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10 **UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO DIVISION**

13 UNITED STATES OF AMERICA,

14 *Plaintiff,*

15 v.

16 FLAKEBOARD AMERICA LIMITED, et al.,

17 *Defendants.*

Case No. 3:14-cv-04949-VC

18 **PLAINTIFF UNITED STATES OF AMERICA'S MOTION AND SUPPORTING**
19 **MEMORANDUM TO ENTER FINAL JUDGMENT**

20 As authorized by Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C.
21 § 16(b)–(h) (“APPA” or “Tunney Act”), the United States moves for entry of the proposed Final
22 Judgment filed in this civil antitrust case. The proposed Final Judgment (attached as Exhibit A)
23 may be entered at this time without further hearing if the Court determines that entry is in the
24 public interest. The Competitive Impact Statement (“CIS”), filed by the United States on
25 November 7, 2014, explains why entry of the proposed Final Judgment is in the public interest.
26 The United States is filing simultaneously with this motion a Certificate of Compliance (attached
27 as Exhibit B) setting forth the steps taken by the parties to comply with all applicable provisions
28 of the APPA and certifying that the statutory waiting period has expired.

1 **A. BACKGROUND**

2 On November 7, 2014, the United States filed a two-count Complaint against Flakeboard
3 America Limited; its parent companies, Celulosa Arauco y Constitución, S.A., and Inversiones
4 Angelini y Compañía Limitada; and SierraPine for engaging in unlawful conduct while
5 Flakeboard's proposed transaction with SierraPine was under antitrust review. The Complaint
6 alleged that the defendants' conduct constituted a per se unlawful agreement between
7 competitors to reduce output and allocate customers in violation of Section 1 of the Sherman
8 Act, 15 U.S.C. § 1, and a premature transfer of beneficial ownership to Flakeboard in violation
9 of Section 7A of the Clayton Act, 15 U.S.C. § 18a.

10 Simultaneously with the filing of the Complaint, the United States filed the CIS, a
11 proposed Final Judgment, and a Stipulation. The proposed Final Judgment remedies the Sherman
12 Act violation by enjoining Flakeboard, Arauco, and SierraPine from reaching similar
13 anticompetitive agreements with competitors and requiring Flakeboard to disgorge \$1.15 million
14 of ill-gotten gains, the approximate amount of profits that Flakeboard illegally obtained by
15 coordinating with SierraPine to close its Springfield mill and move the mill's customers to
16 Flakeboard. To resolve the HSR Act violation, the proposed Final Judgment requires Inversiones
17 Angelini (together with Flakeboard and Arauco) and SierraPine to each pay a civil penalty of
18 \$1.9 million, for a total of \$3.8 million.

19 The Stipulation provides that the proposed Final Judgment may be entered after the
20 completion of the procedures required by the APPA. Entry of the proposed Final Judgment
21 would terminate this action, except that the Court would retain jurisdiction to construe, modify,
22 or enforce the provisions of the Final Judgment and to punish violations thereof.

23 **B. COMPLIANCE WITH THE APPA**

24 The APPA requires a 60-day period for the submission of public comments on a
25 proposed Final Judgment. *See* 15 U.S.C. § 16(b). In compliance with the APPA, the United
26 States filed the CIS with the Court on November 7, 2014; published the proposed Final Judgment
27 and CIS in the *Federal Register* on November 26, 2014 (*See* 79 Fed. Reg. 70555-70566 (2014));

1 and had summaries of the terms of the proposed Final Judgment and CIS, together with
 2 directions for submitting written comments relating to the proposed Final Judgment, published in
 3 *The Washington Post* for seven days beginning on November 21, 2014, and ending on November
 4 27, 2014, and published in the *San Francisco Chronicle* for seven days beginning on November
 5 21, 2014, and ending on November 27, 2014. The defendants filed the statements required by 15
 6 U.S.C. § 16(g) on November 17, 2014. The 60-day period for public comments ended on January
 7 26, 2015. The Division did not receive any public comments. The Certificate of Compliance
 8 filed with this Motion as Exhibit B recites that all the requirements of the APPA now have been
 9 satisfied. It is therefore appropriate for the Court to make the public-interest determination
 10 required by 15 U.S.C. § 16(e) and to enter the proposed Final Judgment.

11 **C. STANDARD OF JUDICIAL REVIEW**

12 The APPA requires that proposed consent judgments in antitrust cases brought by the
 13 United States be subject to a 60-day comment period, after which the Court shall determine
 14 whether entry of the proposed Final Judgment “is in the public interest.” 15 U.S.C. § 16(e)(1). In
 15 making that determination in accordance with the statute, the Court is required to consider:

- 16 (A) the competitive impact of such judgment, including termination of alleged
 17 violations, provisions for enforcement and modification, duration of relief
 18 sought, anticipated effects of alternative remedies actually considered,
 19 whether its terms are ambiguous, and any other competitive considerations
 20 bearing upon the adequacy of such judgment that the court deems necessary
 to a determination of whether the consent judgment is in the public interest;
 and
- 21 (B) the impact of entry of such judgment upon competition in the relevant
 22 market or markets, upon the public generally and individuals alleging
 23 specific injury from the violations set forth in the complaint including
 consideration of the public benefit, if any, to be derived from a
 determination of the issues at trial.

24 15 U.S.C. § 16(e)(1).

25 In the CIS, the United States set forth the public-interest standard under the APPA and
 26 now incorporates those statements herein by reference. The public, including affected
 27 competitors and customers, has had the opportunity to comment on the proposed Final Judgment

1 as required by law. As explained in the CIS, entry of the proposed Final Judgment is in the
2 public interest.

3 **D. CONCLUSION**

4 For the reasons set forth in this Motion and the CIS, the Court should find that entry of
5 the proposed Final Judgment is in the public interest and should enter the proposed Final
6 Judgment without further hearings. The United States respectfully requests that the proposed
7 Final Judgment attached hereto be entered as soon as possible.

8 Respectfully submitted,

9 UNITED STATES OF AMERICA

10
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