information identifying the number of and type of garments, their style numbers, country of origin, and final destination. Defendants pay the manufacturers the amounts indicated on the commercial invoices. A customs broker then utilizes the commercial invoices to prepare entry summary forms, which are used to calculate the appropriate duty owed on the imported items. The commercial invoices, however, represent only a portion of what Defendants actually pay the manufacturers and thus understate the value of the imported goods.

16. The second set of invoices –the “debit notes”– reflect the difference between what Defendants actually pay the manufacturers of the garments and the commercial invoices. The debit notes are invoices prepared by the manufacturers or their agents at the direction of Defendants and reflect a flat charge per garment set, typically \$2.50. Defendants directly instructed manufacturers and their agents to deduct these amounts prior to calculating the duty on their orders.

17. Over the last ten years, Dana Kay and Siouni & Zar used debit notes to give themselves deductions on nearly all the apparel they imported. Coordinating their fraudulent schemes, Defendants typically used debit notes reflecting the same deductions per garment set. For instance, in instructing one manufacturer concerning duty calculations, a Dana Kay principal stated that its deduction was to be the “same as Danny & Nicole, classify as separate pieces and also deduct \$2.50 from total (make \$2.50 per set as per debit note).” Further, one of the principals of Siouni & Zar frequently negotiated with manufacturers on behalf of both

Defendants to increase the amount of the debit note as labor costs rose, in order to keep the overall cost of the imported apparel the same.

18. Over the last ten years, Defendants thus steadily, and simultaneously, increased the 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 increased, some manufacturers or their agents expressed concern about either the appropriateness of the deduction or the transparency of the scheme. For instance, on one occasion in July of 2009, at a meeting between Dana Kay and a manufacturer's agent, Queen Apparel, a Dana Kay principal suggested another increase in the amount of the debit note and a representative of Queen Apparel responded that the debit note amount could not be further increased because it would draw unwanted attention given that the deductions were illegal.

19. Defendants did not disclose to CBP the amounts they paid to manufacturers pursuant to debit notes, thus understating the value of the apparel they imported, and, accordingly, reducing their obligations to pay duty.

20. 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.

21. The Government relied on Defendants' fraudulent invoices and resulting entry summaries in assessing and collecting duty.

22. By knowingly submitting the fraudulent invoices to CBP, and by not disclosing the amounts it paid to manufacturers pursuant to debit notes, Defendants have been able to pay less than the amount of customs duties actually owed to CBP since at least 2003.

23. The three examples that follow illustrate the use of debit notes specifically by Dana Kay to artificially deflate the value of its imported apparel and therefore avoid duty payment obligations to CBP. These examples represent a small fraction of the total number of fraudulent records submitted by Defendants over the course of a decade. Indeed, during the past few years, as Defendants were paying their top manufacturers a steady or increasing amount for imported apparel, they paid a decreasing amount in customs duties to CBP.

1. The January 9, 2009 Transaction

24. On or about January 9, 2009, Dana Kay paid commercial invoice no. EXPT.KC0014/09 for \$61,085.46 for the importation of apparel originating in Vietnam with a final destination of Harrison, New Jersey. The commercial invoice contained information that allowed the transaction to be tracked by style numbers and quantities.

25. On the same date, Dana Kay paid debit-note no. EXPT.KC0014/09 with a unit price of \$2.50 per item for the same style numbers and quantities as the commercial invoice. The debit note listed a total transactional amount of \$16,830.00. The customs broker for the transaction prepared an Entry Package containing commercial invoice no. EXPT.KC0014/09, an Entry Summary document listing a total entered value of \$61,085, and a duty of \$12,537.13.

26. The debit note was not contained in the package of materials provided to the customs broker and was therefore not included in the Entry Package prepared for the purpose of calculating duty. This transaction resulted in an underpayment of approximately \$3,700 in duty to the Government.

2. The October 18, 2009 Transaction

27. On or about October 18, 2009, Dana Kay paid commercial invoice no. MB181009 in the amount of \$68,673.74 for the importation of apparel originating in Vietnam with a final destination of Harrison, New Jersey.

28. On the same date, Dana Kay paid debit note no. MB181009 with a unit price of \$1.00 per item for the same style numbers and quantities as the commercial invoice. The debit note listed a total transactional amount of \$11,041.50. The customs broker prepared an Entry Package containing commercial invoice no. MB181009 and an Entry Summary listing the total entered value for the package as \$68,674.

29. The debit note was not contained in the package of materials provided to the customs broker and was therefore not included in the Entry Package prepared for the purpose of calculating duty. This transaction resulted in an underpayment of approximately \$1,700 in duty to the Government.

3. The May 2, 2011 Transaction

30. On or about May 2, 2011, Dana Kay paid commercial invoice no. 211YS92101 in the amount of \$37,252.13 for the importation of apparel originating in Vietnam with a final destination of Harrison, New Jersey.

31. On the same date, Dana Kay paid debit note no. 211YS92101 with a unit price of \$2.50 per item for the same style numbers and quantities as the commercial invoice. The debit note listed a total transactional amount of \$27,090.50. The customs broker prepared an Entry Package containing commercial invoice no. 211YS92101 and an Entry Summary listing the total entered value for the package as \$37,252.13.

32. The debit note was not contained in the package of materials provided to the customs broker and was therefore not included in the Entry Package prepared for the purpose of calculating duty. This transaction resulted in an underpayment of approximately \$5,900 in duty to the Government.

33. 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

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

35. 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).

36. 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.

37. The Government incurred losses relating to customs duties underpaid by Defendants because of their wrongful and fraudulent conduct.

38. 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.

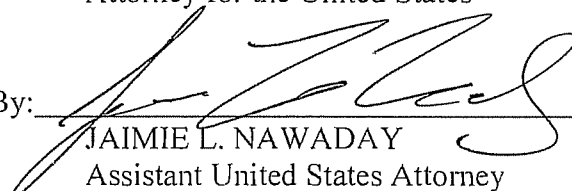
WHEREFORE, the Government respectfully requests that judgment be entered in its favor and against Defendants as follows:

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
January 24, 2014

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

By: _____


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