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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	:	CRIMINAL NO. _____
	:	
Plaintiff,	:	
	:	
v.	:	VIOLATIONS:
	:	15 U.S.C. §§ 78m (Foreign
JERDS LUXEMBOURG HOLDING S.À.R.L.	:	Corrupt Practices Act); and
	:	18 U.S.C. § 2 (Aiding and
Defendant.	:	Abetting)
	:	

INFORMATION

The United States Department of Justice, Criminal Division, Fraud Section, charges as follows:

At all times material to this Information (unless specified otherwise):

GENERAL ALLEGATIONS

Relevant Statutory Background

1. The Foreign Corrupt Practices Act of 1977, as amended, Title 15, United States Code, Sections 78dd-1, *et seq.* ("FCPA"), was enacted by Congress for the purpose of, among other things, making it unlawful to act corruptly in furtherance of an offer, promise, authorization, or payment of money or anything of value, directly or indirectly, to a foreign official for the purpose of obtaining or retaining business for, or directing business to, any person. The FCPA's accounting provisions, among other things, require that any issuer make and keep books, records, and accounts that accurately and fairly reflect the transactions and

disposition of the company's assets, prohibit the knowing and willful falsification of an issuer's books, records, or accounts. 15 U.S.C. §§ 78m(b)(2) and 78ff(a).

Relevant Entities and Individuals

2. Biomet, Inc. ("Biomet") was an orthopedic medical and dental device manufacturer incorporated in Indiana. Biomet sold its products worldwide. At all times material to this Statement of Facts, Biomet was an "issuer" within the meaning of the FCPA, 15 U.S.C. §§ 78dd-1 and 78m.

3. On or about March 26, 2012, Biomet entered into a deferred prosecution agreement with the Fraud Section (the "2012 DPA") arising out of Biomet's FCPA violations in Brazil, China, and Argentina.

4. In June 2015, Zimmer Holdings, Inc. ("Zimmer") acquired LVB Acquisition, Inc., which owned all of Biomet, Inc. ("Biomet"). The combined entities and their subsidiaries became ZIMMER BIOMET, headquartered in Warsaw, Indiana and incorporated in Delaware. Thus, ZIMMER BIOMET knowingly assumed all the rights and obligations of Biomet under the 2012 DPA, including under the compliance monitorship that was part of the 2012 DPA.

5. As the result of the acquisition that occurred on or about June 24, 2015, ZIMMER BIOMET assumed the obligations of Biomet under the 2012 DPA and became Biomet's successor-in-interest for purposes of the 2012 DPA and Biomet's conduct described below.

6. Implant Innovations Holdings, LLC ("IIH"), a wholly-owned subsidiary of Biomet, owned several subsidiaries, including Biomet 3i, LLC ("Biomet 3i"), which was incorporated in Florida. Biomet 3i marketed and sold dental implants and related products. Biomet 3i was Biomet's fourth-largest subsidiary by revenues. Biomet 3i's financial statements

were consolidated into IIIH's financial statements, which were consolidated into Biomet's financial statements.

7. Defendant JERDS LUXEMBOURG HOLDING S.ÀR.L. ("JERDS") was a wholly-owned subsidiary of IIIH, which in turn was a subsidiary of Biomet. JERDS had its headquarters in Luxembourg, and owned several subsidiaries, including Biomet 3i Mexico S.A. de C.V. ("3i Mexico"), that marketed and sold Biomet 3i's products overseas.

8. 3i Mexico, which was incorporated in Mexico, was owned by JERDS. 3i Mexico marketed and sold Biomet 3i's products in Mexico. 3i Mexico's financial statements were consolidated into JERDS's financial statements, which were eventually consolidated into Biomet's financial statements. 3i Mexico no longer sells products and is in the process of winding down, and the Defendant is the successor-in-interest to 3i Mexico and is therefore responsible for 3i Mexico's conduct, including the conduct described herein. Thus, JERDS is the successor-in-interest of 3i Mexico for the conduct described herein.

9. "Mexico Customs Broker," a company whose identity is known to the United States and JERDS, is a customs broker that 3i Mexico hired to import products from the United States to Mexico.

10. "Shipping Company," a company whose identity is known to the United States and JERDS, is a shipping company in Texas that worked with Mexico Customs Broker to export Biomet 3i's products from the United States to Mexico.

11. "Biomet Executive," an individual whose identity is known to the United States and ZIMMER BIOMET, was an attorney at Biomet and Biomet International during the relevant period and became a high-level attorney during that period. Biomet Executive's responsibilities included ensuring that Biomet had effective internal accounting controls, such as third-party due

diligence, and implementing Biomet's internal accounting controls. Biomet Executive was also responsible for addressing the requirements of Biomet's FCPA monitor with respect to Biomet International.

12. "3i Mexico Managing Director," an individual whose identity is known to the United States and JERDS, was an employee of 3i Mexico.

13. "3i Mexico Employee," an individual whose identity is known to the United States and JERDS, was an employee of 3i Mexico.

The Unlawful Scheme

14. At all relevant times, Biomet exported products to, and sold those products in, countries with a high risk of corruption, including Mexico. From in or around 2010 to in or around 2013, 3i Mexico used a custom broker and subagents to pay bribes to Mexican customs officials to smuggle unregistered and improperly-labeled dental products into Mexico. 3i Mexico falsely recorded payments to its customs broker's subagents as payments to its customs broker and payments that included bribes as payments for customs services, causing JERDS, IHH, and, ultimately, Biomet, to falsify their books and records. Between in or around 2010 and 2013, Biomet's subsidiaries paid \$980,774 to the customs broker's subagents knowing that at least part of this amount would be passed on to customs officials, and disguised the bribe payments.

15. 3i Mexico sold Biomet 3i's dental products in Mexico, which were regulated under Mexican law; Mexican law required proper labeling, identification of the product's country of origin, and a valid product registration issued by Mexican regulatory authorities.

16. In or about January 2009, 3i Mexico began having difficulty importing some of Biomet 3i's membrane products into Mexico because of problems with their product

registrations. At one point, customs authorities at the Mexico City Airport detained shipments destined for 3i Mexico due to product registration problems.

17. On or about January 7, 2009, several individuals at Biomet 3i's headquarters in Florida received an email from the then-general manager of 3i Mexico who proposed that 3i Mexico use a Texas-based customs agent to bring unregistered membrane products into Mexico through Texas.

18. On or about January 19, 2009, soon after 3i Mexico learned that the registration for a specific type of membrane was not current, a senior manager in Biomet 3i's regulatory affairs department – the head of Latin American regulatory affairs – requested that all shipments of membranes to Mexico be placed on hold until further notice.

19. On or about January 28, 2009, the managing director of a Biomet subsidiary in Mexico advised the senior manager and head of Biomet 3i's regulatory affairs department for Latin America in an email message that importing dental implants without a valid registration from Mexico's Secretary of Health was a crime.

20. In or around February 2009, Biomet Executive undertook a compliance assessment of another Biomet subsidiary in Mexico. One of the findings in that compliance assessment was that the subsidiary had used a third-party "consultant" to expedite customs shipments at the border. The subsidiary had used the consultant to import products that would have been delayed in customs due to problems with the products' licenses if they had been shipped via the Mexico City Airport. The consultant did not have the requisite credentials to carry out import and export activities. The assessment stated that using the consultant was a risk and noted that Biomet Corporate had labelled the consultant "higher risk." In response to the assessment, the subsidiary terminated its relationship with the consultant, but Biomet did not

implement controls to ensure that 3i Mexico did not use third parties who engaged in similar high risk activities. Prior to this time, both Biomet's subsidiary and 3i Mexico had used the consultant to import products.

21. In or around 2010, 3i Mexico began having difficulty importing its products into Mexico from the United States via the airport in Mexico City. Some of the shipments were stopped by Mexican customs officials because the products were mislabeled, lacked proper country of origin markings, and did not have valid product registrations with the Mexican government.

22. In response to these issues, 3i Mexico's agents and employees developed a scheme to avoid those problems: first, Biomet 3i would ship certain Biomet 3i products to an address in Texas provided by Mexico Customs Broker; second, Mexico Customs Broker would segregate the products into two sets of products – those products that were properly labeled and registered under Mexican law, and those products that were not properly labeled and registered and thus contraband; third, Mexico Customs Broker would transport all of the compliant products across the border to Mexico, but one of Mexico Customs Broker's subagents would bribe Mexican customs officials so that the contraband dental products could cross the border illegally.

23. 3i Mexico did not have a written contract with Mexico Customs Broker or its subagents even though they were providing services in a country and industry with high corruption risks. 3i Mexico also did not receive anticorruption representations from Mexico Customs Broker or its subagents.

24. Biomet did not implement internal accounting controls to ensure that 3i Mexico would undertake those tasks. In addition, 3i Mexico knew that Mexico Customs Broker's

subagents would pay bribes and that there was no legitimate reason to use subagents when it had retained Mexico Customs Broker as its customs broker.

25. On or about March 17, 2010, an employee at Mexico Customs Broker sent an email message to 3i Mexico Managing Director and 3i Mexico Employee which read as follows: “here is the procedure that will be followed to release shipments through [Texas] customs: Deliver the shipment to [Shipping Company’s address], Attn: [an employee at Shipping Company]. The person responsible for carrying out this step, will go to our warehouse and afterwards will send us the quotation.” 3i Mexico Employee knew that Mexico Customs Broker’s subagents would bribe Mexican customs officials to ensure that the mislabeled products would be imported into Mexico.

26. On or about April 8, 2010, 3i Mexico Managing Director wrote an email to five other Biomet 3i and 3i Mexico employees and stated that they had problems getting shipments through customs at Mexico City’s airport because some product labels indicated that they were manufactured in countries other than the United States, while the product registrations stated that they were manufactured in the United States. 3i Mexico Managing Director recommended that Biomet 3i ship the products to Shipping Company’s office because at “the border they have more flexibility to access and import the products according to the right procedures. The details of the broker are: [Shipping Company’s address], Attn: [an employee at Shipping Company].”

27. On or about April 9, 2010, 3i Mexico Managing Director wrote the following in an email to a 3i Mexico employee and two other Biomet 3i employees: “Ok lets [*sic*] do the following . . . lets [*sic*] return all previous shipment[s] to [Biomet 3i’s office] and you send us 1 new shipment with all the [back order items] to Texas, then we normalize the inventory and return to weekly shipments using only items made in USA and the rest special shipments using

[Texas].” The 3i Mexico employee knew that Mexico Customs Broker’s subagents were being paid large amounts of money to smuggle the mislabeled products into Mexico.

28. On or about April 9, 2010, 3i Mexico Managing Director sent an email to the senior manager who was the head of Biomet 3i’s regulatory affairs department for Latin America, stating, as translated from Spanish to English, that because of problems with illegal drugs being smuggled into Mexico City’s airport, Mexican authorities had reinforced border controls over health products. 3i Mexico Managing Director wrote that customs agents had recommended “that we use the border and in this case [Texas] because at this entry point the authorities are not as strict since from the US to Mexico there is no problem with prohibited substances, indeed it is the reverse.”

29. On or about April 9, 2010, the senior manager who was the head of Biomet 3i’s regulatory affairs department for Latin America, responded to 3i Mexico Managing Director by email and stated, as translated from Spanish to English: “I understand completely—how do we set this up so that the product enters through [Texas]?”

30. On or about April 9, 2010, 3i Mexico Managing Director responded to the senior manager who was the head of Biomet 3i’s regulatory department for Latin America by email, stating, as translated from Spanish to English: “[two employees] are already working to send this Friday’s shipment to [Texas].”

31. On or about March 26, 2012, Biomet entered into the 2012 DPA.

32. On or about April 27, 2012, an employee in Biomet 3i’s regulatory department sent 3i Mexico Managing Director an email message and said that Biomet 3i could not import a particular ceramic dental cement into Mexico because it did not have the necessary importation license. 3i Mexico Managing Director responded that customs officials at Mexico City’s airport

would require the importation license, so Biomet 3i was instead using Mexico Customs Broker to ship the products through the border at Texas.

33. On or about July 27, 2012, an employee at Mexico Customs Broker sent an email to 3i Mexico Employee and another employee at Mexico Customs Broker and stated, as translated from Spanish to English: "I attached the prepayment request and proforma of this week's shipment. Taxes on models with registry [MX]\$26,900.00. American account, deliver, digitization and fees MX\$18,009.00 (vat included). Taxes on models without registry MX\$115860.00 (vat included)."

34. On or about July 30, 2012, one of Mexico Customs Broker's subagents sent an invoice to 3i Mexico requesting payment of approximately MX\$115,860 for "servicios profesionales" with no further description of the services provided.

35. On or about July 30, 2012, 3i Mexico Managing Director caused a wire transfer in the amount of approximately MX\$44,909 (the amount of the taxes and fees in the prepayment request identified in Paragraph 33) to be made from a 3i Mexico bank account in Mexico to Mexico Customs Broker's bank account in Mexico. That same day, 3i Mexico Managing Director caused a wire transfer in the amount of approximately MX\$115,860 (the same amount as one of the prepayment requests identified in Paragraph 33 and the invoice identified in Paragraph 34 that one of Mexico Customs Broker's subagents sent to 3i Mexico) to be made from the same 3i Mexico bank account in Mexico to the bank account of Mexico Customs Broker's subagent in Mexico.

36. On or about July 30, 2012, 3i Mexico Employee sent an email to an employee at Mexico Customs Broker, stating, as translated from Spanish to English: "I attach copies of the deposits, will you know [*sic*] something about the merchandise." Wire transfer records

reflecting the two wire transfers authorized that same day by 3i Mexico Managing Director were attached to that email.

37. On or about July 31, 2012, Mexico Customs Broker sent an invoice to 3i Mexico requesting payment of approximately MX\$44,909 for Mexico Customs Broker's services in transporting a shipment of dental implants to 3i Mexico's address in Mexico City, Mexico. The invoice was supported by a shipping record explaining the items that Mexico Customs Broker had imported on behalf of 3i Mexico.

38. On or about July 31, 2012, 3i Mexico Employee recorded the two wire transfers from the previous day in 3i Mexico's accounting system as three payments to Mexico Customs Broker totaling approximately MX\$160,769, which was equal to the combined amount of the invoices sent on July 30, 2012 and July 31, 2012. 3i Mexico Employee recorded each of the wire transfers as payments to Mexico Customs Broker even though 3i Mexico made one of those payments to Mexico Customs Broker's subagent instead of Mexico Customs Broker. 3i Mexico Employee made no separate record of any payment to Mexico Customs Broker's subagent. The payments were then recorded in the general ledger for 3i Mexico as payments to Mexico Customs Broker for customs services and later consolidated into JERDS's financial statements, which were consolidated into Biomet's financial statements.

39. Between in or around 2010 and 2013, 3i Mexico paid approximately \$980,774 to Mexico Customs Broker in connection with clearing Biomet 3i products.

40. Between in or around 2010 and 2013, 3i Mexico earned \$2,402,100 in profits from sales of products in Mexico that were shipped through Texas.

COUNT ONE

(Violation of the Books and Records Provisions of the FCPA)

41. Paragraphs 1 through 40 are realleged and incorporated by reference as though fully set forth herein.

42. From in or around 2010, and continuing through in or around 2013, the defendant,

JERDS LUXEMBOURG HOLDING S.À.R.L.

knowingly falsified and caused to be falsified books, records, and accounts required to, in reasonable detail, accurately and fairly reflect the transactions and dispositions of Biomet, Inc., to wit: the defendant, as a wholly owned subsidiary of an issuer and whose financials were consolidated into an issuer's books, records, and accounts, knowingly and willfully falsified its book, records, and accounts relating to payments to its customs broker's subagents, including by recording bribe payments as payments for customs services, and knowingly and willfully caused an issuer to falsify its books, records, and accounts in violation of Title 15, United States Code, Sections 78m(b)(2)(A) and 78ff(a), and Title 18, United States Code, Section 2.

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