UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 20-cv-20157

MARLENE CUETO IGLESIAS and
MIRIAM IGLESIAS ALVAREZ

Plaintiffs,

vs.

PERNOD RICARD, S.A.,

Defendant.
_____/

SECOND AMENDED COMPLAINT FOR DAMAGES

Plaintiffs MARLENE CUETO IGLESIAS and MIRIAM IGLESIAS ALVAREZ ("Plaintiffs") hereby sues PERNOD RICARD, S.A., ("Defendant") for trafficking in Plaintiff's confiscated property located in Cuba and alleges as follows.

NATURE OF CASE

1. This is an action brought under the Cuban Liberty and Democratic Solidarity Act ("LIBERTAD Act" or the "Helms-Burton Act"). The U.S. Congress enacted the LIBERTAD Act in 1996 to assist Cuban people residing in the United States in regaining their freedom and prosperity, to strengthen international sanctions against the communist Cuban Government, and to deter the exploitation of wrongfully confiscated property in Cuba. Indeed, one of the LIBERTAD Act's purposes is to "protect United States nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro Regime." 22 U.S.C. § 6022(6).

2. Title III of the LIBERTAD Act ("Title III") establishes a private right of action for money damages against any person who "traffics" in such property as defined by 22 U.S.C. § 6023(13). *See* 22 U.S.C. § 6082.

3. Although every U.S. President has suspended the right to bring an action under the LIBERTAD Act since its enactment, Defendant has been on notice since 1996 that trafficking in property confiscated by the communist Cuban Government would subject it to liability under the LIBERTAD Act. As of the date of filing this Complaint, the United States Government has ceased suspending the right to bring an action under the LIBERTAD Act, which therefore permits Plaintiff to seek damages for the Defendants' conduct in exploiting Plaintiff's wrongly confiscated property.

PARTIES

4. Plaintiff, Marlene Cueto Iglesias ("Plaintiff Cueto"), is an individual and resident of Manhattan Beach, Los Angeles County, California.

5. Plaintiff Cueto became a citizen of the United States on August 5, 1986 and, at all times relevant to this action, is and continues to be a citizen and resident of the United States.

6. Plaintiff Miriam Iglesias Alvarez ("Plaintiff Alvarez), is an individual and resident of Hawthorne, Los Angeles County, California.

7. Plaintiff Alvarez became a citizen of the United States on August 5, 1986 and, at all times relevant to this action, is and continues to be a citizen and resident of the United States.

8. Defendant Pernod Ricard S.A. is a French corporation organized under foreign law. Defendant Pernod Ricard S.A.'s principal place of business is located at 12 Place des Etats-Unis, 75783 Paris Cedex 16, France. Defendant Pernod maintains sufficient minimum contacts

with the State of Florida, specifically, the Southern District of Florida as Defendant Pernod Ricard S.A. operates and controls corporate agents throughout the United States and the Southern District of Florida, distributes a portfolio of liquor products throughout the United States and the Southern District of Florida including, but not limited to, Absolut Vodka, Jameson Irish Whiskey and others.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), because Plaintiffs' claims arises under 22 U.S.C. § 6021, et seq., and the amount in controversy exceeds the sum or value of $50,000, exclusive of interest, costs, and attorneys' fees.

10. This Court has personal jurisdiction over Defendant under Fla. Stat. § 48.193(1)(a)(1), 48.193(1)(a)(2), 48.193(1)(a)(6)(a) and 48.193(2) because it maintains and carries on continuous and systematic contacts with Florida, regularly transacts business within Florida, regularly avails itself of the benefits of its presence in Florida.

11. Venue is proper in this District under 28 U.S.C. § 1391(a)(l), because Defendant reside or are deemed to reside in the Southern District of Florida under 28 U.S.C. §§ 1391(c)(2) and (d).

FACTUAL ALLEGATIONS

THE CONFISCATION OF CONAC CUETO

12. Plaintiff Cueto is the surviving daughter of Fernando Tomas Cueto Sanchez. Plaintiff Alvarez is the surviving widow of Fernando Tomas Cueto Sanchez.

13. In the early 1950s, Fernando Tomas Cueto Sanchez founded Conac Cueto, C.I.A., a Cuban company, originally located at Avenue 25 #5401, Almendares, Buena Vista, La Habana,

Cuba ("Conac Cueto"). The Conac Cueto product line included Conac Cueto Extra Viejo, Conac Cueto Anejo V.S., Conac Cueto Extra Dry, Champagne Conac Cueto, Aguardiente Cueto and others (the "Cueto Brands"). The Cueto Brand names were protected under the trademark laws of Cuba.

14. Conac Cueto employed a house chemist, a house taster, staff accountants, a general manager, and numerous employees and sales representatives. The Conac Cueto assets included certain intellectual property, thousands of oak barrels, thousands of bottles, labels, corks, tasters, meters, an established customer market segment, and other assets Conac Cueto used in the production, marketing, and sale of cognac (the "Subject Property").

15. In or about March 1959, the Cuban Government enacted Law No. 15, which ordered the confiscation of property and assets owned by Cuban nationals, which would in turn be "nationalized" by the Cuban Government.

16. In or about October 1960, the Cuban Government, by and through Law No. 890, ordered the confiscation of certain "all industrial and commercial enterprises".

17. In or about June 1961, the Cuban Government, by and through Law 947, ordered the confiscation of all remaining "industrial and commercial enterprises" including the Subject Property, which was confiscated by the Cuban Government in 1963.

18. At the time of the Subject Property's confiscation, the Cuban Government forcefully took possession and control of all Conac Cueto's assets and the Subject Property. As with the seizure of other distilleries, alcoholic brands and spirits, the Cuban Government nationalized the Subject Property and gathered all Conac Cueto assets into a company owned and controlled by the Cuban Government: Cuba Ron S.A., the Cuban Government's national rum company.

19. In addition to the seizure of the Subject Property, the Cuban Government also nationalized other spirit companies including the now infamous Jose Arechabala, S.A., the original owner of the Havana Club brand name.

20. Upon information and belief, the Subject Property was moved to a factory in Cardenas and, ultimately, to Santa Cruz, Cuba where Cuba Ron, S.A. manufactured the Havana Club rum brand. Upon further information and belief, the empty oak barrels owned by Conac Cueto were used to age the Havana Club rum.

21. Oak barrels used in the distillery industry have a sustainable life of 100 years of aging production. As commonly known in the distillery industry, oak barrels are re-used time and time again to age spirits.

22. The Havana Club rum, aged to perfection in oak barrels seized by the Cuban Government, was then sold nationally and internationally by the Cuban Government, by and through Cuba Ron, S.A. Upon information and belief, Havana Club rum continues to be aged in the seized barrels which continues to be sold internationally by and through Cuba Ron, S.A. and Defendant.

23. Fernando Tomas Cueto Sanchez passed away on December 8, 1979. At the time of his death, his assets, including rightful ownership to Conac Cueto and the Subject Property, passed from Fernando Tomas Cueto Sanchez to Plaintiff Alvarez through intestate inheritance. The Cueto family believed that Conac Cueto and the Subject Property would eventually pass from Plaintiff Alvarez to Plaintiff Cueto through gift or inheritance. When Plaintiff Cueto reached the age of majority, Plaintiff Alvarez gifted Plaintiff Cueto with 100% ownership interest in Conac Cueto and the Subject Property on September 2, 1986.

24. Plaintiff Cueto is a U.S. national as defined by 22 U.S.C. § 6023(15), as she became a U.S. Citizen on August 5, 1986. Plaintiff Cueto has never abandoned her legitimate interest in the Subject Property. In the alternative, in the event it is determined that Plaintiff Cueto has no interest in the Subject Property, Plaintiff Alvarez, also a U.S. national as defined by 22 U.S.C. § 6023(15), has never abandoned her legitimate interest in the Subject Property.

CUBA RON S.A. AND PERNOD RICARD S.A.

25. In or about 1993, the Cuban Government partnered with the Defendant in a 50:50 joint venture to distribute Havana Club rum globally. *See* Consolidated Financial Statement of Pernod Ricard, Exhibit 1 at page 9. Through this partnership, Defendant and the Cuban Government fraudulently founded Cuba Ron, S.A. with confiscated companies and assets of several private companies for the sole purpose of fraudulently distributing Havana Club rum and other spirits globally.

26. As a publicly traded company, and in the exercise of corporate due diligence, Defendant knew or should have known that Havana Club and all associated assets of the Cuban Government were systematically seized by Cuban nationals in the 1950s and 1960s and subsequently nationalized by the Cuban Government.

27. In the exercise of corporate due diligence, Defendant also knew or should have known that the U.S. Congress enacted the LIBERTAD Act in 1996. Thereby, from 1996 to the present, Defendant knew or should have known, in the exercise of corporate due diligence, that it was held an interest in confiscated property and was deliberately benefiting financially from commercial activity related to confiscated property .

28. Upon information and belief, and to facilitate the objectives of the joint venture, Defendant created a series of 100% owned subsidiary companies to market Havana Club as well

as other liquor brands owned by Defendant. More specifically, Defendant "defines, coordinates and oversees the implementation of the [subsidiary's] overall company strategy" and is responsible for all "governance functions (strategy, mergers & acquisitions, finance, legal affairs, corporate communications, talent development, S&R, etc.); dissemination of best practices and cross-functional initiatives with high added value (digital marketing, luxury, innovation, etc.); and support functions (supply chain, IT, etc.) of their brand and market companies. *See* Exhibit 1 at page 10.

29. By its own admission, Defendant is the alter ego of its subsidiary companies including, but not limited to Pernod Ricard USA, LLC, Pernod Ricard Americas Travel Retail, LLC, and Pernod Ricard Marketing USA, LLC (the "Pernod Subsidiaries"). *See* Exhibit 1, at page 204.

30. The Pernod Subsidiaries are registered as foreign limited liability companies in the State of Florida and conduct business within the State of Florida and within the Southern District of Florida. *See* Consolidated Exhibit 2.

31. As Defendant's agent and Florida operating segment, the Pernod Subsidiaries import, market, and sell spirits and wines owned and/or controlled by Defendant in the State of Florida and within the Southern District of Florida. By way of example, and upon information and belief, Pernod Ricard Americas Travel Retail, LLC allows international travelers departing from the Miami Airport or Fort Lauderdale Airport to purchase Havana Club and Martell Cohiba Cognac, duty free. Employees and/or agents of Pernod Ricard Americas Travel Retail, LLC then deliver the purchased Havana Club to the international traveler at the gate prior to the international traveler's departure. By and through the Pernod Subsidiaries, Defendant has specifically engaged in business in the Southern District of Florida and engages is substantial,

significant, and *not isolated*, activity in the Southern District of Florida. Simply stated, there is no difference between Defendant and the Pernod Subsidiaries.

32. The Cuban Government and Defendant maintain possession of the Subject Property and have not paid any compensation to Plaintiffs for its confiscation and seizure. More specifically, following the Cuban Government expropriated, and seized ownership and control of the Subject Property, the Subject Property has not been returned and adequate and effective compensation has not been provided to Plaintiffs. Further, the claim to the Subject Property has not been settled pursuant to an international settlement agreement or other settlement procedure.

33. The Cuban Government and Defendant have used the Subject Property to engage in commercial activities, using or otherwise benefiting from the Subject Property (i.e. manufacturing and selling Havana Club that has been aged in oak barrels owned by Plaintiffs) without consent from or compensation paid to Plaintiff Cueto or Plaintiff Alvarez, both U.S. citizens, thereby injuring Plaintiffs.

34. Plaintiffs' interest in the Subject Property is based upon an uncertified claim as Plaintiff Alvarez did not have the ability to bring a claim under the Settlement of International Claims Act of 1949.

DEFENDANT'S LIABILITY UNDER THE LIBERTAD ACT

35. Section 302 of the LIBERTAD Act provides the following civil remedy:

> (1) Liability for trafficking.--(A) Except as otherwise provided in this section, any person that, after the end of the 3-month period beginning on the effective date of this title, traffics in property which was confiscated by the Cuban Government on or after January 1, 1959, shall be liable to any United States national who owns the claim to such property for money damages . . . 22 U.S.C. § 6082(a)(1).

36. Section 302 implements a fundamental purpose of the LIBERTAD Act, which is to permit US nationals to bring claims against those that engage in unlawful trafficking. For example:

a. Congress found that trafficking in property confiscated from U.S. nationals benefits "the current Cuban Government" and "undermines the foreign policy of the United States." 22 U.S.C. § 6081(6).

b. Regarding remedies, Congress found that "[t]he international judicial system … lacks fully effective remedies" thereby permitting unjust enrichment "by governments and private entities at the expense of the rightful owners of the property." *Id*. § 6081(8).

c. Congress further recognized the U.S. Government's "obligation to its citizens to provide protection against wrongful confiscations by foreign nations and their citizens, including the provision of private remedies." *Id*. § 6081(10).

37. Given these findings, Section 302 of the LIBERTAD Act unsurprisingly includes foreign entities within its scope.

38. Specifically, the definition of a "person" who may be liable for trafficking includes "any person or entity, including any agency or instrumentality of a foreign state" as defined by the FSIA, 28 U.S.C. § 1603(b). *See* 22 U.S.C. § 6023(1), (11).

39. The LIBERTAD Act defines a person who "traffics" in confiscated property, inter alia, as one who: knowingly and intentionally -

a. sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property,
b. engages in a commercial activity, using or otherwise benefiting from confiscated property, or
c. causes, directs, participates in, or profits from, trafficking ... by another person, or otherwise engages in trafficking through another person without the authorization of any United States national who holds a claim to the property.

See 22 U.S.C. § 6023(13).

40. Plaintiffs have never authorized any person to engage in the activities covered by the LIBERTAD Act's definition of trafficking with respect to the Subject Property. Accordingly, Section 302 provides Plaintiffs with a private right of action against any person—including Defendant—that has trafficked in the Subject Property.

COUNT I - TRAFFICKING IN THE CONFISCATED SUBJECT PROPERTY

41. Plaintiffs incorporate by this reference each and every allegation contained in Paragraphs 1 through 40 above.

42. Plaintiffs are U.S. nationals who own the claim to property that was confiscated by the Cuban Government after January 1, 1959.

43. Defendant is a person under the LIBERTAD Act, as defined by 22 U.S.C. § 6023(11).

44. Upon information and belief, beginning in or about 1993 and continuing thereafter, Defendant knowingly and intentionally commenced, conducted, and promoted the sale of the products derived and/or produced from the Subject Property without the authorization of Plaintiff.

45. Upon information and belief, beginning in or about 1993 and continuing thereafter, Defendant also knowingly and intentionally participated in and profited from the Cuban Government's possession of the Subject Property without authorization of Plaintiffs who hold a claim in the Subject Property.

46. Defendant knowingly and intentionally commenced, conducted, and promoted the sale of the products derived and/or produced from the Subject Property with regard to the Subject Property as defined in 22 U.S.C. § 6023(13)(A).

47. Additionally, Defendant has generated revenues, obtained profits, and realized other benefits from these activities and has not compensated Plaintiffs.

48. Defendant has engaged in trafficking in violation of Title III of the LIBERTAD Act through, at minimum: (i) managing, possessing, and using the Subject Property; (ii) engaging in commercial activities using or otherwise benefiting from the Subject Property; and (iii) causing, directing, participating in, and profiting from trafficking in the Subject Property by another person, in furtherance of their operations.

49. At all relevant times, Defendant has conducted this trafficking "without the authorization of any United States national who holds claim to the property" in violation of Title III of the LIBERTAD Act. 22 U.S.C. § 6023(13).

50. Defendant has engaged in unlawful trafficking since the LIBERTAD Act became effective.

51. As a result of the Defendant's trafficking in the Subject Property, the Defendants are liable to Plaintiff for all money damages allowable under 22 U.S.C. § 6082(a).

52. Plaintiff is entitled to all money damages allowable under 22 U.S.C. § 6082(a), including, but not limited to, those equal to the sum of:

a. The amount greater of: (i) the amount certified by the Foreign Claims Settlement Commission, plus interest; (ii) the amount determined by a special master pursuant to 22 U.S.C. § 6083(a)(2); or (iii) the "fair market value" of the Subject Property, plus interest;

b. Three times the amount determined above (treble damages); and

c. Court costs and reasonable attorneys' fees.

53. As of the date of filing this Amended Complaint, the United States Government has ceased suspending the right to bring an action under Title III, 22 U.S.C. § 6085, which therefore permits Plaintiff to seek the relief requested herein.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff demands judgment against the Defendants as follows:

A. Ordering the Defendants to pay damages (including treble damages);

B. Ordering the Defendants to pay pre-judgment and post-judgment interest on any amounts awarded;

C. Order the Defendants to pay attorneys' fees, costs, and expenses; and

D. Ordering such other relief as may be just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all issues so triable, and a trial pursuant to Rule 39(c), Federal Rules of Civil Procedure, as to all matters not triable as of right by a jury.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on **August 31, 2020**, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the Service List in the manner specified, either via transmission of Notices of Electronic filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Electronic Filing.

By: _____
Joycelyn S. Brown
Florida Bar No. 0058277