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3  
4 IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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6 LMT AUTO EXPORT; JEANY CHEDID ) Case No.:  
7 TRADING EST.; SAAB AND AWKAL; )  
8 DAHER MOTORS OF KINGSTON INC.; ) Complaint  
9 NAYA AND KAMAL EL KHAWAND; )  
10 A and Z AUTO SALES; B and J AUTO LLC; )  
11 ABES GLOBAL AUTO WHOLESALING )  
12 INC.; SABIMEX; ITANI AUTOHADEL )  
13 AND SHIPPING; M.G. ENTERPRISE U.S.A. )  
14 LLC; AHMAD KASSEM; MADI AUTO )  
15 SALES AND SHIPPING, INC., )

16 Plaintiff,

17 vs.

18 UNITED STATES OF AMERICA; )  
19 SECRETARY OF TREASURY; )  
20 SECRETARY OF DEPARTMENT OF )  
21 HOMELAND SECURITY; CUSTOMS AND )  
22 BORDER PROTECTION; OFFICE OF )  
23 FOREIGN ASSET CONTROL; various agents )  
24 of the CUSTOMS AND BORDER )  
25 PROTECTION AGENCY, individually )  
and in their official capacity, )

Defendants.

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**PLAINTIFF'S COMPLAINT FOR VIOLATION OF FIFTH AMENDMENT DUE  
PROCESS, WRONGFUL SEIZURE, GROSS NEGLIGENCE**

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**INTRODUCTORY STATEMENT**

**JURISDICTION AND VENUE**

The Plaintiffs file this action for violations of the Due Process Clause under Amendment Fifth to the Constitution of the United States.

This Court has subject matter jurisdiction over Plaintiffs' claims for violation of federal constitutional rights under 28 U.S.C. §§1331, 1332, 1346(b)(1) and 1350.

Venue is proper in this Court pursuant to 28 U.S.C. §§1391(b) and 1355(b)(1)(A), in as much as the unconstitutional, unlawful, and wrongful conduct alleged was committed in this District, and one or more of the Defendants reside in this District.

This Court may grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §2201 *et seq.*, and Fed. R. Civ. P. Rule 57. This Court may grant injunctive relief pursuant to Fed. R. Civ. P. Rule 65.

**PARTIES**

Plaintiff LMT Auto Export is licensed/incorporated in the state of \_\_\_\_\_ on DATE with its headquarters in \_\_\_\_\_.

Plaintiff Jeany Chedid Trading Est is licensed/incorporated in the state of \_\_\_\_\_ on DATE with its headquarters in \_\_\_\_\_.

Plaintiff Saab and Awkal is licensed/incorporated in the state of \_\_\_\_\_ on DATE with its headquarters in \_\_\_\_\_.

Plaintiff Daher Motors of Kingston Inc. is licensed/incorporated in the state of \_\_\_\_\_ on DATE with its headquarters in \_\_\_\_\_.

1 Plaintiff Naya and Kamal El Khawand is licensed/incorporated in the state of \_\_\_\_\_ on  
2 DATE with its headquarters in \_\_\_\_\_.

3 Plaintiff A and Z Auto Sales is licensed/incorporated in the state of \_\_\_\_\_ on DATE  
4 with its headquarters in \_\_\_\_\_.

5 Plaintiff B and J Auto LLC is licensed/incorporated in the state of \_\_\_\_\_ on DATE  
6 with its headquarters in \_\_\_\_\_.

7 Plaintiff Abes Global Auto Wholesaling Inc. is licensed/incorporated in the state of  
8 \_\_\_\_\_ on DATE with its headquarters in \_\_\_\_\_.

9 Plaintiff SABIMEX is licensed/incorporated in the state of \_\_\_\_\_ on DATE with its  
10 headquarters in \_\_\_\_\_.

11 Plaintiff Itani Autohandel And Shipping is licensed/incorporated in the state of \_\_\_\_\_  
12 on DATE with its headquarters in \_\_\_\_\_.

13 Plaintiff M.G. Enterprise U.S.A. LLC is licensed/incorporated in the state of \_\_\_\_\_ on  
14 DATE with its headquarters in \_\_\_\_\_.

15 Plaintiff Ahmad Kassem is licensed/incorporated in the state of \_\_\_\_\_ on DATE with  
16 its headquarters in \_\_\_\_\_.

17 Plaintiff Made Auto Sales and Shipping, Inc. is licensed/incorporated in the state of  
18 \_\_\_\_\_ on DATE with its headquarters in \_\_\_\_\_.

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2 **FACTUAL BACKGROUND**

3 On January 26, 2011, OFAC identified Ellissa Exchange and Hassan Ayash Exchange Co. as  
4 specially designated Narcotics Traffickers (“SDNTs”). OFAC sent out letters to various  
5 automobile dealers and other business entities engaged in the exportation and sales of vehicles  
6 notifying them that Ellissa and Exchange is a designated entity. Following designation of Ellissa  
7 as an “SDNT” CBP undertook to block the transfer or movement of several hundred vehicles  
8 belonging to our clients. Clients awaited the decision to unblock by OFAC believing that such  
9 an action will happen automatically once OFAC discovers that Ellissa has no interest in the  
10 blocked vehicles and that any contact between the automobile dealers and Ellissa is merely  
11 incidental due to Ellissa’ operation of a car park that automobile dealers sometimes use along  
12 with other car parks in the free trade zone in the Port of Cotonou. On May 20, 2011, OFAC  
13 notified the automobile dealers that while the vehicles remain blocked, the owners of the  
14 vehicles may apply for licenses to unblock the vehicles.  
15

16 a. The Seizure.

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

22 The blocked property consists of hundreds of vehicles located at various ports around the  
23 United States. It appears that the basis for the decision determining that Ellissa has any interest  
24 in the vehicles is shipping documents called “Dock Receipts.” A Dock receipt is required for any  
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1 vehicle waiting to be shipped. *See Enclosure (1), Example Dock Receipt.* On the Dock receipt, a  
2 space labeled “Consignee” requires that the shipper provide the name of a consignee who shall  
3 act as the receiving agent for the shipped vehicles upon the vehicle’s arrival at its port of  
4 destination. The consignee receives the shipped vehicle and provides a staging/parking area  
5 where the vehicle awaits its intended receiver who is also identified on the “Dock Receipt” in the  
6 “Notify” box. The “consignee” receives a small fee for providing that service. Ellissa acts as a  
7 consignee, with the authority of state officials at the Port of Cotonou in the country of Benin. At  
8 the Port of Cotonou, the consignee typically receives about \$150 for each vehicle for the service  
9 provided. The consignee has no interest in the vehicle. And shippers are under no obligation to  
10 use any particular consignee.

11           b. The auto dealer-clients

12           The Clients in this matter consist of small and medium sized automobile dealers whose  
13 sole interest is to profit from the shipping and sales of vehicles overseas.<sup>1</sup> The automobile dealers  
14 have neither interest nor association with Ellissa or any other designated entity. The represented  
15 automobile dealers simply purchase and ship vehicles. Any interaction with Ellissa or any other  
16 entity or person that may or may not be designated is incidental and arises through normal and  
17 legitimate business activities. For example, if Ellissa operated or owned a cargo vessel, it is  
18 arguable that the contract for shipping a vehicle between the vehicle owner and the vessel owner  
19 creates an interest in the vehicle by the vessel owner until the vessel owner receives payment.  
20 Such activity would be a legitimate business activity and should not expose the legitimate  
21 automobile dealer to punitive actions unless the automobile dealer violates the prohibition  
22 against transactions with the vessel owner. Mere interaction cannot give rise to liability. More is  
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24 \_\_\_\_\_  
25 <sup>1</sup> 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.

1 required before concluding that the shipper's actions were a knowing and voluntary agreement to  
2 give an interest in property to a designated entity prohibited from engaging in economic activity  
3 with the United States, its citizens or residents. Determining that by virtue of interacting with a  
4 business entity, that is later discovered to be engaged in criminal activity, exposes a bonafide  
5 legitimate business to arbitrary blocking of property, pecuniary losses, and loss of business  
6 opportunity fails to consider the knowledge of the shipper and intentions at the time the shipper  
7 turns a vehicle over to the vessel master for shipping.

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

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

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

21 d. Ellissa and other "SDNTs".

22         While it appears that the Government has investigated Ellissa and arrived at certain  
23 conclusions regarding the propriety of Ellissa's business dealings, that information was not, nor is  
24 it now, available to the shippers. Shippers had no reason to know that Ellissa is engaged in illicit  
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1 activities or that the U.S. Government was going to list it as an “SDNT.” To the shippers, Ellissa  
2 was, and remains, the entity that operates a car park within the Free Trade Zone at the Port of  
3 Cotonou. Auto dealers shipping cars from the United States to the Port of Cotonou are required  
4 by port regulations in Cotonou and by CBP regulations to list a consignee who is responsible for  
5 receiving a vehicle once it is off-loaded from the vessel. In fact, vessel masters will not accept a  
6 vehicle for transport to the Port of Cotonou –and other ports- unless the shipper designates a  
7 consignee. These procedural steps to shipping cargo overseas are mandated by the Automated  
8 Export System (“AES”) which seeks the advanced transmission of information on arriving and  
9 departing cargo as set forth in Title 15, Code of Federal Regulations, Part 30, Foreign Trade  
10 Regulations. Moreover, practical and common sense reasons underlie why port authorities and  
11 shipping lines require a consignee who is available to receive the vehicles immediately upon  
12 arrival of a vessel in port.

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

2 Given the standard operating procedure used by the port authority in Cotonou, every  
3 shipper was required to identify a consignee. And while there are several available consignees to  
4 choose from, there was no reason to believe at the time the shippers chose Ellissa, that Ellissa  
5 was engaged in anything but legitimate business. In fact, it appears that Ellissa does engage in  
6 the legitimate business of operating a car park along with whatever other questionable business  
7 the U.S. Government has accused it of. Ellissa runs one of the largest car parks in the free trade  
8 zone at the Port of Cotonou. Shippers have used Ellissa's services before for a fee of about \$150  
9 per vehicle for their consignee services. The services Ellissa provided are akin to the services  
10 provided by parking garage companies in most large cities around the United States. The interest  
11 Ellissa had in the vehicles arriving at the Port of Cotonou are no different than the interest a  
12 Parking facility operator would have in the vehicle of a legitimate commuter who happens to  
13 choose the parking operator's facility to park a vehicle. If the parking facility operator, in  
14 addition to operating the parking facility, also engages in criminal misconduct, the commuter  
15 does not lose the right to his or her property nor have to suffer the economic losses and  
16 emotional tribulations from having his vehicle blocked for simply choosing one parking facility  
17 over another. Likewise, the automobile dealers' mistake is that they did not have foreknowledge  
18 that Ellissa would be listed as a designated entity when they simply chose a car park to place  
19 their vehicles to wait for their intended recipients.  
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21 **COUNT ONE**

22 **VIOLATION OF THE FIFTH AMENDMENT**

23 **Due Process**  
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1 -United States of America, Secretary of Treasury; Secretary of Department of Homeland  
2 Security; Customs and Border Protection; Office of Foreign Asset Control; various agents of the  
3 Customs and Border Protection Agency-

4 Plaintiffs incorporate, re-allege, and adopt by reference paragraphs 1-65 as though fully set forth  
5 herein.

6 Plaintiffs were the lawful owners of the vehicles seized by CBP as herein described.

7 CBP detained/seized the Plaintiffs' vehicles without conducting any prior investigation.

8 CBP detained/ seized the Plaintiffs' vehicles absent probable cause to do so.

9 CBP did not provide Plaintiffs with any probable cause or material facts to justify the seizure at  
10 the time of the initial detention/seizure.

11 To date, CBP has not provided Plaintiffs with any probable cause or material facts to justify its  
12 seizure and is unable to do so.

13 By OFAC's own records ELLISSA was designated an SDNT after the dock receipts were  
14 completed designating "Ellissa" as a consignee.

15 To date CBP has produced absolutely no evidence to support its contention that Plaintiffs has  
16 violated United States export laws and regulations.

17 CBP's failure to conduct a reasonable investigation regarding the Plaintiffs' vehicles prior to  
18 detaining/seizing the vehicles is illegal and unconstitutional under the Fifth Amendment.

19 OFAC's unreasonable delay in conducting its "investigation" violated Plaintiffs' right to Due  
20 Process under the Fifth Amendment.

21 OFAC's's continued detention of the Plaintiffs' vehicles is illegal and unconstitutional under the  
22 Fifth Amendment.  
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1 Unless the Court orders CBP and OFAC to immediately release the Plaintiffs' vehicles, Plaintiffs  
2 will continue to suffer manifest injustice.

3 As a consequence of CBP's unconstitutional seizure of the Plaintiffs' vehicles , Plaintiffs have  
4 been deprived of approximately \$\_\_\_\_\_ in capital, \_\_\_\_\_ for storage costs,  
5 \_\_\_\_\_ in depreciation, has suffered damages including, without limitation, the loss of  
6 multiple business opportunities, corporate earning capacity, and the impairment of goodwill.

7 As further consequence of these Constitutional violations, Plaintiffs seeks relief as set forth more  
8 specifically in the section of this Complaint entitled "Prayer For Relief."

9 **COUNT TWO**

10 **WRONGFUL SEIZURE**

11 -United States of America, Secretary of Treasury; Secretary of Department of Homeland  
12 Security; Customs and Border Protection; Office of Foreign Asset Control; various agents of the  
13 Customs and Border Protection Agency-  
14 Plaintiffs incorporate, re-allege, and adopt by reference paragraphs 1-81 as though fully set forth  
15 herein.  
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17 Agents seized the Plaintiffs' vehicles absent probable cause or reasonable investigation under the  
18 pretext of United States customs law enforcement.

19 The seizure carried out by Agents transcended the scope of their lawful authority to enforce  
20 United States customs laws.

21 Because of this wrongful seizure, Plaintiffs have suffered damages including, without limitation,  
22 the loss of multiple business opportunities, corporate earning capacity, and the impairment of  
23 goodwill.  
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1 As further consequence of CBP's wrongful seizure, Plaintiffs seek relief as set forth more  
2 specifically in the section of this Complaint entitled "Prayer For Relief"

3 **COUNT THREE**

4 **GROSS NEGLIGENCE**

5 -Agents-

6 Plaintiffs incorporate, re-allege, and adopt by reference paragraphs 1-86 as though fully set forth  
7 herein.

8 In connection with their duties and responsibilities as Department of Homeland  
9 Security/Immigration and Customs Enforcement agents Agent Duke and Agent George owed a  
10 duty of care to companies and individuals, including Plaintiffs, who rely on the integrity of the  
11 United States, its agents, and its rule of law to transact business within its borders.

12 Agents breached the duty of care owed to Plaintiffs by seizing the Plaintiffs' automobiles absent  
13 probable cause or reasonable pre-detention/seizure investigation.

14 Agents further breached the duty of care owed to Plaintiffs by failing to conduct a reasonable  
15 post-detention/seizure investigation regarding the Plaintiffs' vehicles.

16 Agents further breached the duty of care owed to Plaintiffs by unreasonably delaying their  
17 "investigation."

18 Agents further breached the duty of care owed to Plaintiffs by failing to enlist a translator to aid  
19 in communicating with Mr. Uddin.

20 Agents further breached the duty of care owed to Plaintiffs by bringing baseless and defamatory  
21 allegations of impropriety against Plaintiffs. These allegations include each and every alleged  
22 violation of the laws CBP cites to in its Notice of Seizure.  
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1 Agents further breached the duty of care owed to Plaintiffs by advocating on behalf of a private  
2 company (Cannon) while acting ostensibly in their official capacities.

3 As a result of the foregoing, Agents directly and proximately caused Plaintiffs to suffer damages.

4 Agents conduct as described herein was reckless and amounted to gross negligence.

5 Agents conduct as described herein demonstrated their deliberate indifference to a substantial  
6 likelihood that their conduct would cause Plaintiffs to suffer considerable damages.

7 Agents conduct as described herein transcended the scope of their lawful authority to enforce  
8 United States customs laws.

9 Agents conduct as described herein constituted an egregious violation of Plaintiff's right to Due  
10 Process under the Fifth Amendment.

11 Agents are therefore liable to Plaintiffs in their individual capacities for compensatory and  
12 exemplary damages in an amount to be proven at trial.

13 Because of Agents gross negligence, Plaintiffs have suffered damages including, without  
14 limitation, the loss of multiple business opportunities, earning capacity, and goodwill  
15 impairment.  
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17 As further consequence of Agents gross negligence, Plaintiffs seek relief as set forth more  
18 specifically in the section of this Complaint entitled "Prayer For Relief."

19 **COUNT FOUR**

20 **CIVIL CONSPIRACY/CONCERT OF ACTION**

21 -Agents of the Customs and Border Protection Agency-

22 (Collectively, the "Conspirator Defendants")

23 Plaintiffs incorporate, re-allege, and adopt by reference paragraphs 1-\_\_\_\_ as though fully set  
24 forth herein.  
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1 Upon information and belief, unidentified CBP acted in concert and pursuant to a common  
2 design with OFAC agents to further and/or facilitate the illegal and unconstitutional seizure of  
3 the Plaintiffs' vehicles for pecuniary or similar gain.

4 Upon further information and belief CBP and OFAC Agents personally benefit through  
5 promotions, recognitions and additional agency funding by demonstrating mission  
6 accomplishment through the seizure of valuable goods.

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8 **PRAYER FOR RELIEF**

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14 **The Law Firm of Puckett & Faraj, PC.**

15 Dates this 5<sup>th</sup> day of October, 2011

16 /s/ Haytham Faraj  
17 Haytham Faraj  
18 1800 Diagonal Road  
19 Suite 210  
20 Alexandria, VA 22314  
21 ATTORNEY FOR PLAINTIFF  
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