

is more than 0.06 percent of the weight of the total nonvolatile content of the paint or of the weight of the dried paint film. Pursuant to CPSA section 8, 15 U.S.C. § 2057, and 16 C.F.R. § 1303.1(a)(1) and 1303.4(b), a product that fails to comply with this regulation is a “banned hazardous product.”

5. From approximately November 2007 through August 2008, OKK imported into the United States, offered for sale, and distributed in commerce, units of different types of toys or other children’s articles that violated the Lead Paint Ban. OKK provided the Commission staff with information about these violative toys or other children’s articles, and, thereafter, the Commission staff accepted OKK’s corrective action plans concerning them. The toys or other children’s articles referred to in this paragraph are collectively referred to herein as “Painted Toys.”

6. Tests on samples of the Painted Toys demonstrated that the Painted Toys bore or contained paint or other surface coating materials whose lead content is more than 0.06 percent of the weight of the total nonvolatile content of the paint or of the weight of the dried paint film. Therefore, the Painted Toys failed to comply with the Lead Paint Ban.

7. The Painted Toys are “consumer product[s],” and, at all times relevant hereto, OKK was a “manufacturer” of those consumer products, which were “distributed in commerce,” as those terms are defined in CPSA sections 3(a)(5), (8), and (11), 15 U.S.C. § 2052(a)(5), (8), and (11).

8. OKK informed the Commission that it had received no reports of incidents or injuries relating to the Painted Toys.

9. Pursuant to CPSA section 8, 15 U.S.C. § 2057, and 16 C.F.R. § 1303.1(a)(1) and 1303.4(b), the Painted Toys are “banned hazardous products.”

10. Under CPSA section 19(a)(1), 15 U.S.C. § 2068(a)(1), the offer for sale, distribution in commerce, or importation into the United States of a banned hazardous product is a prohibited act.

11. Under CPSA section 20(d), 15 U.S.C. § 2069(d), OKK had actual knowledge that the Painted Toys were banned hazardous products, or it is presumed to have had knowledge deemed to be possessed by a reasonable person acting in the circumstances, and, therefore, OKK knowingly committed prohibited acts concerning the Painted Toys. Pursuant to CPSA section 20, 15 U.S.C. § 2069, OKK's prohibited acts concerning the Painted Toys subjected it to civil penalties.

Violation of the Small Parts Regulation

12. From approximately December 2004 through August 2008, OKK introduced and/or delivered for introduction into interstate commerce, received in interstate commerce, and/or delivered or proffered delivery for pay or otherwise, units of different types of toys, intended for use by children under three years of age, that failed to comply with the Commission's Small Parts Regulation at 16 C.F.R. Part 1501. OKK provided the Commission staff with information about these violative toys, and, thereafter, the Commission staff accepted OKK's corrective action plans concerning them. The toys referred to in this paragraph are collectively referred to herein as "Toys."

13. The Toys failed to comply with 16 C.F.R. Part 1501 in that, when tested under the "use and abuse" test methods specified in 16 C.F.R. § 1500.51 and .52, one or more parts of each tested Toy separated, and one or more of the separated parts fit completely within the small parts cylinder identified in 16 C.F.R. § 1501.4.

14. OKK informed the Commission that it had received no reports of incidents or injuries relating to the Toys.

15. Because each Toy failed to comply with the Commission's Small Parts Regulation at 16 C.F.R. Part 1501, it presented a "mechanical hazard" within the meaning of FHSA section 2(s), 15 U.S.C. § 1261(s), and was a "hazardous substance" in accordance with FHSA section 2(f)(1)(D), 15 U.S.C. § 1261(f)(1)(D).

16. Under 16 C.F.R. § 1500.18(a)(9), each Toy presented an unreasonable risk of personal injury or illness and was a "banned hazardous substance" within the meaning of FHSA section 2(q)(1)(A), 15 U.S.C. § 1261(q)(1)(A).

17. Under FHSA section 4(a), 15 U.S.C. § 1263(a), the introduction or delivery for introduction into interstate commerce of any banned hazardous substance, or the causing thereof, is a prohibited act. Under FHSA section 4(c), 15 U.S.C. § 1263(c), the receipt in interstate commerce, and the delivery or proffered delivery for pay or otherwise, of any banned hazardous substance, and the causing thereof, is a prohibited act.

18. Under FHSA § 5(c)(5), 15 U.S.C. § 1264(c)(5), OKK had actual knowledge that the Toys were banned hazardous substances, or it is presumed to have had knowledge deemed to be possessed by a reasonable person acting in the circumstances, and, therefore, OKK knowingly committed prohibited acts concerning the Toys. Pursuant to FHSA section 5(c)(1), 15 U.S.C. § 1264(c)(1), OKK's prohibited acts concerning the Toys subjected it to civil penalties.

Violation of the Rattle Requirements

19. From approximately November 2004 to January 2005, OKK introduced and/or delivered for introduction into interstate commerce, received in interstate commerce, and/or delivered or proffered delivery for pay or otherwise, units of different types of rattles that failed

to comply with the Commission's requirements for rattles at 16 C.F.R. Part 1510. OKK provided the Commission staff with information about these violative rattles, and, thereafter, the Commission staff accepted OKK's corrective action plans concerning them. The rattles referred to in this paragraph are collectively referred to herein as "Rattles."

20. The Rattles failed to comply with 16 C.F.R. Part 1510 in that, when tested under the procedures set forth in 16 C.F.R. § 1510.4, the Rattles penetrated to the full depth of the test fixture.

21. OKK informed the Commission that it had received no reports of incidents or injuries relating to the Rattles.

22. Because each Rattle failed to comply with the Commission's requirements for rattles at 16 C.F.R. Part 1510, it presented a "mechanical hazard" within the meaning of FHSA section 2(s), 15 U.S.C. § 1261(s), and was a "hazardous substance" in accordance with FHSA section 2(f)(1)(D), 15 U.S.C. § 1261(f)(1)(D).

23. Under 16 C.F.R. § 1500.18(a)(15), each Rattle presented an unreasonable risk of personal injury or illness and was a "banned hazardous substance" within the meaning of FHSA section 2(q)(1)(A), 15 U.S.C. § 1261(q)(1)(A).

24. Under FHSA section 4(a), 15 U.S.C. § 1263(a), the introduction or delivery for introduction into interstate commerce of any banned hazardous substance, or the causing thereof, is a prohibited act. Under FHSA section 4(c), 15 U.S.C. § 1263(c), the receipt in interstate commerce, and the delivery or proffered delivery for pay or otherwise, of any banned hazardous substance, and the causing thereof, is a prohibited act.

25. Under FHSA § 5(c)(5), 15 U.S.C. § 1264(c)(5), OKK had actual knowledge that the Rattles were banned hazardous substances, or it is presumed to have had knowledge deemed

to be possessed by a reasonable person acting in the circumstances, and, therefore, OKK knowingly committed prohibited acts concerning the Rattles. Pursuant to FHSA section 5(c)(1), 15 U.S.C. § 1264(c)(1), OKK's prohibited acts concerning the Rattles subjected it to civil penalties.

Violation of the Toys and Games Labeling Requirements

26. From approximately January 2005 through April 2007, OKK introduced and/or delivered for introduction into interstate commerce, received in interstate commerce, and/or delivered or proffered delivery for pay or otherwise, units of different types of toys and games, intended for children three years of age or older, that failed to comply with the Commission's labeling requirements for balloons, small balls, and/or small parts found in FHSA section 24(b)(2)(A), (b)(2)(B), and (b)(2)(C), 15 U.S.C. § 1278(b)(2)(A), (b)(2)(B), and (b)(2)(C), 16 C.F.R. § 1500.19(b)(2), (b)(3)(ii), (b)(4)(i), and (d). OKK provided the Commission staff with information about these violative toys and games, and, thereafter, the Commission staff accepted OKK's corrective action plans concerning them. The toys and games referred to in this paragraph are collectively referred to herein as "Toys/Games."

27. OKK informed the Commission that it had received no reports of incidents or injuries relating to the Toys/Games.

28. Each of the Toys/Games presented a "mechanical hazard" within the meaning of FHSA section 2(s), 15 U.S.C. § 1261(s), and was a "hazardous substance" in accordance with FHSA section 2(f)(1)(D), 15 U.S.C. § 1261(f)(1)(D).

29. Under FHSA sections (3)(b) and 24(d), 15 U.S.C. §§ 1262(b) and 1278(d), each of the Toys/Games was a "misbranded hazardous substance" within the meaning of FHSA section 2(p), 15 U.S.C. § 1261(p).

30. Under FHSA section 4(a), 15 U.S.C. § 1263(a), the introduction or delivery for introduction into interstate commerce of any misbranded hazardous substance, or the causing thereof, is a prohibited act. Under FHSA section 4(c), 15 U.S.C. § 1263(c), the receipt in interstate commerce, and the delivery or proffered delivery for pay or otherwise, of any misbranded hazardous substance, and the causing thereof, is a prohibited act.

31. Under FHSA § 5(c)(5), 15 U.S.C. § 1264(c)(5), OKK had actual knowledge that the Toys/Games were misbranded hazardous substances, or it is presumed to have had knowledge deemed to be possessed by a reasonable person acting in the circumstances, and, therefore, OKK knowingly committed prohibited acts concerning the Toys/Games. Pursuant to FHSA section 5(c)(1), 15 U.S.C. § 1264(c)(1), OKK's prohibited acts concerning the Toys/Games subjected it to civil penalties.

Violation of the Art Materials Labeling Requirements

32. From approximately September 2005 through April 2007, OKK introduced and/or delivered for introduction into interstate commerce, received in interstate commerce, and/or delivered or proffered delivery for pay or otherwise, units of different types of art materials that failed to comply with the labeling requirements for art materials found in FHSA section 23, 15 U.S.C. § 1277. OKK provided the Commission staff with information about these violative art materials, and, thereafter, the Commission staff accepted OKK's corrective action plans concerning them. The art materials referred to in this paragraph are collectively referred to herein as "Art Materials."

33. OKK informed the Commission that it had received no reports of incidents or injuries relating to the Art Materials.

34. Each of the Art Materials presented a “mechanical hazard” within the meaning of FHSA section 2(s), 15 U.S.C. § 1261(s), and was a “hazardous substance” in accordance with FHSA section 2(f)(1)(D), 15 U.S.C. § 1261(f)(1)(D).

35. Under FHSA sections (3)(b) and 23, 15 U.S.C. §§ 1262(b) and 1277, each of the Art Materials was a “misbranded hazardous substance” within the meaning of FHSA section 2(p), 15 U.S.C. § 1261(p).

36. Under FHSA section 4(a), 15 U.S.C. § 1263(a), the introduction or delivery for introduction into interstate commerce of any misbranded hazardous substance, or the causing thereof, is a prohibited act. Under FHSA section 4(c), 15 U.S.C. § 1263(c), the receipt in interstate commerce, and the delivery or proffered delivery for pay or otherwise, of any misbranded hazardous substance, and the causing thereof, is a prohibited act.

37. Under FHSA § 5(c)(5), 15 U.S.C. § 1264(c)(5), OKK had actual knowledge that the Art Materials were misbranded hazardous substances, or it is presumed to have had knowledge deemed to be possessed by a reasonable person acting in the circumstances, and, therefore, OKK knowingly committed prohibited acts concerning the Art Materials. Pursuant to FHSA section 5(c)(1), 15 U.S.C. § 1264(c)(1), OKK’s prohibited acts concerning the Art Materials subjected it to civil penalties.

Violation of the Pacifier Requirements

38. From approximately July 2007 to January 2008, OKK introduced and/or delivered for introduction into interstate commerce, received in interstate commerce, and/or delivered or proffered delivery for pay or otherwise, units of a pacifier that failed to comply with the Commission’s requirements for pacifiers at 16 C.F.R. Part 1511. OKK provided the Commission staff with information about these violative pacifiers, and, thereafter, the

Commission staff accepted OKK's corrective action plans concerning them. The pacifiers referred to in this paragraph are collectively referred to herein as "Pacifiers."

39. The Pacifiers failed to comply with 16 C.F.R. Part 1511 in that: a) when tested under the procedures set forth in 16 C.F.R. § 1511.5, the Pacifiers released parts that fit completely within the small parts cylinder identified in 16 C.F.R. § 1511.5; and b) the Pacifiers' packaging failed to contain the labeling statement required by 16 C.F.R. § 1511.7.

40. OKK informed the Commission that it had received no reports of incidents or injuries relating to the Pacifiers.

41. Because each Pacifier failed to comply with the Commission's requirements for pacifiers at 16 C.F.R. Part 1511, it presented a "mechanical hazard" within the meaning of FHSA section 2(s), 15 U.S.C. § 1261(s), and was a "hazardous substance" in accordance with FHSA section 2(f)(1)(D), 15 U.S.C. § 1261(f)(1)(D).

42. Under 16 C.F.R. § 1500.18(a)(8), each Pacifier presented an unreasonable risk of personal injury or illness and was a "banned hazardous substance" within the meaning of FHSA section 2(q)(1)(A), 15 U.S.C. § 1261(q)(1)(A). Each of the Pacifiers was also a "misbranded hazardous substance" within the meaning of FHSA section 2(p), 15 U.S.C. § 1261(p).

43. Under FHSA section 4(a), 15 U.S.C. § 1263(a), the introduction or delivery for introduction into interstate commerce of any banned hazardous substance or misbranded hazardous substance, or the causing thereof, is a prohibited act. Under FHSA section 4(c), 15 U.S.C. § 1263(c), the receipt in interstate commerce, and the delivery or proffered delivery for pay or otherwise, of any banned hazardous substance or misbranded hazardous substance, and the causing thereof, is a prohibited act.

44. Under FHSA § 5(c)(5), 15 U.S.C. § 1264(c)(5), OKK had actual knowledge that the Pacifiers were banned hazardous substances and misbranded hazardous substances, or it is presumed to have had knowledge deemed to be possessed by a reasonable person acting in the circumstances, and, therefore, OKK knowingly committed prohibited acts concerning the Pacifiers. Pursuant to FHSA section 5(c)(1), 15 U.S.C. § 1264(c)(1), OKK's prohibited acts concerning the Pacifiers subjected it to civil penalties.

Violation of the Export Notification Requirements

45. From approximately May to December 2007, without notifying the Commission as required under FHSA section 14(d), 15 U.S.C. § 1273(d), OKK exported units of different types of banned and/or misbranded hazardous substances (collectively, "Exported Substances"). OKK shipped the Exported Substances in separate shipments, each shipment constituting a separate series of violations.

46. Under FHSA section 4(i), 15 U.S.C. § 1263(i), the failure to notify the Commission with respect to exports as required by FHSA section 14(d), 15 U.S.C. § 1273(d), is a prohibited act.

47. Under FHSA § 5(c)(5), 15 U.S.C. § 1264(c)(5), OKK had actual knowledge that the Exported Substances were banned and/or misbranded hazardous substances and that OKK failed to notify the Commission prior to their exportation as required under FHSA section 14(d), 15 U.S.C. § 1273(d), or OKK is presumed to have had knowledge deemed to be possessed by a reasonable person acting in the circumstances. Therefore, OKK knowingly committed prohibited acts concerning the Exported Substances. Pursuant to FHSA section 5(c)(1), 15 U.S.C. § 1264(c)(1), OKK's prohibited acts concerning the Exported Substances subjected it to civil penalties.

OKK'S RESPONSE

48. OKK denies the Staff's allegations above that OKK knowingly violated the CPSA and FHSA.

AGREEMENT OF THE PARTIES

49. Under the CPSA and FHSA, the Commission has jurisdiction over this matter and over OKK.

50. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by OKK, or a determination by the Commission, that OKK knowingly violated the CPSA and FHSA.

51. In settlement of the Staff's allegations, OKK shall pay a civil penalty in the total amount of six hundred sixty-five thousand dollars (\$665,000.00). The civil penalty shall be paid in four (4) installments as follows: \$200,000.00 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; \$170,000 shall be paid on or before January 10, 2010; \$170,000 shall be paid on or before January 10, 2011; and \$125,000 shall be paid on or before July 10, 2011. Each payment shall be made by check payable to the order of the United States Treasury.

52. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the *Federal Register* in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). In accordance with 16 C.F.R. § 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the *Federal Register*.

53. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, OKK knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) an administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether OKK failed to comply with the CPSA, the FHSA, and their underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

54. The Commission may publicize the terms of the Agreement and the Order.

55. The Agreement and the Order shall apply to, and be binding upon, OKK and each of its successors and assigns.

56. The Commission issues the Order under the provisions of the CPSA and FHSA, and violation of the Order may subject those persons or entities referenced in the preceding paragraph to appropriate legal action.

57. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

58. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and OKK agree that severing the provision materially affects the purpose of the Agreement and the Order.

59. The Agreement covers only those products that OKK distributed in commerce for which recalls or other corrective actions were undertaken in cooperation with the Commission prior to the date on which OKK executed the Agreement.

OKK TRADING, INC.

Dated: _____ By: _____
William Hung, CEO
OKK Trading, Inc.
5705 Union Pacific Ave.
Commerce, CA 90022

Dated: _____ By: _____
Barry E. Powell, Esq.
Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP
707 Wilshire Blvd., Suite 4900
Los Angeles, CA 90017
Counsel for OKK Trading, Inc.

U.S. CONSUMER PRODUCT SAFETY
COMMISSION STAFF

Cheryl A. Falvey
General Counsel

Ronald G. Yelenik
Assistant General Counsel
Office of the General Counsel

Dated: _____ By: _____
Seth B. Popkin
Lead Trial Attorney
Division of Compliance
Office of the General Counsel

interest set forth at 28 U.S.C. § 1961(a) and (b).

Provisionally accepted and provisional Order issued on the ____ day of _____,
2009.

BY ORDER OF THE COMMISSION:

Todd A. Stevenson, Secretary
U.S. Consumer Product Safety Commission

Finally accepted and final Order issued on the ____ day of _____, 2009.

BY ORDER OF THE COMMISSION:

Todd A. Stevenson, Secretary
U.S. Consumer Product Safety Commission