IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION **Plaintiff,** **v.** **Star Pipe Products, Ltd.,** **Defendant.**	)	CIVIL ACTION NO.

PLAINTIFF'S MOTION FOR ENTRY OF FINAL JUDGMENT

Plaintiff Federal Trade Commission ("Commission"), having filed its Complaint in the above-captioned case, and having filed on this date a Stipulation and proposed Final Judgment, hereby moves this Court for entry of a Final Judgment against Defendant Star Pipe Products, Ltd. ("Star Pipe"). By agreement of the parties, the Final Judgment against Star Pipe, authorized by Sections 5(*l*) and 16(a)(1) of the Federal Trade Commission Act, 15 U.S.C. §§ 45(*l*) and 56(a)(1), provides for the payment of civil penalties totaling one hundred twenty thousand United States dollars ($120,000). The parties have agreed in the Stipulation that the Final Judgment may be entered on the motion of either party.[1]

BACKGROUND

The Commission has filed this action pursuant to its above-cited authority to seek relief for violations of one of its final administrative orders. As alleged in the Complaint, Star Pipe violated the Commission's 2012 final order by attempting to reach an understanding with one of

[1] Settlement of this proceeding is not subject to the notification requirements of the Antitrust Procedures and Penalties Act ("Tunney Act"), 15 U.S.C. § 16(b)-(h), because this is not a civil proceeding brought by or on behalf of the United States under the antitrust laws. *See, e.g.*, Federal Trade Commission v. Onkyo U.S.A. Corp., 1995-2 Trade Cas. (CCH) P71,111, 1995 U.S. Dist. LEXIS 21222, (D.D.C. 1995) at 5, n.2. *See*, *also*, Federal Trade Commission v. Toys "R" Us, Inc., Civ No. 11-0635, (D.D.C. 2011).

its competitors to communicate Competitively Sensitive Information (as defined in the Commission's order) and failing to report those communications in its required reports of compliance. That conduct continued for almost a year. The Complaint also alleges that Star Pipe filed incomplete reports of compliance, and failed in those reports to alert the Commission that it had been receiving Competitively Sensitive Information. Following an investigation by the Commission, Star Pipe and the Commission reached a settlement of the allegations. One part of that settlement is the Stipulation in this matter for entry of a judgment to pay civil penalties. In addition, as discussed below, Star Pipe agreed that the Commission may modify the original final administrative order, and impose additional training, monitoring, and reporting obligations. This two-part resolution of the Commission's allegations will both penalize and deter Star Pipe from further violations of the Commission's order, and will deter similarly situated respondents from violating the Commission's orders.

STATEMENT OF POINTS AND AUTHORITIES

The Complaint in this action alleges that the Defendant Star Pipe violated a final order of the Federal Trade Commission in FTC Docket No. 9351 ("Order"). Section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*) authorizes the imposition of civil penalties of not more than $16,000 per violation for violations of Federal Trade Commission orders.[2] In the case of a continuing violation, each day is considered a separate violation. Accordingly, the Complaint seeks "an appropriate civil penalty." As the Stipulation and proposed Final Judgment indicate, Defendant Star Pipe has agreed to pay a civil penalty of one hundred twenty thousand United States dollars ($120,000), payable within thirty (30) days after entry of the Final Judgment.

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[2] For violations that occurred on or before February 9, 2009, the maximum penalty was $11,000. *See* Debt Collection Act of 1996, Pub.L. 104-134 § 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461), and FTC Rule 1.98, 16 C.F.R. § 1.98, 61 Fed. Reg. 54549 (Oct. 21, 1996), 74 Fed. Reg. 858 (Jan. 9, 2009).

The Commission submits that the proposed civil penalty settlement in this action is in the public interest because it is fair, adequate and reasonable based on consideration of the factors discussed below.[3] These factors include, among others: the need to deter similar conduct by this defendant and others; and the need to vindicate the authority of the Commission and the rule of law.[4]

The civil penalty settlement is only one part of the Commission's overall resolution of Star Pipe's violation. Simultaneous with filing this action in this Court, the Commission has also issued, with Star Pipe's consent, an administrative order that reopens and modifies the Commission's original final Order to impose additional training, monitoring, and reporting obligations on Star Pipe. For example, Star Pipe must distribute the Commission's Order to a broader group of employees, and must train them annually on the Order's requirements. In addition, Star Pipe must notify the Commission within thirty days of learning about any prohibited communications, and must annually certify to the Commission that no prohibited communications have taken place. Those additional obligations are designed to enhance the prophylactic provisions of the Commission's Order, and thus reduce the risk that Star Pipe may engage in future conduct of the type that has led to this enforcement action.

Defendant Star Pipe is a small company, and it recently agreed to pay $4,275,000 to settle private plaintiff litigation triggered by the Commission's original case. Considering Defendant Star Pipe's ability to pay, its payment to the United States Treasury of the $120,000 civil penalty set by the Final Judgment therefore is appropriate and is in the public interest. This penalty will produce the desired deterrent effect, by signaling to Defendant Star Pipe, and other industry participants and other respondents to Commission orders, that Commission orders cannot be

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[3] *See Securities and Exchange Commission v. James H. Randolph, Jr., et al.*, 736 F.3d 525, 529 (9th Cir. 1984) ("[u]nless a consent decree is unfair, inadequate, or unreasonable, it ought to be approved.").

[4] *See United States v. Boston Scientific Corp.*, 253 F. Supp. 3d 85, 98 (D. Mass. 2003).

violated without consequence. It will also demonstrate the Commission's commitment to monitoring the compliance by respondents subject to its orders with the terms of such orders, as well as the Commission's willingness to enforce its orders. In addition, entry of the proposed Final Judgment is in the public interest because it will vindicate the authority of the Commission and the rule of law.

For the above reasons, the Federal Trade Commission asks the Court to enter the Final Judgment in this case.

Respectfully submitted,

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