

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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: UNITED STATES OF AMERICA :  
: :  
: SEALED INDICTMENT :  
: - v. - :  
: 19 Cr. \_\_\_\_ :  
: JOSEPH BAILEY, :  
: :  
: Defendant. :  
: :  
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COUNT ONE  
(Conspiracy to Commit Wire Fraud)

The Grand Jury charges:

1. At all times relevant to this Indictment, JOSEPH BAILEY, the defendant, was the majority owner, President and Chief Executive Officer of an apparel company ("Company-1") located in Manhattan, New York.

2. Beginning in at least 2007 and through at least 2015, JOSEPH BAILEY, the defendant, and others known and unknown, conspired together to submit fraudulent invoices to U.S. Customs and Border Protection ("CBP") that significantly understated the value of clothing imported into the United States by Company-1, thereby depriving the United States more than \$1 million of duty revenue.

3. At all times relevant to this Indictment, Company-1 purchased the vast majority of the clothing that it sold from a manufacturer ("Manufacturer-1") located in China. At the direction of JOSEPH BAILEY, the defendant, individuals

located in China who were affiliated with Manufacturer-1 prepared false invoices that materially understated the value of the clothing purchased by Company-1. Between in or about 2007 and in or about 2015, BAILEY and his co-conspirators, including certain employees of Company-1, orchestrated the undervaluation scheme in two distinct ways – through a “double-invoicing” scheme and a “samples” scheme.

#### The Double-Invoicing Scheme

4. Starting shortly after Company-1 began doing business with Manufacturer-1 in 2007, through approximately 2010, JOSEPH BAILEY, the defendant, and his co-conspirators engaged in a double-invoicing scheme by which Company-1 would receive two sets of invoices from Manufacturer-1 for the same shipment of goods. One invoice, referred to as the “pay by” invoice, was significantly higher and reflected the actual price paid by Company-1 for the goods. The second invoice reflected a significantly lower price for the goods and was presented to CBP. This allowed Company-1 to pay a fraudulently lower amount of customs duties.

5. For example, in early January 2008, an employee of Manufacturer-1 located in China sent an email to JOSEPH BAILEY, the defendant, seeking payment for a number of invoices (the "Pay By Invoices") in the following amounts, which Company-1 then paid at BAILEY's direction, primarily by wire transfers, including via wire transfers from Company-1's bank account in Manhattan, New York to Manufacturer-1's bank account in China:

- i. JL7280 : \$286,442.00
- ii. JL7285 : \$227,974.00
- iii. JL7289 : \$97,002.10
- iv. JL7290/92/93 : \$299,314.25
- v. JL7294 : \$55,681.80

b. Shortly thereafter, Manufacturer-1 sent documents identified as "Shipment Documents" including false invoices for these shipments (the "Falsified Invoices"). The Falsified Invoices included in the "shipment documents" bore the same invoice numbers as the Pay By Invoices for which Manufacturer-1 has previously requested payment, but reflected different costs:

- i. JL7280 : \$203,328
- ii. JL7285 : \$21,750
- iii. JL7289 : \$43,394
- iv. JL7290/92/93 : (\$75,066, \$57,773, \$51,612)
- \$184,451 total
- v. JL7294 : \$38,923

c. Company-1 falsely declared the amounts on the Falsified Invoices as the value of the goods to CBP when entering the goods into the United States. As a result of these fraudulent statements, the United States was deprived of duty revenue.

6. As another example, in June 2009, an employee of Manufacturer-1 located in China requested payment for a shipment of 41,410 pieces of girls' clothing by emailing a "pay by" invoice, bearing the invoice number JL9267 in the amount of \$199,157.26, to an employee of Company-1 located in New York, New York. Company-1 paid this amount to Manufacturer-1 for the shipment primarily by wire transfer from Company-1's bank account in Manhattan, New York to Manufacturer-1's bank account in China. Manufacturer-1 also emailed a second invoice to an

employee at Company-1, bearing an identical date and invoice number, which reflected a price of \$130,591.12 for those same 41,410 pieces of girls' clothing. An employee of Company-1, at the direction of JOSEPH BAILEY, the defendant, submitted the invoice with the lower amount to CBP, and Company-1 therefore falsely declared the value of the shipment to CBP as being only \$130,591.12.

#### The Sample Invoice Scheme

7. In approximately 2010, JOSEPH BAILEY, the defendant, and his co-conspirators began a new customs fraud scheme, involving invoices for "sample" goods, by which Manufacturer-1 would send two separate sets of invoices for a given shipment that together reflected the true price Company-1 actually paid to Manufacturer-1 for a particular shipment of clothing. The first invoice, typically entitled the "commercial invoice," described the goods purchased and was submitted to CBP. The second invoice purportedly reflected amounts paid by Company-1 for "sample" goods and was not submitted to CBP. Sample goods, which are not permitted to be sold, are not subject to customs duties.

8. The "samples" invoice was not, in fact, for samples actually purchased by Company-1. Rather, it was a means to make an additional payment to Manufacturer-1 for actual goods purchased by Company-1 without disclosing it to CBP. Typically, the "samples" invoices reflected a unit price for sample goods that was significantly greater than the unit price for the non-sample goods reflected on the invoice submitted to CBP (for example, \$70-\$90 per unit on the "samples" invoice versus a \$4 per unit price on the "commercial invoice"). In addition, the "samples" invoice reflected the purchase of unusually large amounts of sample goods, for example the "samples" invoice reflected quantities as large as 24 or 48 pieces of a single color in a single style.

9. In its internal accounting program, employees of Company-1 would allocate the amount reflected on the "samples" invoice to the cost of each style listed on the commercial invoice by using a "miscellaneous" column. As JOSEPH BAILEY, the defendant well knew, the unit price reflected on the commercial invoice was not the true price that Company-1 paid for the goods to Manufacturer-1. Among other things, BAILEY's handwriting on

a commercial invoice dated June 5, 2013 reflects calculations that he personally performed that include the total true unit prices of the goods next to the false unit prices indicated on the invoice.

10. As another example of the sample invoicing scheme, in October 2013, an employee of Manufacturer-1 located in China sent an email to employees of Company-1 located in Manhattan, New York requesting payment of \$277,105.20 for a shipment of girls' woven pants and jackets. Attached to the email were two invoices:

i. an invoice in the amount of \$207,427.50 was entitled "Commercial Invoice" ("Commercial Invoice-1") and reflected Company-1's purchase of 35,670 Girls' Woven Pants with a purported unit price of \$4.50 and 7,506 Girls' Woven Jackets with a purported unit price of \$6.25; and

ii. an invoice in the amount of \$69,677.70 was entitled "Debit Note Samples" ("Sample Invoice-1") and purported to describe the purchase of 576 samples at unit prices ranging from \$75/unit to \$100/unit. In truth and in fact, Sample Invoice-1 did not reflect a purchase of actual samples, but

rather was a means for Company-1 to make an additional payment to Manufacturer-1 for the goods described in Commercial Invoice-1 without declaring that additional payment to CBP.

11. On or about October 23, 2013, JOSEPH BAILEY, the defendant, authorized and effectuated a wire transfer of \$277,105.20 – i.e., the figure that results from adding the billed amounts of Commercial Invoice-1 and Sample Invoice-1 – from a bank account in Manhattan, New York to the account of Manufacturer-1 in China.

12. On October 27, 2013, an employee of Company-1, at the direction of JOSEPH BAILEY, the defendant, submitted only Commercial Invoice-1 to CBP, and falsely declared the value of the shipment as \$207,427.50,

13. In order to account for the amount Company-1 actually paid for the goods in its internal accounting system, an employee of Company-1 allocated the additional \$69,677.70 that Company-1 had paid for the shipment to the unit price for this shipment of Girls' Woven Pants – adding \$1.85 per unit to 23,376 pieces and \$2.15 per unit to 12,294 pieces in the "Miscellaneous" column of its internal accounting software.



14. As another example, in April 2014, Company-1 wired \$157,537.20 from its account in New York, NY to the account of Manufacturer-1 in China for a shipment of girls' pants and shorts. Company records indicate that this amount was reflected in two separate invoices - the first in the amount of \$126,924.00 and the second for \$30,613.20. The first invoice, bearing the invoice number JL12010, was entitled "Commercial Invoice" ("Commercial Invoice-2") and reflected an order of 31,731 pieces of girls' pants and shorts priced at \$4 per unit. The second invoice was entitled "Debit Note Samples" ("Sample Invoice-2") and indicated, falsely, that it reflected a shipment of 252 sample pieces ranging in unit price from \$75 to \$90 per piece. Company-1 declared only \$126,924 - i.e., the value of Commercial-Invoice-2 - as the value of the shipment to CBP.

15. As a final example, in late April 2014, Manufacturer-1 e-mailed two separate invoices, totaling \$179,947.30, to employees of Company-1 requesting payment for a shipment of ladies' and girls' woven pants and shorts that was expected to enter the United States in early May 2014. One invoice entitled "Commercial Invoice," ("Commercial Invoice-3")

bearing the invoice number JL14010, was for an amount of \$131,722 for 27,986 pieces priced between \$4.50 and \$5.00 per unit. The second invoice entitled "Debit Note Samples" ("Sample Invoice-3") indicated, falsely, that it reflected a shipment of 456 sample pieces priced between \$75 and \$95 per unit. On or about April 29, 2014, Company-1 wired \$179,947.30 to the account of Manufacturer-1 for this shipment. However, when the goods entered the United States on or about May 5, 2014, an employee of Company-1, at the direction of JOSEPH BAILEY, the defendant, submitted only Commercial Invoice-3 to CBP and falsely declared only \$131,722 as the value of the shipment.

#### STATUTORY ALLEGATIONS

16. From in or about 2007 up to and including in or about July 2015, in the Southern District of New York and elsewhere, JOSEPH BAILEY, the defendant, and others known and unknown, willfully and knowingly did combine, conspire, confederate, and agree together and with each other to commit wire fraud, in violation of Title 18, United States Code, Section 1343.

17. It was a part and an object of the conspiracy that JOSEPH BAILEY, the defendant, and others known and unknown, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, would and did transmit and cause to be transmitted by means of wire and radio communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343, to wit, BAILEY, the majority owner and CEO of Company-1, participated in a scheme to submit fraudulent invoices to CBP that significantly understated the value of merchandise imported into the United States by Company-1.

(Title 18, United States Code, Section 1349.)

COUNT TWO  
(Wire Fraud)

The Grand Jury further charges:

18. From in or about 2007 up to and including in or about July 2015, in the Southern District of New York and

elsewhere, JOSEPH BAILEY, the defendant, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, transmitted and caused to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds, for the purpose of executing such scheme and artifice, to wit, BAILEY submitted, and aided and abetted others in submitting, fraudulent invoices to CBP that significantly understated the value of merchandise imported into the United States by Company-1, through the use of emails and transfers between the Southern District of New York and China.

(Title 18, United States Code, Sections 1343 and 2.)

COUNT THREE

(Effecting the Entry of Falsely Valued Goods)

The Grand Jury further charges:

19. From in or about 2007, up to and including in or about July 2015, in the Southern District of New York and elsewhere, JOSEPH BAILEY, the defendant, knowingly effected the entry of goods, wares, and merchandise, at less than the true weight and measure thereof, and upon a false classification as to quality and value, and by the payment of less than the amount of duty legally due, to wit, BAILEY submitted, and aided and abetted others in submitting, fraudulent invoices to CBP that significantly understated the value of merchandise imported into the United States by Company-1.

(Title 18, United States Code, Sections 541 and 2.)

FORFEITURE ALLEGATIONS

20. As a result of committing the offenses alleged in Counts One and Two of this Indictment, JOSEPH BAILEY, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), any and all property, real

and personal, that constitutes or is derived from proceeds traceable to the commission of said offenses, including but not limited to a sum of money in United States currency representing the amount of proceeds traceable to the commission of said offenses that the defendant personally obtained.

SUBSTITUTE ASSET PROVISION

21. If any of the above described forfeitable property, as a result of any act or omission of the defendant:

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third person;

(c) has been placed beyond the jurisdiction of the Court;

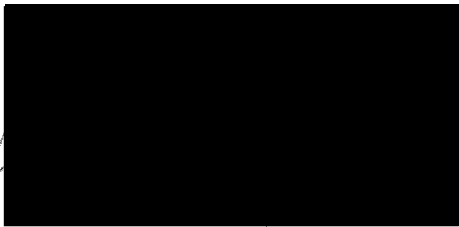
(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p) and Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property

of said defendant up to the value of the above forfeitable property.

(Title 18, United States Code, Section 981;  
Title 21, United States Code, Section 853; and  
Title 28, United States Code, Section 2461.)



  
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GEOFFREY S. BERMAN  
United States Attorney

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- v. -

JOSEPH BAILEY,

Defendant.

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SEALED INDICTMENT

19 Cr. \_\_\_\_\_

(18 U.S.C. §§ 541, 1343, 1349, and 2.)

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Geoffrey S. Berman  
United States Attorney.

