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THE LAW FIRM OF PUCKETT AND FARAJ, PC

June 23, 2011

Via FEDEX
Facsimile (202) 622-1657

U.S. Department of the Treasury
Office of Foreign Asset Control
Attn: Licensing Division
1500 Pennsylvania Ave. NW
Washington, DC 20220

Re: License application to unblock certain blocked vehicles; FNK-511732 and others

Dear Mr. Kane:

Pursuant to paragraph (a) of 31 C.F.R. §501.801, our clients

- 1) LMT Auto Export,
- 2) Jeany Chedid Trading Est,
- 3) Saab and Awkal,
- 4) Daher Motors of Kingston Inc.,
- 5) Naya and Kamal El Khawand,
- 6) A and Z Auto Sales,
- 7) B and J Auto LLC,
- 8) Abes Global Auto Wholesaling Inc.,
- 9) SABIMEX,
- 10) Itani Autohandel Und Shipping,
- 11) M.G. Enterprise U.S.A. LLC,
- 12) Ahmad Kassem,
- 13) Madi Auto Sales and Shipping, Inc.

request a general license to engage in transactions which shall be subject to the prohibitions contained within the economic sanctions programs, and specifically, as it relates to the facts of this case, engaging in any business or economic activity with any entity identified as a "Specially Designated Narcotics Trafficker ("SDNT"). Upon issuance of the license, owners of the vehicles will either remove the cars from the ports to sell within the United States; remove the vehicles from the port facilities to await shipment consistent with the restrictions governing transactions with designated entities; or keep the vehicles in place to await shipment consistent with the

restrictions governing transactions with designated entities. None of the vehicle owners have made plans to ship the vehicles at this time as they await OFAC decision on this license application. Some do plan to move the vehicles upon notice of unblocking to avoid incurring any additional parking/storage fees. All dealers listed above agree to notify OFAC of the plan to transfer any vehicle(s) to ensure compliance with the prohibition, should such notification be necessary.

I. Background

On January 26, 2011, OFAC identified Ellissa Exchange and Hassan Ayash Exchange Co. as specially designated Narcotics Traffickers (“SDNTs”). OFAC sent out letters to various automobile dealers and other business entities engaged in the exportation and sales of vehicles notifying them that Ellissa and Exchange is a designated entity. Following designation of Ellissa as an “SDNT” CBP undertook to block the transfer or movement of several hundred vehicles belonging to our clients. Clients awaited the decision to unblock by OFAC believing that such an action will happen automatically once OFAC discovers that Ellissa has no interest in the blocked vehicles and that any contact between the automobile dealers and Ellissa is merely incidental due to Ellissa’ operation of a car park that automobile dealers sometimes use along with other car parks in the free trade zone in the Port of Cotonou. On May 20, 2011, OFAC notified the automobile dealers that while the vehicles remain blocked, the owners of the vehicles may apply for licenses to unblock the vehicles.

a. The Seizure.

Within days and perhaps hours after OFAC placed Ellissa Exchange on the list of SDNTs, OFAC blocked and prohibited the transfer, exchange, sale or any transaction in which Ellissa Exchange or any other designated person or entity have an interest. **Neither Ellissa Exchange nor any other designated entity or person have any interest whatsoever in the blocked property of the parties represented.**

The blocked property consists of hundreds of vehicles located at various ports around the United States. It appears that the basis for the decision determining that Ellissa has any interest

in the vehicles is shipping documents called “Dock Receipts.” A Dock receipt is required for any vehicle waiting to be shipped. *See Enclosure (1), Example Dock Receipt.* On the Dock receipt, a space labeled “Consignee” requires that the shipper provide the name of a consignee who shall act as the receiving agent for the shipped vehicles upon the vehicle’s arrival at its port of destination. The consignee receives the shipped vehicle and provides a staging/parking area where the vehicle awaits its intended receiver who is also identified on the “Dock Receipt” in the “Notify” box. The “consignee” receives a small fee for providing that service. Ellissa acts as a consignee, with the authority of state officials at the Port of Cotonou in the country of Benin. At the Port of Cotonou, the consignee typically receives about \$150 for each vehicle for the service provided. The consignee has no interest in the vehicle. And shippers are under no obligation to use any particular consignee.

b. The auto dealer-clients

The Clients in this matter consist of small and medium sized automobile dealers whose sole interest is to profit from the shipping and sales of vehicles overseas.¹ The automobile dealers have neither interest nor association with Ellissa or any other designated entity. The represented automobile dealers simply purchase and ship vehicles. Any interaction with Ellissa or any other entity or person that may or may not be designated is incidental and arises through normal and legitimate business activities. For example, if Ellissa operated or owned a cargo vessel, it is arguable that the contract for shipping a vehicle between the vehicle owner and the vessel owner creates an interest in the vehicle by the vessel owner until the vessel owner receives payment. Such activity would be a legitimate business activity and should not expose the legitimate automobile dealer to punitive actions unless the automobile dealer violates the prohibition against transactions with the vessel owner. Mere interaction cannot give rise to liability. More is required before concluding that the shipper’s actions were a knowing and voluntary agreement to give an interest in property to a designated entity prohibited from engaging in economic activity with the United States, its citizens or residents. Determining that by virtue of interacting with a business entity, that is later discovered to be engaged in criminal activity, exposes a bonafide

¹ It can be well argued that these car dealers perform an important service by purchasing automobiles whose life expectancy has expired or near expiration and recycling them for use overseas. The dealers rid the U.S. of the need to destroy these vehicles and help people with limited means or resources by providing them affordable transportation.

legitimate business to arbitrary blocking of property, pecuniary losses, and loss of business opportunity fails to consider the knowledge of the shipper and intentions at the time the shipper turns a vehicle over to the vessel master for shipping.

The facts of this case do not support the conclusion that the shippers ceded any interest to Ellissa or had any knowledge that Ellissa was a designated entity until January 26, 2011. In every instance, the ports received the vehicles and Dock Receipts designating Ellissa as a consignee before January 26, 2011. The vehicles were already in their staging areas with completed Dock Receipts when the notice designating Ellissa an “SDNT” was published. At the time those Dock Receipts were completed neither the shippers nor the shipping line had any reason to know that Ellissa is a designated entity.

c. Preventive action undertaken to prevent future confusion as to dealings.

As a consequence of the Governmental action listing Ellissa as a designated entity, all our clients have taken affirmative actions to prevent any future transaction that may raise questions of propriety. Our clients have all registered their own businesses in Cotonou which would obviate and limit the necessity of engaging in transactions with unknown entities.

d. Ellissa and other “SDNTs”.

While it appears that the Government has investigated Ellissa and arrived at certain conclusions regarding the propriety of Ellissa’ business dealings, that information was not, nor is it now, available to the shippers. Shippers had no reason to know that Ellissa is engaged in illicit activities or that the U.S. Government was going to list it as an “SDNT.” To the shippers, Ellissa was, and remains, the entity that operates a car park within the Free Trade Zone at the Port of Cotonou. Auto dealers shipping cars from the United States to the Port of Cotonou are required by port regulations in Cotonou and by CBP regulations to list a consignee who is responsible for receiving a vehicle once it is off-loaded from the vessel. In fact, vessel masters will not accept a vehicle for transport to the Port of Cotonou –and other ports- unless the shipper designates a consignee. These procedural steps to shipping cargo overseas are mandated by the Automated Export System (“AES”) which seeks the advanced transmission of information on arriving and

departing cargo as set forth in Title 15, Code of Federal Regulations, Part 30, Foreign Trade Regulations. Moreover, practical and common sense reasons underlie why port authorities and shipping lines require a consignee who is available to receive the vehicles immediately upon arrival of a vessel in port.

Once a vessel arrives in port, it seeks to disgorge its cargo without delay. Vessels pay for berthing space based on the time a vessel occupies a space. They, therefore, seek to load and unload as quickly as possible. Likewise, port authorities cannot manage marine traffic within their waters by allowing vessels to delay in their berths while they await individual vehicle owners to come pick-up their cargo. Accordingly, a process has been created that assigns a consignee as an agent of the intended recipient of the cargo. The consignee serves the function of receiving and staging the cargo in a holding area on behalf of the intended recipient as soon as the cargo is offloaded. The consignee then notifies the intended recipient who is listed on the Dock receipt. The intended recipient then comes to the Car Park to receive the vehicle and pay the consignee or arranges for the delivery of the vehicles and pays the consignee the vehicle consignee fee.

e. Why clients transacted with Ellissa?

Given the standard operating procedure used by the port authority in Cotonou, every shipper was required to identify a consignee. And while there are several available consignees to choose from, there was no reason to believe at the time the shippers chose Ellissa, that Ellissa was engaged in anything but legitimate business. In fact, it appears that Ellissa does engage in the legitimate business of operating a car park along with whatever other questionable business the U.S. Government has accused it of. Ellissa runs one of the largest car parks in the free trade zone at the Port of Cotonou. Shippers have used Ellissa' services before for a fee of about \$150 per vehicle for their consignee services. The services Ellissa provided are akin to the services provided by parking garage companies in most large cities around the United States. The interest Ellissa had in the vehicles arriving at the Port of Cotonou are no different than the interest a Parking facility operator would have in the vehicle of a legitimate commuter who happens to choose the parking operator's facility to park a vehicle. If the parking facility operator, in

addition to operating the parking facility, also engages in criminal misconduct, the commuter does not lose the right to his or her property nor have to suffer the economic losses and emotional tribulations from having his vehicle blocked for simply choosing one parking facility over another. Likewise, the automobile dealers' mistake is that they did not have foreknowledge that Ellissa would be listed as a designated entity when they simply chose a car park to place their vehicles to wait for their intended recipients.

II. The law

A. **WHETHER A NOTICE TO BLOCK VEHICLES OWNED BY U.S. CITIZENS AND LEGAL RESIDENTS DESTINED FOR SHIPMENT TO INDIVIDUALS AND ENTITIES WHO ARE NOT DESIGNATED AS PROHIBITED ENTITIES IS AN ARBITRARY AND CAPRICIOUS, ABUSE OF DISCRETION OR OTHERWISE NOT IN ACCORDANCE WITH THE LAW WHEN THE ONLY NEXUS TO A DESIGNATED ENTITY IS THAT THE VEHICLES WERE PLANNED TO BE PARKED AT A FACILITY OWNED BY A DESIGNATED ENTITY?**

Yes. While the agency's decision will be upheld if it conforms to certain minimal standards of rationality, the decision must be based on consideration of relevant factors. *Holy Land Foundation v. Ashcroft*, 219 F. Supp. 2d 57, 66-67 (D.D.C. 2002). The relevant factors in this case clearly indicate that the shippers gave no interest to Ellissa in their property. Shippers must use a consignee to load and ship their vehicles. Ellissa provided that service at the port of Cotonou. Ellissa operates the car park under the cognizance and knowledge of the Port Authority. In fact, it is believed that Ellissa leases the car park from the Port Authority. When the shippers listed Ellissa as the consignee at the Port of Cotonou, they could reasonably rely on the information then available to them and on their practice and experience to believe that Ellissa is a bonafide concern. The auto dealers receive no benefit from using Ellissa. In fact, all have suffered grave financial losses as a result of the blocking action. The blocking action was unnecessary and resulted in gross harm to the innocent auto dealers.

The notice that Ellissa is an "SDNT" is sufficient to put the shippers on notice to no longer engage Ellissa' services. OFAC did not need to block the vehicles. The blocked vehicles are all used vehicles whose value rapidly diminishes. Any delay results in prejudice to the

owners by reducing the value of their vehicles. That means even if the vehicles are released today, as of the writing of this letter, the shippers will have lost substantial amounts of money through no fault of their own and purely based on a decision to block that is arbitrary, capricious and an abuse of discretion. While the shippers do not question the Government's decision to designate Ellissa, concluding that Ellissa had an interest in the vehicles, without more is unconscionable and lumps decent hard working people with an organization that may be involved in a criminal enterprise.

B. WHETHER THE IMPLEMENTATION OF THE BLOCKING DECISION ON VEHICLES THAT LEFT THE POSSESSION OF THEIR OWNERS BEFORE THE NOTICE REGARDING ELLISSA BEING DESIGNATED AS AN "SDNT" IS A RETROACTIVE APPLICATION OF A NEW RULE OR LAW?

a. Retroactive implementation of a rule or law is not favored.

Yes. Retroactivity is the application of a new rule of law to an act or transaction which was completed before the rule was promulgated. "Black's Law Dictionary, Bryan A. Garner Ed., 8th ed. (2004). Retroactivity is not favored in the law *Bergerco Can. v. United States Treasury Dep't, Office of Foreign Assets Control*, 129 F.3d 189, 192 (D.C. Cir. 1997) (citing *Bowen v. Georgetown University Hospital*, 488 U.S. 204, 208 (1988)). While the inclusion of Ellissa on the "SDNT" list is not a retroactive action, its application to block vehicles owned by innocent shippers unaware and unaccountable for Ellissa's conduct constitutes an arbitrary and capricious decision because the agency failed to balance mischief of retroactive application of a rule against the salutary effects, if any, of retroactivity. See *Beregrecu*, 129 F.3d 189, 192-193; See also *Yakima Valley Cablevision v. FCC*, 254 U.S. App. D.C. 28, 794 F.2d 737, 746 (D.C. Cir. 1986). The agency could not have completed any analysis of the automobile dealers links to Ellissa in this matter. Even a cursory inquiry into the matter of the blocked vehicles would have definitively disclosed that 1) all the vehicles except those owned by A and Z Auto Sales were delivered to the port and underwent the Customs and Border Protection clearance process that included review of the completed Dock Receipts before the January 26, 2011, notice announcing the inclusion of Ellissa on the "SDNT" list; 2) Any interest Ellissa had was merely prospective

and de minimis, in that it only vests an interest of about \$150 in Ellissa once the vehicles arrive at the port and are received by Ellissa' agents for processing. Such an interest only inures to the benefit of Ellissa when it receives the vehicles and not by the inclusion of Ellissa in the "consignee" block of the dock receipts. In other words, the owners and shipper could have precluded Ellissa from having any interest in the vehicles had they been afforded an opportunity to change their consignee election after notification by the U.S. Government that Ellissa was a prohibited entity on the "SDNT" list.

The affected vehicle owners relied on information that was available to them at the time they turned over control of their vehicles to the shipper. Once Ellissa made it onto the "SDNT" list, the owners of the vehicles or shipper should have been provided an opportunity to select a new consignee before having their quickly depreciating property blocked. To make matters worse, the blocking action left the shippers with substantial parking fees payable to the various port authorities. The haste in undertaking to block transacting in the vehicles robbed the innocent owners of an opportunity to remedy after the new rule issued. Moreover, because of the speed of the action by CBP, it appears that CBP lumped vehicles listing Ellissa as a consignee with vehicles that had no nexus whatsoever to Ellissa.

The lack of any due diligence in investigating the nexus between Ellissa and the shippers is evidenced in the Customs and Border Protection's action in blocking vehicles that neither have an actual or apparent connection to Ellissa. Several Shippers have blocked vehicles that did not list Ellissa as a consignee. No apparent reason exists for the blocking of those vehicles. *See Encl 2-40, Dock Receipts.*

b. CBP's application of the clocking decision was inconsistent and clearly misunderstood .

Ellissa was placed on the "SDNT" list on January 26, 2011. On that date Sallaum lines and other shippers had taken possession of vehicles that had cleared customs for loading and shipping on their vessels. Customs and Border Protection allowed vehicles that had cleared and loaded onto the vessel before January 26 in Boston, MA to sail. CPB also allowed vehicles that had cleared but were not yet loaded in Bayonne, NJ; Wilmington, DE; and Jacksonville, FL to load and ship after January 26, 2011. CBP agents in Baltimore, however, blocked vehicles that

had cleared before January 26, 2011. The inconsistent application of the decision to block suggests that CPB agents misunderstood the rule its application, and the actions that were required to enforce it. While agents in Baltimore blocked vehicles that had cleared well before January 26, 2011, agents in Bayonne, NJ; Wilmington, DE; and Jacksonville, FL allowed vehicles to load and sail so long as they had cleared before the January 26, 2011, notice.

III. Summary.

Based on the forgoing, I request the expeditious granting of a general license to all the shippers listed herein. Any connection between our clients and Ellissa is purely coincidental and resulted from the need to engage a consignee as an agent at the port of destination. Our clients have severed all association with Ellissa and have undertaken to find alternative consignees. Pursuant to the Rules governing general licenses, our clients/shippers will adhere to the prohibitions against dealing with designated entities.

The blocking action has caused extraordinary losses to all our clients as a result of vehicle depreciation, storage fees, and loss of income and business opportunity. We seek to resolve this matter quickly to avoid additional losses. None of our clients seek nor desire to pursue any action against the U.S. Government to recoup their losses. They desire to retrieve their property and return to business. Your immediate action on this petition will limit further losses to innocent parties and avoid possible legal actions against the U.S. Government for the losses incurred thus far.

I may be reached by email at haytham@puckettfaraj.com, at the numbers below or my cell phone at (760) 521-7934.

Sincerely,



Haytham Faraj

Copy to:
Clients
File