

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:11-cv-20765

UNITED STATES OF AMERICA,

Plaintiff,

v.

LM IMPORT-EXPORT, INC.
A Florida corporation, and

HUNG LAM,
Individually and as
an officer of the corporation,

Defendants.

CONSENT DECREE FOR PAYMENT OF CIVIL PENALTY

WHEREAS the United States of America has filed a Complaint against LM Import-Export, Inc., and Hung Lam ("defendants") to secure civil penalties and a permanent injunction for defendants' violations of statutes and regulations enforced by the U.S. Consumer Product Safety Commission ("CPSC" or "Commission"), including Section 19 of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. § 2068(a), and Section 4 of the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. § 1263;

WHEREAS this Court on March 10, 2011, entered the Consent Decree for Permanent Injunction, at Dkt. Entry #4, which specifically retained this Court's jurisdiction as to the resolution of the civil penalty;

WHEREAS defendants will enter into a plea of guilty – which includes a criminal forfeiture of \$862,500 – pursuant to Fed. R. Crim. P. 11(e)(1)(C), to an information filed in *United States v. Hung Lam, et al.*, Criminal Action No. 12-cr-20048-KMW alleging several violations based on conduct underlying the Complaint and this Decree, including conspiracy to violate the CPSA and FHSA:

WHEREAS the parties consent to entry of this Consent Decree for Payment of Civil Penalty (the “Decree”), without contest, and before any testimony has been taken:

WHEREAS, defendants have waived service of the Summons and Complaint; the parties are represented by the attorneys whose names appear hereafter; and the parties want to settle this action for payment of a civil penalty upon the following terms and conditions, without adjudication of any issue of fact or law.

THEREFORE, on the agreement of the parties, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355(a).
2. This Court has jurisdiction, under 15 U.S.C. §§ 2071(a) and 1267(a), to restrain any violation of the CPSA and FHSA; and jurisdiction, under 15 U.S.C. §§ 2069 and 1264(c), to assess civil penalties for knowing violations of the CPSA and FHSA. “Knowingly” is defined as “(1) the having of actual knowledge, or (2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.” 15 U.S.C. §§ 1264(c)(5) and 2069(d). All references to the CPSA and FHSA refer to those statutes as amended by the

Consumer Product Safety Improvement Act of 2008, Public Law 110-314 ("CPSIA"), and all terms used herein shall have the same meaning as defined and used in the CPSA, CPSIA, and FHSA.

3. Venue in the Southern District of Florida is proper under 28 U.S.C. §§ 1391(b), (c) and 1395(a).

4. At all times relevant hereto, LM Import-Export, Inc., was and is a "manufacturer" (the definition includes any person who imports a consumer product) and "retailer" of consumer products, as defined in Section 3 of the CPSA, 15 U.S.C. § 2052(a).

5. At all times relevant hereto, Hung Lam was and is the president and owner of LM Import-Export, Inc., and as such, is the individual responsible for ensuring compliance with the requirements of the CPSA, the FHSA, and the regulations issued thereunder. At all times relevant to the Complaint, he formulated, directed, controlled, or participated in the acts and practices of the corporate defendant, including the acts and practices set forth in the Complaint. At all times relevant hereto, Lam knew of, and had the authority to control, the acts and practices of LM Import-Export, Inc., regarding the importation, distribution, or sale of consumer products.

6. The Complaint states claims upon which relief may be granted against defendants under Section 19 of the CPSA, 15 U.S.C. § 2068(a), and Section 4 of the FHSA, 15 U.S.C. § 1263.

7. Defendants knowingly violated the CPSA, 15 U.S.C. § 2068(a)(1), by selling, offering for sale, manufacturing for sale, distributing in commerce, or importing into the United States, consumer products, or other products or substances that are regulated under the CPSA or any other Acts enforced by the Commission that are not in conformity with an applicable consumer product safety rule under the CPSA, or any similar rule, regulation, standard, or ban

under any other Act enforced by the Commission. Defendants have violated the CPSA by importing, offering for sale, selling, and distributing toys and other articles intended for use by children that bear lead-containing paint, prohibited under 16 C.F.R. § 1303.4(b), and further violated the CPSA by importing, offering for sale, selling, and distributing in commerce children's toys or child care articles, as defined by 15 U.S.C. § 2057c(e)(1)(B) and (C), that contain phthalate concentrations exceeding the allowable amount pursuant to 15 U.S.C. § 2057c(a).

8. Defendants knowingly violated the CPSA, 15 U.S.C. § 2068(a)(2)(B), by selling, offering for sale, manufacturing for sale, distributing in commerce, or importing into the United States, consumer products, or other products or substances that are subject to a voluntary corrective action taken by the manufacturer, in consultation with the Commission, of which action the Commission has notified the public, or if the seller, distributor, or manufacturer knew, or should have known, of such voluntary corrective action.

9. Defendants knowingly violated the CPSA, 15 U.S.C. § 2068(a)(2)(D), and the FHSA, 15 U.S.C. § 1263(a) and (c), by introducing or causing the introduction or delivery for introduction into interstate commerce of banned hazardous substances, or the receipt in interstate commerce of banned hazardous substances and the delivery or proffered delivery thereof for pay or otherwise. These banned hazardous substances consist of toys and other articles intended for use by children under three years of age, which present a choking, aspiration, or ingestion hazard because of small parts, which are banned under 16 C.F.R. § 1500.18(a)(9); children's products containing lead, which are banned under 15 U.S.C. § 1278a; and rattles that failed to meet the requirements of testing under 16 C.F.R. Part 1510, and are banned under 16 C.F.R. § 1500.18(a)(15).

10. Defendants knowingly violated the CPSA, 15 U.S.C. § 2068(a)(4), by failing to furnish to the CPSC the information required by 15 U.S.C. § 2064(b).

11. Defendants knowingly violated the CPSA, 15 U.S.C. § 2068(a)(6), by failing to furnish certificates required by this Act or any other Act enforced by the Commission, and further, by failing to comply with a requirement of Section 14 (including the requirement for tracking labels) or any rule or regulation under such section.

12. Defendants knowingly violated the FHSA, 15 U.S.C. § 1263(a) and (c), by introducing or causing the introduction or delivery for introduction into interstate commerce of misbranded hazardous substances, or the receipt in interstate commerce of misbranded hazardous substances, and the delivery or proffered delivery thereof for pay or otherwise. These misbranded hazardous substances consist of toys or games intended for children at least three years old, but not older than six years old, which include small parts that do not bear the cautionary statement specified under 15 U.S.C. § 1278(a)(2) and art materials or art material products, which may have the potential to produce chronic, adverse health effects, as defined under 16 C.F.R. § 1500.14(b)(8)(i)(B)(3), and which do not meet the labeling requirements under 16 C.F.R. § 1500.14(b)(8)(i)(E).

13. The Court's findings in the Consent Decree for Permanent Injunction, at Dkt. Entry #4, remain in full effect.

14. Defendants hereby waive all rights to appeal or otherwise challenge or contest the validity of this Decree.

15. Entry of this Decree is in the public interest.

IT IS THEREFORE ORDERED AS FOLLOWS:

ORDER

1. Defendants shall pay in total two hundred eighty seven thousand, five hundred dollars (\$287,500.00) to the United States as a civil penalty, pursuant to 15 U.S.C. §§ 1264(c) and 2069(a). The civil penalty shall be paid in full no later than 72 months after the sentencing hearing in *United States v. Hung Lam*, et al., Criminal Action No. 12-cr-20048-KMW, as follows:

a. Seventy-five thousand dollars (\$75,000.00) shall be paid on or before seven (7) calendar days from the date of the Court's entry of this Decree;

b. Seven thousand five hundred dollars (\$7,500) shall be paid on or before 90 days after the sentencing hearing in *United States v. Hung Lam*, et al., Criminal Action No. 12-cr-20048-KMW, with subsequent payments of no less than \$7,500 every ninety (90) days thereafter; and

c. A final "balloon" payment of the remaining balance, if any, of the civil penalty on the first day of the seventy-second (72) month following the date of the sentencing hearing in *United States v. Hung Lam*, et al., Criminal Action No. 12-cr-20048-KMW.

2. Payment shall be made by electronic fund transfer in accordance with procedures specified by the Consumer Protection Branch, Civil Division, United States Department of Justice, Washington, D.C. 20530. Any cover letter accompanying correspondence regarding this payment shall include the title of this litigation and a reference to DJ #104-18-24.

3. If defendants withdraw from the guilty plea pursuant to Fed. R. Crim. P. 11(c)(1)(C) in *United States v. Hung Lam*, et al., Criminal Action No. 12-cr-20048-KMW, if the plea is not accepted by that court, or if the sentencing hearing in *United States v. Hung Lam*, et

al.. Criminal Action No. 12-cr-20048-KMW for any reason does not occur by December 30, 2012, then defendants shall pay the remaining balance, if any, of the civil penalty no later than February 28, 2013.

4. In the event of any default on the payment required in Paragraph 1, which default continues for ten (10) calendar days beyond the due date of the payment, the entire unpaid amount, together with interest, as computed pursuant to 28 U.S.C. § 1961(a) from the date of default to the date of payment, shall immediately become due and payable.

5. The judgment amount set forth above represents a civil penalty owed to the United States Government, is not compensation for actual pecuniary loss, and, therefore, is not subject to discharge under the Bankruptcy Code pursuant to 11 U.S.C. § 523(a)(7).

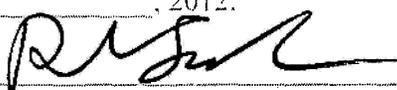
6. The provisions of this Decree are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall remain in full force and effect.

7. Each party shall bear its own costs and attorneys' fees.

8. This Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Decree and the Consent Decree for Permanent Injunction, entered March 10, 2011.

9. The parties, by their respective counsel, hereby consent to entry of the foregoing Decree, which shall constitute a final judgment and order in this matter. The parties further stipulate and agree that the entry of the foregoing Decree shall constitute full, complete, and final settlement of this action.

SO ORDERED this 30th day of April, 2012.


United States District Judge
Robert N. Scola, Jr.

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