

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**UNITED STATES OF AMERICA,**

Plaintiff,

v.

Case No.

CONSENT DECREE OF  
CIVIL PENALTY AND  
PERMANENT INJUNCTION

**GERBER LEGENDARY BLADES,**  
a division of **FISKARS BRANDS, INC.,**  
a Wisconsin corporation,

Defendant.

Plaintiff, the United States of America, has commenced this action by filing a Complaint for Civil Penalties and Permanent Injunctive Relief pursuant to 15 U.S.C. §§ 2064(b), 2068(a)(4), 2069, and 2071(a), against Gerber Legendary Blades, a division of Fiskars Brands, Inc., (“Defendant”). Defendant has waived service of the summons and the Complaint. The parties, represented by the counsel identified below, have agreed to this settlement of the action without adjudication of any issue of fact or law.

The parties have agreed to settlement of all allegations in the Complaint and consent to the entry of this Consent Decree of Civil Penalty and Permanent Injunction (“Decree”).

THEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. In its Complaint, the United States alleges that Defendant knowingly violated the requirement contained in the Consumer Product Safety Act (“CPSA”), to immediately furnish to the Consumer Product Safety Commission (“CPSC” or “Commission”) the information required by 15 U.S.C. § 2064(b). Specifically, the Complaint alleges that Defendant had obtained

information which reasonably supported the conclusion that: (1) the Gator Combo Axe that it manufactured and distributed contained a defect that could create a substantial product hazard, and (2) the Gator Combo Axe that it manufactured and distributed created an unreasonable risk of serious injury or death.

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, 1355(a) and 15 U.S.C. § 2071(a).

3. Venue in this District is proper pursuant to 28 U.S.C. §§ 1391(b), (c) and 1395(a).

4. The Complaint states a claim upon which civil penalties and injunctive relief may be granted against Defendant under the CPSA, 15 U.S.C. §§ 2068(a); 2069(a) and 2071(a).

5. At all relevant times, Defendant was a "manufacturer," as defined in 15 U.S.C. § 2052(a)(11), of the Gator Combo Axe described in the Complaint.

6. Defendant enters into this Decree freely and without coercion. Defendant further acknowledges that it has read the provisions of this Decree and is prepared and able to abide by them.

7. The United States believes settlement of this case on the terms described below is in the public interest and that injunctive relief is necessary to prevent future violations of the CPSA.

8. Defendant does not admit that the law has been or is likely to be violated, and specifically denies that any law has been or is likely to be violated, but believes settlement is appropriate to avoid the time and expense of litigation.

9. Defendant waives any claim that it may hold under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date this Decree is entered by the Court. All parties agree to bear their own fees, costs, and attorneys' fees.

#### **I. CIVIL PENALTY**

A. Defendant shall pay two million six hundred thousand dollars (\$2,600,000.00) to the United States as a civil penalty, pursuant to 15 U.S.C. § 2069. Within fourteen days of entry of this Decree, Defendant shall transfer the civil penalty payment in the form of an electronic fund transfer in accordance with the procedures specified by the Consumer Protection Branch, Civil Division, U.S. Department of Justice, Washington, DC 20530.

B. In the event of any default in payment required in Paragraph A, the entire unpaid amount shall constitute a debt due and immediately owing by Defendant to the United States, and interest shall accrue and be paid by Defendant at the federal legal rate of interest set forth at 28 U.S.C. § 1961 from the date of default until the payment has been paid in full.

C. Defendant relinquishes all dominion, control, and title to the funds paid to the fullest extent permitted by law. Defendant shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise.

D. The judgment amount set forth in this Section 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).

#### **II. INJUNCTIVE RELIEF**

A. Defendant shall implement and shall maintain a compliance program designed to ensure compliance with the safety statutes and regulations enforced by the Commission that, at a minimum, contains the following elements:

- i. written standards and policies;
- ii. a mechanism for confidential employee reporting of compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary;
- iii. procedures for reviewing claims and reports for safety concerns and for implementing corrective and preventive actions when compliance deficiencies or violations are identified;
- iv. effective communication of company compliance-related policies and procedures to all employees through training programs or otherwise;
- v. senior manager responsibility for compliance and accountability for violations of the statutes and regulations enforced by the Commission;
- vi. oversight of compliance by Defendant's governing body; and
- vii. retention of all records reasonably related to compliance with the safety statutes and regulations enforced by the Commission for at least five (5) years and availability of such records to Commission staff upon reasonable request.

B. Defendant shall maintain and enforce a system of internal controls and procedures designed to ensure that:

- i. information required by law to be disclosed by Defendant to the Commission is recorded, processed and reported in accordance with applicable law;
- ii. all reporting made to the Commission is timely, truthful, complete and accurate; and
- iii. prompt disclosure is made to Defendant's management of any material deficiencies or material weaknesses in the design or operation of such internal controls that are

reasonably likely to adversely affect in any material respect Defendant's ability to record, process, and report to the Commission in accordance with applicable law.

C. Defendant shall provide to the Commission written documentation of such improvements, processes, and controls, including, but not limited to, the effective dates of such improvements, processes, and controls, upon reasonable request by the CPSC staff. Defendant shall cooperate fully and truthfully with Commission staff and shall make available all information, materials, and personnel reasonably necessary for Commission staff to evaluate Defendant's compliance with the terms of the Decree.

### **III. MISCELLANEOUS PROVISIONS**

A. This Decree shall be binding on the successors and assigns of Defendant, and any such successors and assigns shall be subject to the terms of this Decree.

B. For a period of five years from the entry of this Decree by the Court, Defendant shall notify the CPSC General Counsel in writing within thirty (30) calendar days after any reorganization, consolidation, merger, acquisition, dissolution, assignment, sale, transfer or similar transaction or series of transactions resulting in a successor entity, the transfer or disposition of substantially all of the assets of Defendant or any other changes in corporate structure that may affect compliance obligations arising out of this Decree.

C. Defendant shall notify the CPSC General Counsel in writing within fourteen (14) days of any change in the person to which communications from the CPSC should be addressed.

D. If Defendant fails to comply with provisions II.B, II.C, III.B, or III.C of this Decree, Defendant shall pay to the United States liquidated damages in the sum of one thousand dollars (\$1,000.00) for each day that Defendant fails to comply with the Decree. Defendant understands and agrees that the 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 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.

E. Nothing in this Decree shall be interpreted as waiving, or an agreement to waive, the attorney-client privilege, work-product doctrine, and similar privileges against disclosure.

F. 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.

G. This Court retains jurisdiction of this matter for the purpose of enabling any of the parties to this Decree to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the enforcement of compliance therewith, or for the punishment of violations thereof.

H. The United States may seek reasonable costs and attorneys' fees upon succeeding in a suit to enforce this Decree.

I. 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 \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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U.S. DISTRICT COURT JUDGE

FOR THE DEFENDANT:

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Rob Kass  
President, Gerber Legendary Blades  
Vice-President, Fiskars Brands, Inc.

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Attorney for Defendant

FOR THE UNITED STATES:

S. AMANDA MARSHALL  
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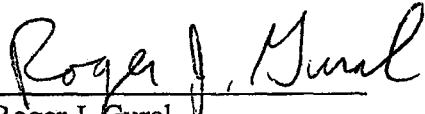
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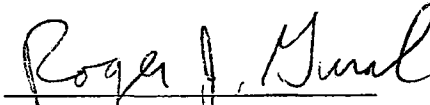
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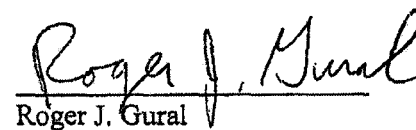
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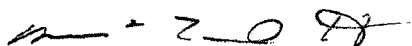


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