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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

-against-

No. CV-10-2980 (RRM)(CLP)

BROOKLYN SLEEP PRODUCTS, INC.
and FRANCISCO CHAVEZ,

Defendants.
-----X

~~PROPOSED~~ **DEFAULT JUDGMENT PURSUANT TO FED. R. CIV. P. 55
AND ORDER FOR PERMANENT INJUNCTION**

The United States of America, Plaintiff, by its attorney, LORETTA E. LYNCH, United States Attorney for the Eastern District of New York, and JAMES R. CHO, Assistant U.S. Attorney, having filed a Complaint for injunctive relief against Brooklyn Sleep Products, Inc. ("Brooklyn Sleep"), and Francisco Chavez ("Chavez") (collectively "Defendants") on June 29, 2010, and this Court having considered the record in this case and having been otherwise duly advised, and it appearing that Defendants are violating, and unless restrained by Order of this Court, will continue to violate the Consumer Product Safety Act ("CPSA"), 15 U.S.C. §§ 2051-2084, and the Flammable Fabrics Act ("FFA"), 15 U.S.C. §§ 1191-1204.

WHEREAS the Court finds as follows:

1. On June 29, 2010, the United States commenced this action against Brooklyn Sleep Products, Inc. and Francisco Chavez by the filing of a complaint and the issuance of summons.

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2. This action was brought pursuant to the CPSA and the FFA, alleging, *inter alia*, that Defendants failed to meet minimum flammability standards and violated the safety provisions under the CPSA and FFA.

3. The United States seeks, *inter alia*, permanent injunctive relief to enjoin Defendants from violating the CPSA and FFA.

4. The summonses and complaint having been served upon Defendants on June 29, 2010 and the amended summonses and complaint having been served upon Defendants on September 8, 2010. Defendants filed proofs of service with the Office of the Clerk of the Court.

5. The Complaint states claims upon which relief may be granted against Defendants under Sections 19(a), 22, and 27 of the CPSA, 15 U.S.C. §§ 2068(a), 2071, and 2076, and Section 3 of the FFA, 15 U.S.C. § 1192.

6. At all times relevant hereto, Brooklyn Sleep was a “manufacturer” of a “consumer product” as those terms are defined in 15 U.S.C. §§ 2052(a)(5) and (11) and a “person” as that term is defined in 15 U.S.C. § 1191.

7. At all times relevant hereto, Chavez was the President and principal officer of Brooklyn Sleep, and in that capacity, was responsible for the acts, practices, and policies of Brooklyn Sleep.

8. Brooklyn Sleep and Chavez have violated and continue to violate the CPSA and the FFA by selling, offering for sale, manufacturing for sale, or distributing consumer products regulated under the FFA, enforced by the Consumer Product Safety Commission (“CPSC”), that are not in conformity with any rule, regulation, or standard under the FFA and the CPSA.

9. Brooklyn Sleep failed to retain an attorney in this matter.

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10. Brooklyn Sleep and Chavez have not answered the Complaint for Injunction filed on June 29, 2010.

11. Brooklyn Sleep and Chavez violated this Court's Order for Preliminary Injunction entered on October 19, 2010, by selling, offering for sale, manufacturing for sale, or distributing in commerce consumer products regulated under the FFA, enforced by the CPSC, that are not in conformity with any rule, regulation, or standard under the FFA and the CPSA.

12. Brooklyn Sleep and Chavez violated this Court's Order entered on January 31, 2011, by failing to respond to both the United States' letter detailing Defendants' violations of the Preliminary Injunction and to the United States' discovery requests served on December 10, 2010.

13. The Clerk of the Court entered a Certificate of Default on April 6, 2011.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

I. Judgment by default be entered against Defendants Brooklyn Sleep and Chavez in favor of the United States pursuant to Fed. R. Civ. P. 55.

II. Defendants, and each and all of their directors, officers, agents, employees, attorneys, successors, assigns, and all persons or entities in active concert or participation with any of them who receive notice of this Order by personal service or otherwise are permanently enjoined from directly or indirectly manufacturing for sale, renovating for sale, selling, or offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported, in commerce, or selling or delivering after a sale or shipment in commerce of any mattress, mattress set, or mattress pad until the Defendants receive written notification from the CPSC that the Defendants have provided

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evidence of, and appear to be in compliance with, the FFA and the CPSA, and that Defendants may resume operations.

III. Defendants recall any and all of the mattresses, mattress sets, or mattress pads manufactured or renovated by Defendants that have been distributed to consumers or are within the possession, custody, or control of the Defendants' distributors, agents, or customers on or after October 19, 2010, that have been found to violate the CPSA, FFA, and the underlying regulations, under the direction and supervision of the CPSC's Office of Compliance and Field Operations.

IV. Defendants take all other corrective actions CPSC deems necessary to protect the public safety and bring Defendants into compliance with this Order, and the FFA and the CPSA. The Defendants shall pay all costs of recalls and other corrective actions, including the costs of CPSC's supervision, inspections, investigations, analyses, examinations, and reviews to implement and monitor recalls and other corrective actions. As of the date of entry of this Order, these rates are: \$85.49 per hour or fraction thereof per representative for inspection and investigative work; \$102.49 per hour or fraction thereof per representative for laboratory and analytical work; \$0.55 per mile for travel expenses by automobile, government rate or the equivalent for travel by air and/or rail; and the published government per diem rate for subsistence expenses where necessary. In the event that the standard rates applicable to CPSC supervision of court-ordered compliance are modified, these rates shall be increased or decreased without further order of the Court. In addition, should Plaintiff bring, and prevail in, a contempt action against Defendants to enforce the terms of this Order, such Defendants shall pay all attorneys' fees and costs, travel expenses incurred by attorneys and witnesses, coordinator

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witness fees, investigational and analytical expenses, and court costs incurred by Plaintiff in bringing such an action.

V. Within ten (10) calendar days of receiving a request from CPSC for any information or documentation that CPSC deems necessary to evaluate Defendants' compliance with this Order, Defendants shall provide such information or documentation to CPSC.

VI. All notifications, correspondence, and communications to the CPSC required by the terms of this Order shall be addressed to the CPSC, Director, Division of Regulatory Management, 4330 East West Highway, Bethesda, MD 20814, as directed.

VII. This Order shall not preclude the United States and any of its component agencies including, but not limited to, the CPSC, under *res judicata* or any other doctrine, from pursuing an action for civil penalties under 15 U.S.C. § 2069 and § 1194(e) against Defendants, or any other applicable statute for the same acts and practices alleged in the Complaint.

VIII. The Defendants shall provide notice of this Order in the following manner upon entry of this Order:

- a. Provide a copy of this Order, personally or, when necessary, by certified mail, return receipt requested, to each of their officers, agents, employees, successors, assigns, attorneys, and any persons in active concert or participation with any of them (who shall receive a copy of the Order in English, Spanish, or other language as needed for the Order to be understood);
- b. Post a copy of this Order in English, Spanish, and any other language(s) so that it is understood by all employees, on a bulletin board in the employee common area at the Defendants' plant, and shall ensure that the Order remains permanently posted.

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IX. If the Defendants fail to comply with any provision of this Order, Defendants shall pay to the United States of America liquidated damages in the amount of one thousand dollars (\$1,000.00) for each day that the Defendants fail to comply with this Order. Such liquidated damages specified in this paragraph are not punitive in nature and that they do not in any way limit the ability of the United States of America to seek, and the Court to impose, additional criminal or civil contempt penalties based on conduct that may also be the basis for the payment of liquidated damages.

X. The United States shall personally serve a copy of this Default Judgment Pursuant To Fed. R. Civ. P. 55 And Order For Permanent Injunction on Defendants and file proof of service via ECF.

XI. This case is hereby closed.

SO ORDERED:

Dated this 5th day of November, 2011.

s/Roslynn R. Mauskopf

Roslynn R. Mauskopf
United States District Judge