FILED
IN CLERKS OFFICE

2025 MAR 20 AM 3: 26

U.S. DISTRICT COURT
DISTRICT OF MASS.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES *ex rel.* DANIEL FOSTER, Plaintiff, v. TRAX RETAIL, INC., and SHOPKICK, INC., Defendants.	Civil Action No. 25-10671-RGS 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 Trax Retail, Inc. ("Trax Retail"), and Shopkick, Inc. ("Shopkick") (collectively, "Defendants"), 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. In early 2021, two affiliated companies, Trax Retail and Shopkick, both of which are now based in Boston, Massachusetts, each obtained $2 million second draw Paycheck Protection Program loans. At the time of the loans, Trax Retail, Shopkick, and their affiliated companies in the United States and abroad together employed well over 300 employees, the maximum allowable number of total employees for a second draw PPP borrower and its affiliates. In their second draw PPP loan applications, however, Trax Retail and Shopkick fraudulently represented that they had just 74 and 113 employees, respectively; neither Trax Retail nor Shopkick disclosed each other's employees, let alone their other affiliates' hundreds of other employees.

2. Had Trax Retail and Shopkick been candid about their affiliated entities' employees on their second draw PPP loan applications, they never would have received those PPP loans and United States taxpayers would have saved over $4 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 Defendants, and venue is appropriate in this Court, under 31 U.S.C. § 3732(a) and 28 U.S.C. § 1391(b)(2), because each of the Defendants 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 Defendants' fraud.

8. Defendant Trax Retail is a Delaware corporation with a principal place of business at 1 Beacon Street, 15th Floor, Boston, Massachusetts.

9. Defendant Shopkick is a Delaware corporation with a principal place of business at 1 Beacon Street, 15th Floor, Boston, Massachusetts.

Background On Trax Retail, Shopkick, And Their Affiliates

10. As of 2019, according to financial statements that Trax Technology Solutions Pte. Ltd. ("Trax Technology") filed with the Singapore Accounting and Corporate Regulatory Authority, Trax Technology had ownership interests in several other companies, including a 100 percent ownership interest in Trax Retail and a 51 percent ownership interest in Global System Solutions Technology International (Private) Limited ("GSS"), a Sri Lankan company. Trax Technology itself was a subsidiary of Trax Global Holdings LLC, a Delaware limited liability company, which in turn was a subsidiary of Trax Ltd., a limited liability company incorporated in the Cayman Islands.

11. The annual returns that GSS filed with the Sri Lanka Department of the Registrar of Companies in 2020, 2021, and 2022 confirm that Trax Technology owned 51 percent of GSS in each of those years.

12. On information and belief, GSS had at least 1,000 employees throughout the period from 2020 through 2024. According to its LinkedIn page, GSS currently has between 1,000 and 5,000 employees. On December 26, 2024, a Sri Lankan company called Rooster announced that it had reached an agreement to "to digitise [the] 5000+ person workforce at GSS."

13. On June 24, 2019, Trax Technology announced that it had acquired Shopkick. That same day, Globes, an Israeli business daily, published an article on the acquisition.

According to the Globes article, Dror Feldheim, Trax Technology's co-founder and Chief Commercial Officer, "stresses that Shopkick's 150 employees in the US will continue to work as a unit independent of Trax, which after this acquisition has 700 employees in 50 countries, 250 of them in Israel." Similarly, in an article published on May 30, 2024, CTECH reported that, "[o]ver the past two years, [Trax Technology] has laid off hundreds of employees and currently employs approximately 680 people 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, s*ee* 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 of 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. 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).

21. 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).

22. 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."

23. 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).

24. 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 Defendants' PPP Loans

25. On February 5, 2021, SBA approved a second draw PPP loan to Trax Retail in the amount of $2,000,000 through HSBC Bank USA. On the application form for this loan, Trax Retail represented that it had 74 employees. On September 2, 2021, SBA forgave Trax Retail's second draw PPP loan. SBA also paid the loan processor, HSBC Bank USA, 3 percent of the loan amount, or $60,000.

26. On March 8, 2021, SBA approved a second draw PPP loan to Shopkick in the amount of $2,000,000 through Silicon Valley Bridge Bank. On the application form for this loan, Shopkick represented that it had 113 employees. On October 20, 2021, SBA forgave Shopkick's second draw PPP loan. SBA also paid the loan processor, Silicon Valley Bridge Bank, 3 percent of the loan amount, or $60,000.

Fraud Allegations

Neither Trax Retail nor Shopkick qualified for the second draw PPP loans they received, because they, together with their affiliates, employed more than 300 people. As noted above, various public statements show that Trax Technology and its affiliates had well over 300 employees at the time Trax Retail and Shopkick applied for their second draw PPP loans. But neither Trax Retail nor Shopkick reported the employees of all of their affiliates on their second draw PPP loan applications, even though the applications 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)

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

28. Through the acts set forth above, Defendants knowingly presented, or caused to be presented, false or fraudulent claims for payment to SBA for second draw PPP loans and PPP loan forgiveness to which they were not entitled.

29. By virtue of the false or fraudulent claims that Defendants knowingly made or presented, or caused to be made or presented, Defendants 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)

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

31. Through the acts set forth above, Defendants 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 second draw PPP loans and loan forgiveness to which they were not entitled.

32. By virtue of the false records and statements Defendants made, used, or caused to be made or used, Defendants 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: March 21, 2025

Respectfully submitted,

DANIEL FOSTER

By his attorney

Gregg Shapiro (BBO No. 642069)
Gregg Shapiro Law, LLC
101 Federal Street, Suite 1900
Boston, MA 02110
Tel: 617-582-3875
gshapiro@greggshapirolaw.com