

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 19-cv-10994-MLW
)	
KIM LONG MARKET MALDEN, LLC,)	
CHIEN HONG PHAM,)	
THOMAS PHAM, and)	
TIEN MANH PHAM,)	
)	
Defendants.)	
_____)	

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into by and between the United States of America, acting through the United States Department of Agriculture (“USDA”) (collectively, “the United States”); and the defendants Kim Long Market Malden, LLC, formerly known as Kim Long Market, LLC (“Kim Long Market”), Chien Hong Pham, Thomas Pham, and Tien Manh Pham (collectively, the “defendants”). The United States and the defendants are together referred to herein as the “Parties.”

Recitals

WHEREAS, Kim Long Market is a grocery retail store located at 211 Ferry Street, Malden, MA; and

WHEREAS, Tien Manh Pham is the manager of Kim Long Market; and

WHEREAS, Chien Hong Pham is the System and Organizations Control Signatory for Kim Long Market; and

WHEREAS, Thomas Pham is the day-to-day operator of Kim Long Market; and

WHEREAS, on April 26, 2019, the United States filed suit against Kim Long Market, Chien Hong Pham, and Thomas Pham, C.A. No. 19-10994-MLW, alleging that the defendants sold non-federally inspected and misbranded meat food products capable of use as human food to retail customers in violation of the Federal Meat Inspection Act (“FMIA”), 21 U.S.C. § 601, *et seq.*, and the Poultry Products Inspection Act (“PPIA”), *see* 21 U.S.C. § 451, *et seq.*, and failed to maintain business records that would evidence the purchase, receipt, offer for sale, and sale of these meat and poultry food products to retail customers; and

WHEREAS, on April 26, 2019, the Parties voluntarily entered into a Consent Decree, endorsed by the United States District Court for the District of Massachusetts on June 28, 2019, to resolve the suit; and

WHEREAS, in the Consent Decree, Kim Long Market, Chien Hong Pham, and Thomas Pham agreed, prospectively, to pay a stipulated penalty of \$500 for each pound of uninspected and/or misbranded meat or poultry food product capable for use as human food sold to retail customers as a first offense, and \$1,000 for each pound of uninspected and/or misbranded meat or poultry food product capable for use as human food sold to retail customers in subsequent offenses; and

WHEREAS, in the Consent Decree, Kim Long Market, Chien Hong Pham, and Thomas Pham agreed, prospectively, to pay a stipulated penalty of \$100 for a first offense of failing to maintain business records that properly disclose the purchase, sale, offer for sale, and transport of each pound of uninspected meat or poultry food product; and \$500 for a subsequent offense of failing to maintain business records that properly disclose the purchase, sale, offer for sale, and transport of each pound of uninspected meat or poultry food product; and

WHEREAS, the Consent Decree further states that the Consent Decree may terminate after a period of five (5) years but only if Kim Long Market, Chien Hong Pham, and Thomas Pharm had maintained substantial compliance with all of the requirements in the Consent Decree; and

WHEREAS, on July 10, 2020, the United States filed a Motion to Enforce Consent Decree because on or around January 24, 2020, Kim Long Market, Chien Hong Pham, and Thomas Pham sold and offered for sale 47 pounds of uninspected and misbranded meat or meat food product capable for use as human food to retail customers and failed to maintain records that fully and correctly disclosed all business transactions involving the meat and meat food products sold and offered for sale in violation of the FMIA and the Consent Decree;

WHEREAS, on July 28, 2020, the United States District Court in the District of Massachusetts endorsed the United States' Motion to Enforce Consent Decree and required Kim Long Market, Chien Hong Pham, and Thomas Pham to pay civil monetary penalties in the amount of \$28,200 to the United States for a first offense of violating the Consent Decree; and

WHEREAS, the defendants violated the FMIA and the Consent Decree a second time on or around January 21, 2023, when the defendants purchased, received for transportation, transported, sold, and offered for sale to retail customers 218 pounds of non-federally inspected and misbranded meat food products capable for use as human food including Pork Banh Tet, Pork Banh Chung, and Pork Cha Chen, and failed to maintain records that fully and correctly disclosed all business transactions involving the purchase, transportation, sale, and offer to sell to retail customers the 218 pounds of non-federally inspected and misbranded meat food products (the "Covered Conduct"), subjecting the defendants to stipulated civil monetary penalties in the amount of \$327,000 under the Consent Decree; and

WHEREAS, the United States and the defendants desire to reach an agreement that settles and resolves all existing and potential civil and administrative claims under the FMIA and PPIA as set forth in the Covered Conduct, and under the Consent Decree;

NOW THEN, in consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

Terms of Agreement

1. The defendants represent that they have permanently ceased all sales of uninspected and misbranded meat food products to retail customers.
2. The defendants, jointly and severally, will pay the United States \$65,000 by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the District of Massachusetts no later than seven (7) days after the Effective Date of this Agreement.
3. The remaining \$262,000 in civil monetary penalties that the defendants owe to the United States under the Consent Decree pursuant to the Covered Conduct will be held in abeyance on the condition that:
 - a. Payment is made in accordance with Paragraph 2.
 - b. The defendants will permanently cease all operations of, and close, Kim Long Market no later than forty-five (45) days after the Effective Date of this Agreement.
 - c. Upon the cessation of all operations, and closure of Kim Long Market, Chien Hong Pham and Thomas Pham voluntarily agree to cease working in the food industry in any capacity whatsoever, including but not limited to as an owner, partner, officer, manager, employee, contractor, or volunteer.

- d. Tien Manh Pham may continue to work in the food industry, but voluntarily agrees:
- i. not to own or manage a food retail business for five (5) years from the date of Execution of the Agreement;
 - ii. to notify the Food Safety Inspection Services (“FSIS”) of the USDA in writing at CEBCorrespondence@usda.gov by April 1st and October 1st each year for five (5) years (starting from the Effective Date of the Agreement) of his employment in the food retail business including identifying his past and current employers over the last six (6) months, his employment position with each employer, and the dates of employment with each employer; and
 - iii. not to violate the FMIA, PPIA, the Consent Decree, or this Agreement in any manner.

4. The defendants understand, acknowledge, and agree that if at any time any of the defendants violates any term of this Agreement, including but not limited to all of the requirements set forth in Paragraph 3, the \$262,000 held in abeyance will become immediately due to the United States, and all of the defendants will be jointly and severally liable to pay the United States the full amount plus interest at a rate of 4.125% per annum. The defendants also understand, acknowledge, and agree that the United States may also seek a further enforcement action against each and all of the defendants as may be necessary, including, but not limited to, seeking a court order to permanently close Kim Long Market and any additional civil penalties for which each and all of the defendants may be responsible under the Consent Decree for any subsequent violation of the FMIA and/or PPIA.

5. In consideration of the defendants' obligations in this Agreement, the United States agrees to settle, release, and relinquish all civil and administrative claims under the FMIA, the PPIA, and the Consent Decree, based on the Covered Conduct, subject to the exceptions set out in Paragraph 4.

6. Within seven days after the United States receives the \$65,000 payment referenced in Paragraph 2 above, the United States will file this Agreement together with a notice of dismissal under Federal Rule of Civil Procedure 41(a)(1)(A)(i). The dismissal will be subject to Paragraph 4 and the United States' right to move to reopen this action if the defendants fail to comply with any provision in this Agreement at any time.

7. This Agreement in no way alters or restricts the United States' right to enforce the FMIA or PPIA by commencing a civil or administrative action against the defendants for any violations of the FMIA and/or PPIA that are not based on the Covered Conduct, nor does it prevent any sovereign other than the United States from pursuing civil and/or administrative claims against the defendants for the Covered Conduct and/or any other conduct.

8. The defendants agree to cooperate fully and truthfully with any present or future investigation by the United States. Upon reasonable notice, the defendants shall encourage, and agrees not to impair, the cooperation of any persons or entities, and shall use their best efforts to make available, and encourage, the cooperation of any persons or entities, consistent with the rights and privileges of such persons or entities. The defendants further agree to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on their behalf.

9. Each party and signatory to this Agreement represents that they freely and voluntarily enter into this Agreement without any degree of duress or compulsion.

10. This Agreement is intended to be for the benefit of the Parties only; it does not create any rights or benefits as to third parties. The Parties do not release any claims against any other person or entity.

11. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of Massachusetts. This Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be constructed against any party for that reason in any subsequent dispute.

12. This Agreement constitutes the complete agreement between the Parties. This Agreement may be amended only by a writing signed by all Parties.

13. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the Parties.

14. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

15. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement and settlement, to the public.

16. The Parties may execute this Agreement electronically or by hand, both of which shall be deemed the equivalent of an original signature.

17. The Agreement will become effective on the date that all the Parties have signed ("Effective Date of the Agreement").

THE UNITED STATES OF AMERICA

DATED: 3/6/2024

BY: _____
STEVEN T. SHAROBEM
Assistant United States Attorney
United States Attorney's Office
District of Massachusetts

KIM LONG MARKET MALDEN, LLC

DATED: _____

BY: _____
GERRY MALONE, ESQ.
Counsel for Kim Long Market
Malden, LLC

DATED: _____

BY: _____
TIEN MANH PHAM
Manager for Kim Long Market
Malden, LLC

TIEN MANH PHAM

DATED: _____

BY: _____
GERRY MALONE, ESQ.
Counsel for Tien Manh Pham

DATED: _____

BY: _____
TIEN MANH PHAM

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____
STEVEN T. SHAROBEM
Assistant United States Attorney
United States Attorney's Office
District of Massachusetts

KIM LONG MARKET MALDEN, LLC

DATED: March 4, 2024

BY: [Signature]
GERRY MALONE, ESQ.
Counsel for Kim Long Market
Malden, LLC

DATED: March 4, 2024

BY: Tien Pham
TIEN MANH PHAM
Manager for Kim Long Market
Malden, LLC

TIEN MANH PHAM

DATED: March 4, 2024

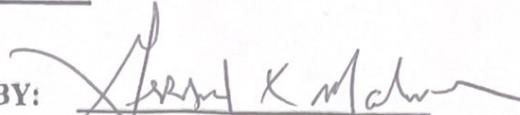
BY: [Signature]
GERRY MALONE, ESQ.
Counsel for Tien Manh Pham

DATED: March 4, 2024

BY: Tien Pham
TIEN MANH PHAM

CHIEN HONG PHAM

DATED: March 4, 2024

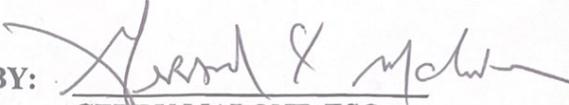
BY: 
GERRY MALONE, ESQ.
Counsel for Chien Hong Pham

DATED: March 4, 2024

BY: 
CHIEN HONG PHAM

THOMAS PHAM

DATED: March 4, 2024

BY: 
GERRY MALONE, ESQ.
Counsel for Thomas Pham

DATED: March 4, 2024

BY: 
THOMAS PHAM