FILED ENTERED
LODGED RECEIVED

APR 10 2024 KS

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA *ex rel.* BLOCKQUOTE, INC., Plaintiff-Relator, v. LOTTE HOTEL HOLDINGS USA CO., LTD., and LOTTE DUTY FREE GUAM LLC, Defendants.	NO. 2:24-cv-476-LK COMPLAINT AND JURY DEMAND **Filed Under Seal** pursuant to 31 U.S.C. § 3730(b)(2)

COMPLAINT AND JURY DEMAND

LAW OFFICES OF
MCNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

NATURE OF THE ALLEGATIONS

1. Relator Blockquote, Inc. brings this action on behalf of itself and the United States of America against Defendants Lotte Hotel Holdings USA Co., Ltd. and Lotte Duty Free Guam LLC for violations of the federal False Claims Act, 31 U.S.C. §§ 3729 *et seq*.

2. This action seeks to recover funds that were loaned to Defendants through the federal Government's Paycheck Protection Program ("PPP") and forgiven as a result of false applications.

3. Under the SBA's affiliation rules, Lotte Duty Free Guam should have considered the employees, revenues, and net worth of its affiliated entities when evaluating its eligibility for the two loans. This includes three affiliated hotels owned by its parent company, Lotte Hotel Holdings USA Co., Ltd., likely worth over a billion dollars. Had it done so, Lotte Duty Free Guam would have exceeded the size standards and been ineligible for PPP funding.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 31 U.S.C. § 3732(a) and 28 U.S.C. §§ 1331, 1345.

5. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 31 U.S.C. § 3732(a), as one or more Defendant transacts business in this jurisdiction and violations of the False Claims Act described herein occurred in this district.

PARTIES

6. Lotte Hotel Holdings USA Co., Ltd. ("Lotte Hotels USA") is registered as a corporation in Delaware. It is part of the multinational conglomerate Lotte Group.

LAW OFFICES OF
MCNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

7. At all relevant times, Lotte Hotels USA was the 100% owner of Lotte Duty Free Guam LLC; Lotte Hotel Guam LLC; Lotte Hotel New York Palace LLC; and Lotte Hotel Seattle LLC.

8. Lotte Duty Free Guam LLC operates a duty free store at Antonio B. Won Pat International Airport, 355 Chalan Pasaheru B224-A, Tamuning, 96913, Guam.

9. Lotte Hotel Guam LLC operates a hotel at 185 Gun Beach Road, Tamuning, 96913, Guam.

10. Lotte Hotel New York Palace LLC operates a hotel at 455 Madison Ave., New York, NY 10022.

11. Lotte Hotel Seattle LLC operates a hotel at 809 5th Ave., Seattle, WA 98104.

12. Blockquote, Inc. is a company based in California that produces public interest research, news reporting, and investigations.

THE PAYCHECK PROTECTION PROGRAM

13. During the COVID-19 pandemic, Congress passed the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). Section 1102 of the CARES Act contains a program called the Paycheck Protection Program ("PPP"), a program administered by the U.S. Small Business Administration ("SBA") to provide economic relief to small businesses nationwide adversely impacted by the coronavirus pandemic.

14. Section 1102 of the CARES Act temporarily permitted SBA to guarantee 100% of the PPP loans. Section 1106 of the CARES Act provided for forgiveness of up to the full principal amount of qualifying loans guaranteed under the PPP.

15. The CARES Act gives lenders delegated authority to process loan applications for PPP funding. SBA allowed lenders to rely on certifications of the borrowers in order to determine eligibility of the borrower and use of loan proceeds, and to rely on

LAW OFFICES OF
MCNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

specified documents provided by the borrower to determine qualifying loan amount, and eligibility for loan forgiveness.

16. Under the First Draw program, lenders were compensated by the federal government via processing fees based on the balance of the financing outstanding at the time of final disbursement, in the following amounts:

- Five (5) percent for loans of not more than $350,000;
- Three (3) percent for loans of more than $350,000 and less than $2,000,000; and
- One (1) percent for loans of at least $2,000,000.

17. Borrowers had to submit documentation necessary to establish eligibility such as payroll processor records, payroll tax filings, form 1099s, income and expenses documentation.

18. In general, the maximum amount borrowers could borrow was calculated by aggregating payroll costs from the previous year, with annual employee salaries capped at $100,000. The borrower then calculated the average monthly payroll cost and multiplied that amount by a factor of 2.5.

19. The Economic Aid Act (P.L. 116-260, in the Consolidated Appropriations Act of 2021), authorized and funded a Second Draw PPP Loan program.

20. For Second Draw PPP Loans, lenders were compensated by the federal government via processing fees based on the balance of the financing outstanding at the time of final disbursement, in the amount of five (5) percent for loans of more than $50,000 and not more than $350,000, and in the amount of three (3) percent for loans above $350,000.

LAW OFFICES OF
MCNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

21. Each borrower certified on the First and Second Draw loan applications that they were eligible to receive the loans under the program guidelines and that their applications and supporting documentation were accurate.

22. Borrowers were later able to seek forgiveness of the loans if the funds were used for eligible payroll costs, payments on business mortgage interest payments, rent, or utilities during either the 8- or 24-week period after disbursement.

FACTUAL ALLEGATIONS

23. Lotte Duty Free Guam LLC was approved for a First Draw PPP loan of $860,500 by Bank of Guam on April 27, 2020. It reported 154 jobs. The loan, plus interest, was forgiven, for a total of $864,318.

24. Lotte Duty Free Guam LLC was approved for a Second Draw PPP loan of $860,500 by Bank of Guam on April 1, 2021. It reported 136 employees. This loan, plus interest, was also forgiven, for a total of $865,639.

25. Lotte Duty Free Guam was not eligible for either loan because, when including affiliated entities, it exceeded the requisite size standards.

26. Version 1 of the First Draw PPP Borrower Application Form, effective April 2, 2020, required the applicant to certify in good faith that, *inter alia*:

a. The Applicant is eligible to receive a loan under the rules in effect at the time this application is submitted that have been issued by the Small Business Administration (SBA) implementing the Paycheck Protection Program under Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (the Paycheck Protection Program Rule).

b. The Applicant (1) is an independent contractor, eligible self-employed individual, or sole proprietor or (2) employs no more than the greater of 500 or employees [sic] or, if applicable, the size standard in number of employees established by the SBA in 13 C.F.R. 121.201 for the Applicant's industry.

LAW OFFICES OF
MCNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

c. I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects. I understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to $250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than $5,000; and, if submitted to a federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than $1,000,000.

27. Version 1 of the Second Draw PPP Borrower Application Form, effective January 8, 2021, required the applicant to certify in good faith that, *inter alia*:

a. The Applicant is eligible to receive a loan under the rules in effect at the time this application is submitted that have been issued by the Small Business Administration (SBA) and the Department of the Treasury (Treasury) implementing Second Draw Paycheck Protection Program Loans under Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (the Paycheck Protection Program Rules).

b. The Applicant, together with its affiliates (if applicable)... employs no more than 300 employees...

c. I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects. I understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to $250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than $5,000; and, if submitted to a federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than $1,000,000.

28. Later versions of the applications had similar certifications.

29. Lotte Duty Free Guam must have made these certifications in order to receive PPP funds.

LAW OFFICES OF
MCNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

30. These certifications were false when made because they failed to properly consider affiliated entities.

A. THE AFFILIATION RULES

31. In addition to small business concerns, a business was eligible for a First Draw PPP Loan if the business had 500 or fewer employees **or** the business met the SBA employee-based or revenue-based size standard for the industry in which it operates (if applicable) **or** under the alternative size standard.

32. Under the Second Draw program, businesses were eligible only if they had 300 or fewer employees.

33. When multiple entities are operated under common ownership, the SBA generally applies "affiliation rules," codified at 13 C.F.R. § 121.301(f), that require the various entities to consolidate their employee and revenue count when evaluating their loan eligibility. Their purpose is to capture exactly the situation we appear to have with Lotte Group—a large and successful corporation operating multiple subsidiaries.

34. The "affiliation based on ownership" test states that:

> 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.

35. Lotte Duty Free Guam LLC, Lotte Hotel Guam LLC, Lotte Hotel New York Palace LLC, and Lotte Hotel Seattle LLC were all wholly owned by Lotte Hotel Holdings USA Co., Ltd., and, thus, they were affiliated.

LAW OFFICES OF
MCNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

B. AFFILIATION RULE WAIVER REQUIREMENTS

36. Accordingly, to avoid affiliation with the hotels, Lotte Duty Free Guam would have to meet one of three affiliation rule waiver requirements. At least two of the three waivers to the affiliation rules do not apply: it was not assigned a NAICS code beginning with 72, nor has it been assigned a franchise identifier code.

37. The third waiver applies where a business "receives financial assistance from a company licensed under section 301 of the Small Business Investment Act of 1958," i.e., a "small business investment company." "Financial assistance" includes any type of financing listed in 13 C.F.R. § 107.50, including loans and equity. It seems unlikely that the subsidiary of a multinational conglomerate would have applied for SBIC funding, and Relator has found no evidence that it did.

38. The NAICS code beginning with the digits 72 did apply to the three Lotte Hotels (Guam, Seattle, and New York Palace), which is why Lotte Hotel Guam was eligible for a PPP loan notwithstanding this affiliation. However, the affiliation waiver is a one-way street. For example, as explained by SBA PPP FAQ 24:

> Example 3. Company X wholly owns Company Y and Company Z (as a result, Companies X, Y, and Z are all affiliates of one another). Company Y owns a restaurant with 400 employees. Company Z is a construction company with 400 employees.
>
> - Company Y is eligible for a First Draw PPP Loan because it has 500 or fewer employees. The affiliation rules do not apply to Company Y, because it has 500 or fewer employees and is in the food services business (with a NAICS code beginning with 72).
>
> - The waiver of the affiliation rules does not apply to Company Z, because Company Z is in the construction industry. Under SBA's affiliation rules, 13 CFR 121.301(f)(1) and (3), Company Y and Company Z are affiliates of one another because they are under the common control of Company X, which wholly owns both companies. This means that the size of Company Z is determined by adding its employees to those of Companies X and Y. Therefore, Company Z is deemed to have more than 500

LAW OFFICES OF
MCNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

> employees, together with its affiliates. However, Company Z may be eligible to receive a First Draw PPP Loan as a small business concern if it, together with Companies X and Y, meets SBA's other applicable size standards, as explained in FAQ #2.

39. Similarly, the size of Lotte Duty Free Guam (Company Z) is determined by adding its employees to those of Lotte Hotel Holdings USA (Company X) and its subsidiaries (Company Y).

C. APPLICATION OF THE AFFILIATION RULES

40. Looking to the Second Draw Loan first, Lotte Duty Free Guam reported 136 employees on its loan application. Separately, Lotte Hotel Guam reported 174 employees on its own application. This puts the affiliated companies at over 300 employees prior to even including the other two hotels. Since this is the only eligibility test for the Second Draw, Lotte Duty Free Guam was not eligible.

41. Lotte Duty Free Guam applied for its Second Draw PPP loan using NAICS code 453220, Gift, Novelty, and Souvenir Stores.

42. Assuming this is the correct code for Lotte Duty Free, with regards to the First Draw program, this code did not have an employee limit, and so the standard 500-employee limit applied to the First Draw Loan. Its revenue standard was $8 million.

43. Under the alternative size standard, an entity (including affiliates) could qualify if the maximum tangible net worth is not more than $15 million; and average net income after Federal income taxes (excluding any carry-over losses) of the business for the two full fiscal years before the date of the application is not more than $5 million.

44. On the First Draw applications, Lotte Duty Free Guam reported 154 jobs and Lotte Hotel Guam reported 244 jobs, a total of 398 jobs.

LAW OFFICES OF
MCNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

45. Upon information and belief, Lotte Hotel New York Palace—a five-star hotel with over 900 rooms and suites and amenities—and Lotte Hotel Seattle had more than 102 employees.

46. Also upon information and belief, the revenues, net worth, and net profits for these three hotels and Lotte Duty Free Guam exceeded the $8 million revenue limit and the limits of the alternative size standard.

47. Zippia, for example, estimated that in 2023, New York Palace Hotel had 1,500 employees and $130M in revenue.

48. Moreover, Lotte Group purchased the New York Palace Hotel in 2015 for about $805 million, plus $140 million in renovations.

CONCLUSION

49. Lotte Duty Free Guam was the subsidiary of a holding company that included three luxury hotels. Moreover, it was part of a multinational conglomerate with total assets of KRW 19,921.9 billion, or about $150 billion.

50. Lotte Group and its affiliates should never have received PPP money. Although it qualified under an exception for its Guam hotel, the same exception did not apply to Lotte Duty Free Guam. Defendants should be required to repay the loan, plus interest, processing fees, and penalties.

COUNT I
VIOLATIONS OF 31 U.S.C. § 3729
FALSE CLAIMS ACT

51. Relator hereby incorporates and realleges herein all other paragraphs as if fully set forth herein.

52. As set forth above, Defendants knowingly presented or caused to be presented false or fraudulent claims for payment or approval, in violation of 31 U.S.C. § 3729(a)(1)(A).

LAW OFFICES OF
MCNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

53. As set forth above, Defendants knowingly made, used, or caused to be made or used, false records or statements material to false or fraudulent claims, in violation of 31 U.S.C. § 3729(a)(1)(B).

54. As set forth above, Defendants knowingly conspired to commit a violation of the False Claims Act, in violation of 31 U.S.C. § 3729(a)(1)(C).

55. Due to Defendants' conduct, the United States Government has suffered substantial monetary damages and is entitled to recover treble damages and a civil penalty for each false claim. 31 U.S.C. § 3729.

56. Relator is entitled to reasonable attorneys' fees, costs, and expenses. 31 U.S.C. § 3730(d)(1).

PRAYER FOR RELIEF

WHEREFORE, Relator prays for judgment against Defendants:

On behalf of the United States:

a) awarding the United States treble damages sustained by it for each of the false claims or improperly retained payments;

b) awarding the United States a maximum civil penalty for each of the false claims, records, or statements;

c) awarding Relator the maximum share of the proceeds of this action and any alternate remedy or the settlement of any such claim;

d) awarding Relator litigation costs, expenses, and reasonable attorneys' fees; and

e) granting such other relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Relator hereby respectfully demands trial by jury on all issues and counts triable as of right before a jury.

LAW OFFICES OF
MCNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

DATED this 10th day of April, 2024.

McNAUL EBEL NAWROT & HELGREN PLLC

Malaika M. Eaton, WSBA No. 32837
600 University Street, Suite 2700
Seattle, Washington 98101
206-467-1816
meaton@mcnaul.com

Jason Marcus
(*Pro Hac Vice Application to be Submitted*)
Georgia Bar No. 949698
Bracker & Marcus LLC
3355 Lenox Rd., Suite 660
Atlanta, Georgia 30326
Tel: (770) 988-5035
Fax: (678) 648-5544
Jason@FCACounsel.com

Attorneys for Relator Blockquote, Inc.

FILED ENTERED
LODGED RECEIVED

APR 10 2024 KS

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA *ex rel.* BLOCKQUOTE, INC., Plaintiff-Relator, v. LOTTE HOTEL HOLDINGS USA CO., LTD., and LOTTE DUTY FREE GUAM LLC, Defendants.	NO. 2:24-CV-476-LK COMPLAINT AND JURY DEMAND **Filed Under Seal** pursuant to 31 U.S.C. § 3730(b)(2)

LAW OFFICES OF
MCNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816