

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA

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4	UNITED STATES OF AMERICA,) CV 14-1364-GW(PLAx)
)
5	Plaintiff,) CONSENT DECREE OF
) PERMANENT INJUNCTION
6) AS TO PAUL PHUONG
7	v.)
)
8	TOYS DISTRIBUTION, INC. dba TDI)
	INTERNATIONAL, a California)
9	corporation; and LOAN TUYET THAI,)
10	LAN MY LAM and PAUL PHUONG,) [15 U.S.C. §§ 2071(a), 1267(a)]
	individually and as officers of the)
11	corporation; S & J MERCHANDISE, INC.,)
12	a California corporation; and CUC T.THAI)
	individually and as an officer of the)
13	corporation; BLJ APPAREL, INC., a)
14	California corporation; and LUAN LUU,)
15	individually and as an officer of the)
16	corporation; and ALL SEASON SALES,)
	INC., a California corporation; and TOM)
17	LIU, individually and as an officer of both)
18	All Season Sales and S & J Merchandise,)
)
19	Defendants.)
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21)

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23 WHEREAS the United States of America has filed a Complaint against Paul

24 Phuong (and others) for a permanent injunction for defendants’ alleged violations

25 of statutes and regulations enforced by the U.S. Consumer Product Safety

26 Commission (“CPSC” or “Commission”), including section 19 of the Consumer

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1 Product Safety Act (“CPSA”), 15 U.S.C. § 2068(a), and section 4 of the Federal
2 Hazardous Substances Act (“FHSA”), 15 U.S.C. § 1263;

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4 WHEREAS the United States and defendant Paul Phuong consent to entry of
5 this Consent Decree for Permanent Injunction (the “Decree”), without contest, and
6 before any testimony has been taken;

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8 WHEREAS, defendant Paul Phuong has waived service of the Summons
9 and Complaint; the parties are represented by the attorneys whose names appear
10 hereafter; and the parties want to settle this action upon the following terms and
11 conditions, without adjudication of any issue of fact or law.

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

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16 **FINDINGS**

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18 1. This Court has jurisdiction over the subject matter of this action
19 pursuant to 28 U.S.C. §§ 1331 and 1345.

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21 2. This Court has jurisdiction, under 15 U.S.C. §§ 2071(a) and 1267(a),
22 to restrain any violation of the CPSA and FHSA. All references to the CPSA and
23 FHSA refer to those statutes as amended by the Consumer Product Safety
24 Improvement Act of 2008, Public Law 110-314 (“CPSIA”), which was amended
25 by Public Law 112-28 (2011), and all terms used herein shall have the same
26 meaning as defined and used in the CPSA, CPSIA, and FHSA.
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1 3. Venue in the Central District of California is proper under 28 U.S.C. §
2 1391(b) and (c).

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4 4. The Complaint alleges that, at times relevant hereto, Paul Phuong was
5 a manager of co-defendant Toys Distribution Inc. dba TDI International (“TDI”).
6 The Complaint alleges that TDI is a manufacturer (the definition includes any
7 person who imports a consumer product) and retailer—as those terms are defined
8 in 15 U.S.C. § 2052(a)(11) and (13)—of consumer products, including children’s
9 toys and articles that are subject to the requirements of the CPSA, the FHSA, and
10 the regulations issued thereunder. The Complaint further alleges that Paul
11 Phuong was an individual responsible for ensuring compliance with the
12 requirements of the CPSA, the FHSA, and the regulations issued thereunder. The
13 Complaint alleges that Paul Phuong formulated, directed, controlled, and
14 participated in the acts and practices of TDI, including the acts and practices set
15 forth in the Complaint.

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

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24 6. The Complaint alleges that the defendants violated the CPSA, 15
25 U.S.C. § 2068(a)(1), by selling, offering for sale, manufacturing for sale,
26 distributing in commerce, and importing into the United States, consumer products,
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1 or other products or substances that are regulated under the CPSA or any other
2 Acts enforced by the Commission that are not in conformity with an applicable
3 consumer product safety rule under the CPSA, or any similar rule, regulation,
4 standard, or ban under any other Act enforced by the Commission. Specifically,
5 the Complaint alleges that TDI violated the CPSA by importing, offering for sale,
6 selling, and distributing in commerce, children's toys or child care articles, as
7 defined by 15 U.S.C. § 2057c(g)(1)(B) and (C), that contain phthalate
8 concentrations exceeding the allowable amount pursuant to 15 U.S.C. § 2057c.
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12 7. The Complaint alleges that the defendants violated the CPSA, 15
13 U.S.C. § 2068(a)(1) and (2)(D), and the FHSA, 15 U.S.C. § 1263(a) and (c), by
14 introducing or causing the introduction or delivery for introduction into interstate
15 commerce of banned hazardous substances, or the receipt in interstate commerce
16 of banned hazardous substances and the delivery or proffered delivery thereof for
17 pay or otherwise. Additionally, the Complaint alleges TDI violated the CPSA
18 and FHSA by importing, distributing and selling children's products containing
19 excessive lead, which are banned under 15 U.S.C. § 1278a. Specifically, the
20 Complaint alleges that TDI violated the CPSA and FHSA by importing,
21 distributing and selling toys and other articles intended for use by children under
22 three years of age, which present a choking, aspiration, or ingestion hazard because
23 of small parts and which are banned by 16 C.F.R. § 1500.18(a)(9). The
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1 Complaint also alleges that TDI violated the CPSA and FHSA by importing,
2 distributing and selling children's products that bear lead-containing paint,
3 prohibited under 16 C.F.R. § 1303.4(b) and that TDI violated the CPSA and FHSA
4 by importing, distributing and selling rattles that failed to meet the requirements of
5 16 C.F.R. part 1510, and are banned hazardous substances under 16 C.F.R. §
6 1500.18(a)(15).
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9 8. The Complaint alleges that TDI violated the CPSA, 15 U.S.C. §
10 2068(a)(4), by failing to furnish to the CPSC the information required by 15 U.S.C.
11 § 2064(b).
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13 9. The Complaint alleges that TDI violated the CPSA, 15 U.S.C. §
14 2068(a)(6), by failing to furnish certificates required by this Act or any other Act
15 enforced by the Commission, and further, by failing to comply with a requirement
16 of section 14 (including the requirement for tracking labels) or any rule or
17 regulation under such section.
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19 10. Defendant Paul Phuong has entered into this Decree freely and
20 without coercion.
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22 11. Defendant Paul Phuong hereby waives all rights to appeal or
23 otherwise challenge or contest the validity of this Decree.
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25 12. Entry of this Decree is in the public interest.
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27 IT IS THEREFORE ORDERED AS FOLLOWS:
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ORDER

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2 1. Defendant Paul Phuong hereby represents and affirms that, as of the
3 date that he signed this Decree, he is not involved in, nor associated with,
4 importing into the United States, directly or indirectly, or introducing or causing
5 the introduction into interstate commerce of any toy or other consumer product
6 intended primarily for children 12 years of age or younger in any capacity.
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9 2. Should defendant Paul Phuong ever now or hereafter, in any capacity,
10 import into the United States, directly or indirectly, or introduce or cause the
11 introduction into interstate commerce of any toy or other consumer product
12 intended primarily for children 12 years of age or younger, defendant Paul Phuong
13 will be permanently enjoined from importing into the United States, directly or
14 indirectly, or introducing or causing the introduction into interstate commerce of
15 any toy or other consumer product intended primarily for children 12 years of age
16 or younger, unless and until:
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20 A. Paul Phuong retains, at Paul Phuong's sole cost and expense, an
21 independent person or entity (the "Product Safety Coordinator"), who is without
22 any personal or financial ties (other than the agreement pursuant to which the
23 Product Safety Coordinator is engaged to perform the functions described in this
24 Section 1.A) to Paul Phuong, his family or any entity directly or indirectly
25 controlled by Paul Phuong or his family, and who, by reason of background,
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1 training, education, or experience is qualified to help Paul Phuong fulfill the
2 following requirements:

- 3 i. Create a comprehensive product safety program.
- 4 ii. Conduct a product audit to determine which of Paul
5 Phuong's merchandise and inventory requires testing and certification of
6 compliance with the FHSA, the CPSA, and any other Act enforced by the CPSC,
7 and quarantines all subject merchandise until the product audit is completed.

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11 B. Paul Phuong retains for children's products an accredited third
12 party conformity assessment body or bodies accepted by the CPSC and listed on
13 the CPSC's website (third party conformity assessment body) to perform third
14 party testing on children's products as required by law.

15
16 C. Paul Phuong establishes, with the assistance of the Product
17 Safety Coordinator, a comprehensive product safety program with written standard
18 operating procedures ("SOPs") designed to ensure continuous compliance with
19 applicable federal laws, standards, and regulations enforced by the CPSC. The
20 product safety program shall:
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- 22 i. Comply with the third party testing requirements
23 pursuant to 15 U.S.C. § 2063(a)(2) and periodic testing at least once a year in
24 accordance with the requirements of 16 C.F.R. part 1107. This periodic testing
25 requirement applies to each children's product that Paul Phuong imports into the
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1 United States or manufactures for sale that is subject to a children's product safety
2 rule, or any other consumer product safety rule or similar ban, standard, or
3 regulation under the CPSA, the FHSA, any other Act enforced by the CPSC, or
4 any regulation passed thereunder.
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6 ii. Ensure that after testing in accordance with law and this
7 Consent Decree, Paul Phuong issues, retains and provides to the CPSC on request,
8 certificates of conformity for every consumer product that is subject to a consumer
9 product safety rule, children's product safety rule, or similar ban, standard, or
10 regulation under the CPSA, the FHSA, and any other Act enforced by the CPSC,
11 or any regulation passed thereunder.
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13 iii. Establish systems to ensure that the product safety
14 program's SOPs are followed consistently.
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16 iv. Include procedures to ensure that Paul Phuong:
17 adequately corrects any product violation cited by the CPSC (whether in
18 connection with an inspection, a letter of advice or otherwise); conducts product
19 recalls; and responds to CPSC letters of advice within the time specified in each
20 letter of advice.
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22 v. Establish systems to: investigate all reports of
23 consumer incidents, property damage, injuries, warranty claims, insurance claims,
24 and court complaints regarding consumer products that Paul Phuong imports,
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1 distributes or sells in the United States; adhere to applicable CPSC reporting
2 requirements; address potentially defective products appropriately; and implement
3 corrective internal procedures should systemic issues relating to compliance with
4 CPSC requirements be identified.
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6 D. Paul Phuong shall ensure that a third party conformity
7 assessment body has conducted certification testing on children's products. Paul
8 Phuong shall hire or supervise the hiring of a third party conformity assessment
9 body to test samples of each children's product, subject to any children's product
10 safety rule including, but not limited to, the following:
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13 i. Small Parts: For each children's product that is intended
14 for children under three years of age, as determined by age grading analysis that
15 includes the factors listed at 16 C.F.R. § 1501.2(b), in accordance with the
16 requirements of 16 C.F.R. §§ 1500.51, 1500.52, and 16 C.F.R. part 1501.
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19 ii. Rattle Requirements: For each children's product that
20 meets the definition of a rattle, as defined in 16 C.F.R. § 1510.2, a third party
21 conformity assessment body for rattle testing shall review a model of each product
22 to determine whether small parts exist and test each rattle toy in accordance with
23 the requirements of 16 C.F.R. §§ 1500.51 and 1510.4.
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26 iii. Lead Paint and Lead Content: A third party conformity
27 assessment body for lead paint and lead content testing shall test each model of
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1 children's product that bears a surface coating for compliance with the lead paint
2 requirements of 16 C.F.R. part 1303, and test accessible substrates, when
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4 applicable, for the lead content requirements of 15 U.S.C. § 1278a(a)(2) and the
5 applicable requirements of the effective version of American Society for Testing
6 and Materials standard F963-11.
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8 iv. Phthalates: A third party conformity assessment body
9 for phthalates testing shall test each model of children's toy or child care article for
10 compliance with the phthalate content requirements of 15 U.S.C. § 2057c.
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12 E. Paul Phuong issues certificates of compliance for each
13 children's product that is subject to any children's product safety rule, verifying
14 that each of Paul Phuong's children's products comply with such children's
15 product safety rule, to the extent required by 15 U.S.C. § 2063(a)(2), 16 C.F.R.
16 part 1110, and other applicable rules.
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19 F. Paul Phuong shall certify in writing to the Office of
20 Compliance that he is in compliance with the requirements set forth in
21 subparagraphs (A)-(E) of this Decree.
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23 3. Paul Phuong, and each and all of his directors, officers, agents,
24 servants, brokers, employees, attorneys, successors, assigns, and all persons or
25 entities in active concert or participation with any of them who receive actual
26 notice of this Decree by personal service or otherwise, are hereby permanently
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1 restrained and enjoined from directly or indirectly doing or causing to be done any
2 of the following acts:

3
4 Violating the CPSA

5 A. Violating section 19(a)(1) of the CPSA, 15 U.S.C. § 2068(a)(1),
6 by selling, offering for sale, manufacturing for sale, distributing in commerce, or
7 importing into the United States any consumer product, or other product or
8 substance that is regulated under the CPSA or any other Act enforced by the
9 Commission, that is not in conformity with an applicable consumer product safety
10 rule under the CPSA, or any similar rule, regulation, standard, or ban under any
11 Act enforced by the Commission, including, but not limited to:

12 i. Any children's toys or child care articles that contain
13 excessive concentrations of phthalates in violation of 15 U.S.C. § 2057c;

14 ii. Any product which is subject to any consumer product
15 safety rule or any children's product safety rule and lacks a conformity certificate
16 to the extent required under 15 U.S.C. § 2063 and applicable rules, regulations, and
17 enforcement policies of the CPSC; and

18 iii. Children's products that have not been tested by an
19 accredited third party conformity assessment body accepted by the CPSC to the
20 extent required under 15 U.S.C. § 2063(a)(2) and applicable rules, regulations, and
21 enforcement policies of the CPSC;

1 receiving in interstate commerce any banned hazardous substances, or delivering
2 or proffering to deliver thereof for pay or otherwise, in violation of section 4 of the
3 FHSA, 15 U.S.C. § 1263(a) and (c), including, but not limited to:
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5 i. Any children's product containing lead exceeding the
6 limits established in 15 U.S.C. § 1278a;
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8 ii. Any toy or other article intended for use by children that
9 bears lead-containing paint, as defined by 16 C.F.R. § 1303.2(b);
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11 iii. Any toy or other article, intended for use by children
12 under three years of age that presents a choking, aspiration, or ingestion hazard
13 because of small parts, as defined by 16 C.F.R. part 1501; and
14

15 iv. Any rattle, as defined in 16 C.F.R. § 1510.2, that does not
16 comply with the requirements 16 C.F.R. part 1510.
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18 G. Engaging in any other act or practice that would violate the
19 FHSA, 15 U.S.C. §§ 1261-1278.
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21 4. Beginning on or before the date that is six (6) months after the date of
22 entry of this Decree and every six (6) months thereafter, for a period of three (3)
23 years after the date of entry of this Decree, Paul Phuong shall provide in writing to
24 the CPSC a list of any names and importer of record numbers used or associated
25 with any entity owned, managed, or controlled, in whole or in part, by Paul
26 Phuong. This list shall be mailed to the Director of Regulatory Enforcement,
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1 Office of Compliance and Field Operations.

2 5. Paul Phuong shall maintain, and provide promptly to the CPSC upon
3 request, for at least five (5) years after the date of this Decree, records of all
4 analyses, testing, and certificates of conformance for any consumer product
5 required by this Decree and all applicable laws. Such records shall include, but
6 not be limited to, the date of the analysis and testing, the procedures used, and the
7 results of the analysis and testing. Paul Phuong shall also maintain, and provide
8 promptly to the CPSC upon request, for at least five (5) years after the date of this
9 Decree, records of all consumer incidents, property damage, injuries, warranty
10 claims, returns, insurance claims, or court complaints regarding consumer products
11 that Paul Phuong imported into the United States, regardless of where the incident
12 occurred, to the extent reasonably available and permitted by law.
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18 6. Within ten (10) calendar days after date of the entry of this Decree,
19 Paul Phuong shall post copies of this Decree on all bulletin boards in common
20 areas at his corporate, warehouse and retail facilities, and at any other locations at
21 which Paul Phuong conducts business within the CPSC's jurisdiction, and shall
22 ensure that the Decrees remain posted at each location for as long as Paul Phuong
23 is engaged in importing or selling any toy or other consumer product intended
24 primarily for children 12 years of age or younger.
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27 7. Within ten (10) calendar days after the date of entry of this Decree,
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1 Paul Phuong shall provide a copy of the Decree, by personal service or certified
2 mail (restricted delivery, return receipt requested), to each and all of his directors,
3 officers, agents, servants, brokers, and employees of each retail location in the
4 United States (collectively referred to as “Associated Persons”). Within thirty
5 (30) calendar days of the date of entry of this Decree, Paul Phuong shall provide to
6 the CPSC’s General Counsel an affidavit stating the fact and manner of his
7 compliance with this paragraph, identifying the names, addresses, and positions of
8 all persons who received a copy of this Decree pursuant to this paragraph.
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12 8. If Paul Phuong becomes associated with any additional Associated
13 Person(s) at any time after the date of entry of this Decree, Paul Phuong
14 immediately shall provide a copy of this Decree, by personal service or certified
15 mail (restricted delivery, return receipt requested), to such Associated Person(s).
16 Within ten (10) calendar days after the date on which Paul Phuong becomes
17 associated with any such additional Associated Person, Paul Phuong shall provide,
18 to the CPSC’s General Counsel, an affidavit stating the fact and manner of his
19 compliance with this paragraph, identifying the names, addresses, and positions of
20 any Associated Person(s) who received a copy of this Decree pursuant to this
21 paragraph, and attaching a copy of the executed certified mail return receipts.
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26 9. Within ten (10) calendar days of receiving a request from the CPSC
27 for any information or documentation that the CPSC deems necessary to evaluate
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1 Paul Phuong's compliance with this Decree, Paul Phuong shall provide such
2 information or documentation to the CPSC.

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4 10. Paul Phuong shall notify the CPSC's General Counsel in writing at
5 least ten (10) calendar before (1) consummation of: a sale, lease, exchange, or
6 transfer of all or substantially all of the assets of TDI; any merger, consolidation,
7 or reorganization of TDI; or any change in ownership of TDI in which the holders
8 of the outstanding equity of these businesses immediately before the transaction do
9 not hold voting control, or at least 50% of the outstanding equity of, the surviving
10 entity after the transaction; or (ii) adoption or approval by TDI of a plan of
11 liquidation or dissolution or an agreement relating to or calling for liquidation or
12 dissolution of TDI.
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16 11. All notifications, correspondence, and communications to the CPSC
17 as required by the terms of this Decree shall be addressed to the Director, Division
18 of Regulatory Enforcement, Office of Compliance and Field Operations, CPSC,
19 4330 East West Highway, Bethesda, MD 20814, and to the General Counsel,
20 Office of the General Counsel, CPSC, 4330 East West Highway, Bethesda, MD
21 20814.
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25 12. If Paul Phuong fails to comply with the material provisions of this
26 Decree, Paul Phuong shall pay to the United States of America liquidated damages
27 in the sum of one thousand dollars (\$1,000.00) for each day that Paul Phuong fails
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1 to comply with this Decree. Paul Phuong understands and agrees that the
2 liquidated damages specified in this paragraph are not punitive in nature and do not
3 in any way limit the ability of the United States of America to seek, and the Court
4 to impose, additional criminal or civil contempt penalties based on conduct that
5 may also be the basis for the payment of liquidated damages.
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8 13. If Paul Phuong violates this Decree and is found in civil or criminal
9 contempt thereof, Paul Phuong shall, in addition to other remedies, reimburse
10 plaintiff for its attorneys' fees, including overhead, investigational expenses, and
11 court costs relating to such contempt proceeding.
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13 14. This Decree, and any act, statement, or document executed pursuant
14 to or in furtherance of this Decree, shall not be deemed or used in any way: (i) as
15 an admission of, or evidence of, the validity of any claim asserted in the
16 Complaint, or of any wrongdoing or liability of Paul Phuong, or of any unlawful,
17 unfair, or fraudulent business practices of Paul Phuong, all of which Paul Phuong
18 deny; (ii) as an admission of, or evidence of, any fault or omission of Paul Phuong
19 in any civil, criminal, or administrative proceeding of any kind in any court,
20 administrative agency, or other tribunal; or (iii) as an admission of, waiver, of, or
21 evidence relating to, any claim or defense asserted by any party.
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26 15. Each party shall bear its own costs and attorneys' fees.

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

3
4 17. This Court shall retain jurisdiction of this matter for purposes of
5 construction, modification, and enforcement of this Decree.

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7 18. The parties, by their respective counsel, hereby consent to entry of the
8 foregoing Decree, which shall constitute a final judgment and order in this matter
9 as to injunctive relief. The parties further stipulate and agree that the entry of the
10 foregoing Decree shall constitute full, complete, and final settlement of this action
11 as to injunctive relief.
12

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14 19. The requirements under paragraphs 4-8 and paragraph 10 of this order
15 shall not apply to defendant Paul Phuong unless he engages in any of the activities
16 described in paragraph 2 of the order.
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19 SO ORDERED this 10th day of June, 2014.
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22 

23 _____
24 HON. GEORGE H. WU
25 United States District Judge

26 OF COUNSEL:

27 FOR PLAINTIFF:

28 STUART F. DELERY
Assistant Attorney General

STEPHANIE TSACOUMIS
General Counsel

1 MAAME EWUSI-MENSAH
2 FRIMPONG
3 Deputy Assistant Attorney General
4 MICHAEL S. BLUME
5 Director
6 JILL FURMAN
7 Deputy Director
8 Consumer Protection Branch

MELISSA V. HAMPSHIRE
Assistant General Counsel

HARRIET KERWIN
Attorney
Office of the General Counsel
U.S. Consumer Product Safety
Commission
Bethesda, MD 20814

8 By: _____
9 PATRICK R. RUNKLE
10 Trial Attorney, Consumer Protection
11 Branch
12 Civil Division
13 United States Department of Justice
14 P.O. Box 386
15 Washington, D.C. 20044
16 Telephone: 202-532-4723
17 Facsimile: 202-514-8742
18 Email: Patrick.r.runkle@usdoj.gov

18 FOR PAUL PHUONG:

21 _____
22 Paul Phuong
23 Individually and as officer of
24 Toys Distribution Inc. dba TDI
25 International

26 _____
27 Kirk Downing, Esq.
28 Attorney for Paul Phuong