

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
U.S. DISTRICT COURT
2025 JUL 14 AM 10:45
DISTRICT OF MASSACHUSETTS

UNITED STATES *ex rel.* DANIEL FOSTER,

Plaintiff,

v.

AKRIS INC.,

Defendant.

Civil Action No. 25cv 11989

FILED UNDER SEAL PURSUANT
TO 31 U.S.C. § 3730(b)(2)

FALSE CLAIMS ACT COMPLAINT

Daniel Foster (“Relator”) brings this action as a *qui tam* relator on behalf of the United States against Akris Inc. pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3729-33, to recover damages, penalties, attorney fees and costs, and other relief.

Introduction

1. On March 17, 2021, Akris Inc., the United States subsidiary of Switzerland-based fashion house Akris AG, received approval for a second draw Paycheck Protection Program (“PPP”) loan in the amount of \$1,180,000. At the time of the loan, Akris Inc. and its affiliates around the world had well over 300 employees, the maximum allowable number of total employees for a second draw PPP borrower and its affiliates. On its second draw PPP loan application, however, Akris Inc. fraudulently represented that it had just 64 employees. Contrary to the clear requirements of applicable law and the PPP loan application, Akris Inc.’s second draw PPP loan application failed to disclose the employees of the company’s affiliates.

2. Had Akris Inc. been candid about its affiliates on its second draw PPP loan application, Akris Inc. never would have received a second draw PPP loan and United States

United States taxpayers would have saved over \$1.2 million in forgiven loan proceeds and lender processing fees.

3. Relator is an original source of the complaint allegations. Prior to the filing of this Complaint, Relator voluntarily made substantive disclosures to the government of facts and evidence underlying the allegations in this Complaint.

4. This action is filed *in camera* and under seal pursuant to the requirements of the False Claims Act, 31 U.S.C. § 3730(b)(2).

Jurisdiction and Venue

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 31 U.S.C. § 3732, which confers jurisdiction over actions brought pursuant to 31 U.S.C. §§ 3729 and 3730.

6. This Court may exercise personal jurisdiction over Akris Inc., and venue is appropriate in this Court, under 31 U.S.C. § 3732(a) and 28 U.S.C. § 1391(b)(2), because Akris Inc. resides in this District and transacts business in this District.

The Parties

7. Relator is a dual citizen of the United States and Germany. He currently has a primary residence in Berlin, Germany. Relator first became aware of the issue of PPP fraud when he discovered that an organization with which he was affiliated had obtained PPP funds improperly. Sensing a larger problem, Relator began to use his digital investigative skills to identify other instances of apparent PPP fraud, including Akris Inc.'s fraud.

8. Defendant Akris Inc. is a Massachusetts corporation with a principal place of business at 835 Madison Avenue, 5th Floor, New York, NY 10021. It operates a clothing boutique at 29 Newbury Street in Boston, Massachusetts.

Background On Akris Inc. And Its Affiliates

9. According to its website, “Akris is an international fashion house founded in 1922 in St. Gallen, Switzerland . . . [and] Akris has subsidiaries in the United States, Japan, and Korea and operates its own boutiques in major cities around the globe.”

10. A 2012 University of St. Gallen case study on Akris provided further background on the company. Among other things, the case study reported that, “[a]t the end of 2011, Akris employed about 1,000 people.” The case study further explained that two brothers, Albert and Peter Kriemler, ran the company.

11. Similarly, the entry for Akris AG in the Commercial Register of the Canton of St. Gallen shows that Peter Kriemler is the Chairperson of Akris AG’s board and Albert Kriemler is a member of the company’s board.

12. According to the 2020 and 2021 annual reports that Akris Inc. filed with the Massachusetts Secretary of State, Peter Kriemler was also the President and sole Director of Akris Inc. during those years.

13. In a 2024 presentation to the City of Chicago Department of Planning and Development, Akris Inc. represented that, “[a]fter over a century of growth and success, Akris remains a true ‘family business’, with over 650 employees and executives worldwide.”

Legal Background

A. The False Claims Act

14. The False Claims Act provides, in pertinent part, that any person who:

(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval; [or]

(B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim; . . .

* * *

is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 104–410 [1]), plus 3 times the amount of damages which the Government sustains because of the act of that person.

31 U.S.C. § 3729(a)(1).

15. For purposes of the False Claims Act, “the terms ‘knowing’ and ‘knowingly’ mean that a person, with respect to information[,] (i) has actual knowledge of the information; (ii) acts in deliberate ignorance of the truth or falsity of the information; or (iii) acts in reckless disregard of the truth or falsity of the information.” 31 U.S.C. § 3729(b)(1)(A). No proof of specific intent to defraud is required. 31 U.S.C. § 3729(b)(1)(B).

B. The Paycheck Protection Program

16. In March 2020, through the CARES Act, Pub. Law 116–136, Congress established the PPP to provide economic relief for small businesses during the coronavirus pandemic.

17. Under the first round of the PPP, an eligible business could apply for a loan of up to 2.5 times its average monthly payroll during 2019, subject to a maximum amount of \$10 million. *See* 15 U.S.C. § 636(a)(36)(E); *see also* Small Business Administration (“SBA”) Form 2483, Instructions.

18. An applicant for a first draw PPP loan could qualify as an eligible business under any of three standards:

(1) having an average of no more than 500 employees during 2019 or during the 12 months prior to applying for a first draw PPP loan, *see* 15 U.S.C. § 636(a)(36)(D)(i)(I) *and* SBA, *PPP Loans Frequently Asked Questions*, Question 14 (April 6, 2020);

(2) the SBA employee-based or revenue-based size standard corresponding to the business’s primary industry, *see* 15 U.S.C. § 636(a)(36)(D)(i)(II) *and* SBA, *PPP Loans Frequently Asked Questions*, Question 2; or

(3) the SBA’s alternative size standard, which provided that the business must have (a) a maximum tangible net worth of not more than \$15 million, and (b) average net income after tax of not more than \$5 million for the business’s two full preceding fiscal years as of March 27, 2020, *see* 86 Fed. Reg. 15083, 15085 n.5 (Mar. 22, 2021) *and* SBA, *PPP Loans Frequently Asked Questions*, Question 2.

19. Under each of these eligibility standards, the law required the business to include its affiliates in assessing whether the business met the standard. *See* 15 U.S.C.

§ 636(a)(36)(D)(iv). The affiliation rule in effect at the time, 13 C.F.R. § 121.301(f) (2019) (*available at* 81 Fed. Reg. 41423, 41428 (June 27, 2016)), provided that “[c]oncerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both.” The rule further elaborated that affiliation could arise under various circumstances, including:

Affiliation based on ownership. For determining affiliation based on equity ownership, a concern is an affiliate of an individual, concern, or entity that owns or has the power to control more than 50 percent of the concern’s voting equity. If no individual, concern, or entity is found to control, SBA will deem the Board of Directors or President or Chief Executive Officer (CEO) (or other officers, managing members, or partners who control the management of the concern) to be in control of the concern. SBA will deem a minority shareholder to be in control, if that individual or entity has the ability, under the concern’s charter, by-laws, or shareholder’s agreement, to prevent a quorum or otherwise block action by the board of directors or shareholders.

Affiliation based on management. Affiliation arises where the CEO or President of the applicant concern (or other officers, managing members, or partners who control the management of the concern) also controls the management of one or more other concerns. Affiliation also arises where a single individual, concern, or entity that controls the Board of Directors or management of one concern also controls the Board of Directors or management of one or more other concerns. Affiliation also arises where a single individual, concern or entity controls the management of the applicant concern through a management agreement.

Id.; *see also* SBA, *Affiliation Rules Applicable to U.S. Small Business Administration Paycheck Protection Program* (April 3, 2020).

20. In guidance that SBA issued on April 6, 2020, the agency included the following:

Question: Are borrowers required to apply SBA’s affiliation rules under 13 C.F.R. 121.301(f)?

Answer: Yes. Borrowers must apply the affiliation rules set forth in SBA’s Interim Final Rule on Affiliation. A borrower must certify on the Borrower Application Form that the borrower is eligible to receive a PPP loan, and that certification means that the borrower is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632), meets the applicable SBA employee-based or revenue-based size standard, or meets the tests in SBA’s alternative size standard, after applying the affiliation rules, if applicable. SBA’s existing affiliation exclusions apply to the PPP, including, for example the exclusions under 13 CFR 121.103(b)(2).

SBA, *PPP Loans Frequently Asked Questions*, Question 5 (Apr. 6, 2020).

21. Notably, when the PPP first came into effect, SBA issued guidance that “[y]ou are eligible for a PPP loan if you have 500 or fewer employees whose principal place of residence is *in the United States*.” 85 Fed. Reg. 20811, 20812 (April 15, 2020) (emphasis added). On May 5, 2020, however, SBA clarified that a PPP “applicant must count all of its employees and the employees of its U.S. *and foreign affiliates*.” 85 Fed. Reg. 30835, 30836 (May 21, 2020) (emphasis added).

22. In December 2020, Congress enacted the Economic Aid to Hard Hit Small Businesses, Nonprofits, and Venues Act, Pub. Law 116-260, Div. N, Tit. III, which, among other things, provided for eligible small businesses to obtain a second draw PPP loan. An eligible business could apply for a second draw PPP loan of up to 2.5 times its average monthly payroll during 2019 or 2020. 15 U.S.C. § 636(a)(37)(C); *see also* SBA Form 2483-SD, Instructions. An applicant for a second draw PPP loan could qualify as an eligible small business if (1) it had no more than 300 employees on average during the 12 months preceding its loan application or during the period it used to calculate average monthly payroll; and (2) and its revenue during any quarter of 2020 was at least 25 percent lower than in the corresponding quarter in 2019. 15 U.S.C. § 636(a)(37)(A)(iv); *see also* SBA Form 2483-SD, Instructions. For purposes of

determining an applicant's number of employees, the original PPP affiliation rules applied. 15 U.S.C. § 636(a)(37)(E).

23. To apply for a second draw PPP loan, a business would submit SBA Form 2483-SD to an authorized lender. This form required a potential borrower to specify its North American Industry Classification System code, the number of employees, and whether “the Applicant or any owner of the Applicant [is] an owner of any other business, or have common management (including a management agreement) with any other business.” On the second draw PPP loan application form, the box for “Number of Employees” specifically said “including affiliates.” The second draw application form also required the applicant to certify, among other things, that:

- “[t]he Applicant is eligible to receive a loan under the rules in effect at the time this application is submitted,”
- “[t]he Applicant, together with its affiliates . . . employs no more than 300 employees,” and
- “[t]he Applicant is not engaged in any activity that is illegal under federal, state or local law.”

24. The statutes creating the PPP program provided that SBA would reimburse PPP lenders for processing at specified rates. As relevant here, the rate for second draw loans of more than \$350,000 was 3 percent. *See* 15 U.S.C. § 636(a)(37)(L)(ii)(II).

25. The PPP also provided for full forgiveness of a loan so long as the borrower used the loan proceeds in accordance with the PPP rules and did not reduce the number of its employees. *See* 15 U.S.C. § 636m; SBA, *Frequently Asked Questions (FAQs) on PPP Loan Forgiveness* (Oct. 13, 2020). To the extent a borrower reduced the average number of its employees in the months after receiving the loan, the PPP created a formula for reducing the loan forgiveness amount accordingly. *See* 15 U.S.C. § 636m(d)(2).

Background On Akris Inc.'s Second Draw PPP Loan

26. On March 17, 2021, SBA approved a second draw PPP loan to Akris Inc. in the amount of \$1,180,000 through Bank of America. On the application form for this loan, Akris Inc. represented that it had 64 employees. On November 19, 2021, SBA forgave Akris Inc.'s second draw PPP loan. SBA also paid the loan processor, Bank of America, 3 percent of the loan amount, or \$35,400.

Fraud Allegations

27. Akris Inc. did not qualify for the second draw PPP loan it received because it and its affiliates employed more than 300 people.

28. When Akris Inc. applied for its second draw PPP loan, it and Akris AG were affiliates because, as alleged above, Akris Inc. was a subsidiary of Akris AG and the two companies shared senior management.

29. As alleged above, Akris reportedly had about 1,000 employees in 2011. Then, in 2024, Akris Inc. represented to the City of Chicago that it had over 650 employees worldwide. Thus, on information and belief, Relator alleges that Akris Inc. and its affiliates had an average of more than 300 employees during all of the time periods potentially relevant to Akris Inc.'s second draw loan application in March 2021. *See* 15 U.S.C. § 636(a)(37)(A)(iv).

30. But Akris Inc. did not report the employees of all of its affiliates on its second draw PPP loan application, even though the application and the governing rules clearly required second draw PPP loan applicants to include the employees of *all* of their affiliates, domestic and foreign, on second draw PPP loan applications.

COUNT I
False Claims Act, 31 U.S.C. § 3729(a)(1)(A)

31. Relator re-alleges and incorporates by reference all paragraphs of this complaint set out above as if fully set forth herein.

32. Through the acts set forth above, Akris Inc. knowingly presented, or caused to be presented, false or fraudulent claims for payment to SBA for its second draw PPP loan and loan forgiveness to which it was not entitled.

33. By virtue of the false or fraudulent claims that Akris Inc. knowingly made or presented, or caused to be made or presented, Akris Inc. violated the False Claims Act, 31 U.S.C. § 3729(a)(1)(A), and the United States has suffered actual damages and is entitled to recover treble damages plus a civil monetary penalty for each false claim.

COUNT II
False Claims Act, 31 U.S.C. § 3729(a)(1)(B)

34. Relator re-alleges and incorporates by reference all paragraphs of this complaint set out above as if fully set forth herein.

35. Through the acts set forth above, Akris Inc. knowingly made, used, or caused to be made and used, false records and statements material to the payment of false or fraudulent claims by SBA for its second draw PPP loan and loan forgiveness to which it was not entitled.

36. By virtue of the false records and statements Akris Inc. made, used, or caused to be made or used, Akris Inc. violated the False Claims Act, 31 U.S.C. § 3729(a)(1)(B), and the United States has suffered actual damages and is entitled to recover treble damages plus a civil monetary penalty for each false claim.

Prayer for Relief

WHEREFORE, Relator demands and prays for the following relief:

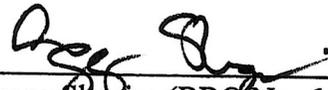
1. That judgment be entered in favor of the United States for the amount of the United States' damages, trebled as required by law, and such civil penalties as are required by law, together with all such further relief as may be just and proper;
2. An award to the Relator of a percentage of the proceeds of the action in accordance with 31 U.S.C. § 3730(d);
3. An award to the Relator of its costs and reasonable attorney fees for prosecuting this action; and
4. All other relief as may be required or authorized by law and in the interests of justice.

Dated: July 14, 2025

Respectfully submitted,

DANIEL FOSTER

By his attorney



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