

1 JOSEPH P. RUSSONIELLO (CSBN 44332)
United States Attorney

2 BRIAN J. STRETCH (CSBN 163973)
3 Chief, Criminal Division

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Assistant United States Attorney

5 450 Golden Gate Avenue, Box 36055
6 San Francisco, California 94102
7 Telephone: (415) 436-6816
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8 Attorneys for Plaintiff

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 UNITED STATES OF AMERICA,)	No. C 06-4675 PJH
)	
13 Plaintiff,)	
)	
14 v.)	REQUEST FOR DISMISSAL
)	AND ORDER
15 APPROXIMATELY 360,804 POUNDS OF)	
16 VIETNAMESE SUTCHI CATFISH,)	
)	
17 Defendants.)	

18
19 Pursuant to Rule 41(a)(2) of Federal Rules of Civil Procedure, plaintiff hereby requests a
20 dismissal of the instant action. Plaintiff contends that a dismissal of this action is appropriate in light of
21 the following information:

22 This civil forfeiture action arises from a criminal investigation being conducted by the United
23 States Department of Commerce National Oceanic and Atmospheric Administration's Fisheries Service
24 Office of Law Enforcement (NOAA-OLE), United States Immigration and Customs Enforcement (ICE)
25 and United States Food and Drug Administration (FDA) concerning alleged violations of federal import
26 and environmental laws. The government seized the fish at issue and subjected it to various tests.
27 According to the government, those tests and other evidence obtained during the course of the
28 investigation demonstrate that the fish was falsely labeled and illegally imported into the United States in

REQUEST FOR DISMISSAL
[C 06-4675 PJH]

1 an attempt to avoid anti-dumping duties and illegally transported throughout the United States, both in
2 violation of the Lacey Act (16 U.S.C. 3372(a) and (d)). The government contends that the fish is thus
3 subject to forfeiture under 16 U.S.C. 3374(a)(1), 18 U.S.C. 545, and 19 U.S.C. 1595(a). Additionally,
4 the government contends that the testing revealed that 17 of the 20 lots of seized fish contain malachite
5 green – a carcinogenic veterinary aquaculture antibiotic that is unsafe for domestic consumption. The
6 presence of malachite green subjects the fish to seizure and condemnation by the FDA and separately
7 prohibits the re-exportation of the seized fish to Vietnam.

8 On May 24, 2007, claimants Virginia Star Seafood and International Sea Products Corporation
9 were among those entities and individuals indicted in the Central District of California on similar charges
10 related to their participation in a conspiracy concerning the trafficking of illegally imported
11 merchandise, namely Vietnamese catfish. In the criminal case, the government also sought forfeiture of
12 the fish at issue in the civil forfeiture action.

13 On October 14, 2008, the criminal case proceeded to trial in Los Angeles. Prior to trial, Virginia
14 Star Seafood and International Sea Products Corporation pled guilty to charges relating to the scheme to
15 unlawfully import and sell the mislabeled fish. These charges support the forfeiture of the seized fish.
16 Trial proceeded against Peter Lam, the President and Director of Virginia Star. Lam was convicted of
17 various offenses, including conspiring to import the seized fish in violation of law. Following the trial,
18 Lam consented to the forfeiture of the seized fish.

19 On May 18, 2009 the Court entered a Preliminary Order of Forfeiture forfeiting the subject fish
20 pursuant to Title 21, United States Code, Sections 853(p)(1)(B) and (p)(2); and Title 28, United States
21 Code, Section 2461(c). (*See Exhibit A*)

22 The Preliminary Order required the United States to publish notice of the Order and otherwise
23 direct written notice to all persons known to have an interest in said property. Beginning on August 4,
24 2009, the United States published notice of the forfeiture action on www.forfeiture.gov, a government
25 website for at least thirty days, notice of this Order and notice of the government's intent to dispose of
26 the property in accordance with the law. The notice also advised potential third parties of their right to
27 petition the Court within thirty (30) days for a hearing to adjudicate the validity of their alleged legal
28 interest in the property.

1 On or about August 20, 2009, defendant Peter Lam signed a form entitled "Waiver of Claim To
2 and Abandonment of Seized Item" forfeiting his interest in the seized fish. (See Exhibit B). Co-
3 defendant Arthur Yavelberg signed a similar form forfeiting his interest in the seized fish on or about
4 August 4, 2009. (See Exhibit C).

5 In June 2009, the government also provided notice of the impending criminal forfeiture
6 proceedings against the seized fish to Virginia Star Seafood and International Sea Products Corporation,
7 the claimants to the fish in the instant forfeiture action. (See Exhibit D).

8 No petitions were filed challenging the forfeiture in the criminal case and the district court for
9 the Central District of California issued a final order of forfeiture regarding the fish on December 7,
10 2009. (See Exhibit E).

11 Thus, the government contends that since the fish at issue has been ordered forfeited in the
12 related criminal case, the instant action is moot and should be dismissed.

13

14

Respectfully submitted,

15

JOSEPH P. RUSSONIELLO
United States Attorney

16

17 Dated: December 22, 2009


STEPHANIE M. HINDS
Assistant United States Attorney

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[PROPOSED] ORDER RE DISMISSAL

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Upon plaintiff's request and good cause appearing, the Court hereby dismisses the instant action.

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DATED: 12/23/09

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REQUEST FOR DISMISSAL
[C 06-4675 PJH]



EXHIBIT A

1 THOMAS P. O'BRIEN
United States Attorney
2 CHRISTINE C. EWELL
Assistant United States Attorney
3 Chief, Criminal Division
JOSEPH O. JOHNS (No. 144524)
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Chief, Environmental Crimes Section
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8 RONALD J. TENPAS
Assistant Attorney General
ELINOR COLBOURN
9 Senior Trial Attorney
United States Department of Justice
10 Environment and Natural Resources Division
Environmental Crimes Section
11 601 D. St., NW
Washington, DC 20004
12 Telephone: (202) 305-0321
Facsimile: (202) 305-0397

E-FILED 05-18-09
CC: USPO/PTS/USM

13 Attorneys for Plaintiff
14 United States of America

15 UNITED STATES DISTRICT COURT
16 FOR THE CENTRAL DISTRICT OF CALIFORNIA

17
18 UNITED STATES OF AMERICA,) CR No. 07-00449 (PSG) -Deft 6
Plaintiff,) [PROPOSED] PRELIMINARY ORDER FOR
19) FORFEITURE
v.)
20)
21 PETER X. LAM,) (GOVERNMENT'S MOTION FOR A
Defendant.) PRELIMINARY ORDER OF FORFEITURE
22) AND SUPPORTING MEMORANDUM OF
POINTS AND AUTHORITIES
23) CONCURRENTLY FILED)
24)
25)
26)
27)
28)

[PROPOSED] ORDER

1
2 This matter having come before the Court upon motion of the
3 United States of America for a Preliminary Order of Forfeiture;
4 and the Court having considered said motion and the bases
5 therefore as well as the opposition thereto; and good and
6 sufficient cause having been shown; the Court makes the following
7 findings and orders:

8 WHEREAS, on October 29, 2008, a jury found defendant Peter
9 X. Lam guilty of Counts One, Two, Three and Four of the Redacted
10 Indictment;

11 WHEREAS, on May 18, 2009, this Court, pursuant to Rule
12 32.2(b)(1) of the Federal Rules of Criminal Procedure, determined
13 that defendant Lam participated in the conspiracy alleged in
14 Count One, to cause merchandise to be introduced into the United
15 States in violation of 18 U.S.C. § 545, which property includes
16 the specific property identified in Attachment A hereto, that is
17 267,570 pounds of frozen fish fillets, as well as an additional
18 \$12,578,676 worth of such merchandise that was introduced into
19 the United States pursuant to the conspiracy during the time
20 defendant Lam was a participant in the conspiracy;

21 WHEREAS, the United States has filed a Motion for Entry of
22 Preliminary Order of Forfeiture which would consist of an order
23 of forfeiture of the specific 267,570 pounds of frozen fish
24 fillets identified in Attachment A hereto, and of a personal
25 money judgment in the amount of \$12,578,676 for defendant Lam;

26 WHEREAS, Rule 32.2(c)(1) provides that "no ancillary
27

1 proceeding is required to the extent that the forfeiture consists
2 of a money judgment”;

3 NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED
4 that defendant Lam shall forfeit to the United States the sum of
5 \$12,578,676.

6 IT IS FURTHER ORDERED that defendant Lam shall forfeit to
7 the United States the 267,570 pounds of frozen fish fillets
8 identified in Attachment A hereto, pursuant to Title 18, United
9 States Code, Section 545 and Rule 32.2(b) of the Federal Rules of
10 Criminal Procedure;

11 IT IS FURTHER ORDERED that the United States, through its
12 appropriate agency, having previously seized the forfeited
13 property, shall forthwith publish on www.forfeiture.gov, a
14 government website, for at least thirty days, notice of this
15 Order, notice of the government’s intent to dispose of the
16 property in such manner as the Attorney General may direct and
17 notice that any person, other than the defendant, having or
18 claiming a legal interest in the property must file a petition
19 with the Court and serve a copy on government counsel within
20 thirty (30) days of the final publication of notice or of receipt
21 of actual notice, whichever is earlier;

22 IT IS FURTHER ORDERED that the United States District Court
23 shall retain jurisdiction in the case for the purpose of
24 enforcing this Order;

25 IT IS FURTHER ORDERED that pursuant to Rule 32.2(b)(3), this
26 Order of Forfeiture shall become final as to defendant at the

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1 time of sentencing, and shall be made part of the sentence and
2 included in the judgment;

3 IT IS FURTHER ORDERED that the United States may, at any
4 time, move pursuant to Rule 32.2(e), and 21 U.S.C. § 853(p)(1)(B)
5 and (p)(2), and 28 U.S.C. § 2461(c), to amend this Order of
6 Forfeiture to substitute property having a value not to exceed
7 \$3,041,398.97 for defendant Lam to satisfy the money judgment in
8 whole or in part; and

9 IT IS FURTHER ORDERED that the Clerk of the Court shall
10 forward four certified copies of this Order to Senior Trial
11 Attorney Elinor Colbourn, U.S. Department of Justice, Environment
12 and Natural Resources Section, 601 D St., NW, Room 2132,
13 Washington, D.C. 20004.

14
15 SO ORDERED:

16 DATED this 18th day of ^{May}~~February~~, 2009.

17
18 PHILIP S. GUTIERREZ
19 HONORABLE PHILIP S. GUTIERREZ
20 UNITED STATES DISTRICT JUDGE

21 ATTEST:

22 CLERK OF THE COURT

23 BY: Irene Ramirez
24 Deputy Clerk
25
26
27
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EXHIBIT B

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Office of Law Enforcement

WAIVER OF CLAIM TO AND ABANDONMENT OF SEIZED ITEM

I, **Peter X. Lam**, do hereby waive all claim to and voluntarily abandon and forfeit, to the United States Department of Commerce, any title or interest I may have in the following item(s), to wit: 22 lots of frozen seafood product labeled as "Sole" numbered APRU500420, APRU500420A, APRU504796, APRU504796A, APRU5034273, APRU5034273A, CRLU7105935, CRLU7105935A, TRIU8452057, TRIU8452057A, APRU501618, APRU501618A, TRLU1938139, TRLU1938139A, APRU5008910, APRU5008910A, APRU5008910B, APLU6937507, APLU6937507A, APLU6937507B, CRLU5223923, CRLU5223923A, which item(s) were seized on December 27, 2005, at a freezer warehouse in the San Francisco, California area for an alleged violation of the following statute: *(check appropriate box)*

- Magnuson-Stevens Fishery Conservation and Management Act, 16 USC 1801-1882
- Atlantic Tunas Convention Act, 16 USC 971e
- Marine Mammal Protection Act, 16 USC 1361-1407
- Endangered Species Act, 16 USC 1531-1543
- Lacey Act Amendments of 1981, 16 USC 3371-3378

and implementing regulation at 50 CFR 300.160.

I make this waiver of claim and so forfeit and abandon the stated item(s) voluntarily and with full knowledge of my right to otherwise contest the alleged violation and any penalty, seizure, forfeiture or other sanction that might be sought by the United States. I also agree not to assert against the United States any claims or counterclaims whatsoever arising out of the seizure, detention and forfeiture of the seized item described above.

8-20-09
Date


Signature

PETER X. LAM
Name (Please Print)

Certified Mail No:

EXHIBIT C

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Office of Law Enforcement

WAIVER OF CLAIM TO AND ABANDONMENT OF SEIZED ITEM

I, **Arthur Yavelberg**, while not acknowledging any interest in, do hereby waive all claim to and voluntarily abandon and forfeit, to the United States Department of Commerce, all title and interest I may possess in the following item(s), to wit:

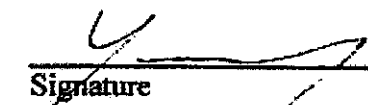
22 lots of frozen seafood product labeled as "Sole" numbered APRU500420, APRU500420A, APRU504796, APRU504796A, APRU5034273, APRU5034273A, CRLU7105935, CRLU7105935A, TRIU8452057, TRIU8452057A, APRU501618, APRU501618A, TRLU1938139, TRLU1938139A, APRU5008910, APRU5008910A, APRU5008910B, APLU6937507, APLU6937507A, APLU6937507B, CRLU5223923, CRLU5223923A, which item(s) were seized on December 27, 2005, at a freezer warehouse in the San Francisco, California area for violation of the following statute: *(check appropriate box)*

- Magnuson-Stevens Fishery Conservation and Management Act, 16 USC 1801-1882
- Atlantic Tunas Convention Act, 16 USC 971e
- Marine Mammal Protection Act, 16 USC 1361-1407
- Endangered Species Act, 16 USC 1531-1543
- Lacey Act Amendments of 1981, 16 USC 3371-3378

and implementing regulation at 50 CFR 300.160.

I make this waiver of claim and so forfeit and abandon the stated item(s) voluntarily and with full knowledge of any and all rights I may have. I also agree not to assert against the United States any claims or counterclaims whatsoever arising out of the seizure, detention and forfeiture of the seized item described above.

8/4/09
Date


Signature

ARTHUR YAVELBERG
Name (Please Print)

Certified Mail No:

EXHIBIT D



U.S. Department of Justice

United States Attorney
Northern District of California

11th Floor, Federal Building
450 Golden Gate Avenue, Box 36055
San Francisco, California 94102-3495

(415) 436-7200
FAX: (415) 436-7234

June 26, 2009

Leslie T. Krasny, Esq.
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Douglas J. Behr, Esq.
Keller and Heckman LLP
1001 G Street, N.W. Suite 500 West
Washington, DC 20036

RE: United States v. Approximately Three Hundred and Sixty Thousand Eight
Hundred and Four (360,804) Pounds of Fish/ C 06-04675 PJH

Dear Counsel:

Enclosed is the Preliminary Order of Forfeiture in criminal case again Peter Lam wherein the Court ordered forfeiture of the seized fish. The Order sets forth the procedures for third parties to pursue claims to the seized property. To the extent your clients do not seek to pursue claims against the fish, please let me know as soon as possible if you have any objections to the government destroying the fish as it continues to incur daily storage fees.

Thank you for your anticipated cooperation. Please let me know if you have any questions.

Very truly yours,

JOSEPH P. RUSSONIELLO
United States Attorney

STEPHANIE M. HINDS
Assistant United States Attorney

Enc.

1 THOMAS P. O'BRIEN
United States Attorney
2 CHRISTINE C. EWELL
Assistant United States Attorney
3 Chief, Criminal Division
JOSEPH O. JOHNS (No. 144524)
4 Assistant United States Attorney
Chief, Environmental Crimes Section
5 1300 U.S. Courthouse
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7 Email: joseph.johns@usdoj.gov

8 RONALD J. TENPAS
Assistant Attorney General
ELINOR COLBOURN
9 Senior Trial Attorney
United States Department of Justice
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Environmental Crimes Section
11 601 D. St., NW
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12 Telephone: (202) 305-0321
Facsimile: (202) 305-0397

E-FILED 05-18-09
CC: USPO/PTS/USM

13 Attorneys for Plaintiff
14 United States of America

15 UNITED STATES DISTRICT COURT
16 FOR THE CENTRAL DISTRICT OF CALIFORNIA

17
18 UNITED STATES OF AMERICA,) CR No. 07-00449 (PSG) -Deft 6
)
19 Plaintiff,) [PROPOSED] PRELIMINARY ORDER FOR
) FORFEITURE
20 v.)
)
21 PETER X. LAM,) (GOVERNMENT'S MOTION FOR A
) PRELIMINARY ORDER OF FORFEITURE
22 Defendant.) AND SUPPORTING MEMORANDUM OF
) POINTS AND AUTHORITIES
23) (CONCURRENTLY FILED)
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[PROPOSED] ORDER

1
2
3 This matter having come before the Court upon motion of the
4 United States of America for a Preliminary Order of Forfeiture;
5 and the Court having considered said motion and the bases
6 therefore as well as the opposition thereto; and good and
7 sufficient cause having been shown; the Court makes the following
8 findings and orders:

9 WHEREAS, on October 29, 2008, a jury found defendant Peter
10 X. Lam guilty of Counts One, Two, Three and Four of the Redacted
11 Indictment;

12 WHEREAS, on May 18, 2009, this Court, pursuant to Rule
13 32.2(b)(1) of the Federal Rules of Criminal Procedure, determined
14 that defendant Lam participated in the conspiracy alleged in
15 Count One, to cause merchandise to be introduced into the United
16 States in violation of 18 U.S.C. § 545, which property includes
17 the specific property identified in Attachment A hereto, that is
18 267,570 pounds of frozen fish fillets, as well as an additional
19 \$12,578,676 worth of such merchandise that was introduced into
20 the United States pursuant to the conspiracy during the time
21 defendant Lam was a participant in the conspiracy;

22 WHEREAS, the United States has filed a Motion for Entry of
23 Preliminary Order of Forfeiture which would consist of an order
24 of forfeiture of the specific 267,570 pounds of frozen fish
25 fillets identified in Attachment A hereto, and of a personal
26 money judgment in the amount of \$12,578,676 for defendant Lam;

27 WHEREAS, Rule 32.2(c)(1) provides that "no ancillary
28

1 proceeding is required to the extent that the forfeiture consists
2 of a money judgment”;

3 NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED
4 that defendant Lam shall forfeit to the United States the sum of
5 \$12,578,676.

6 IT IS FURTHER ORDERED that defendant Lam shall forfeit to
7 the United States the 267,570 pounds of frozen fish fillets
8 identified in Attachment A hereto, pursuant to Title 18, United
9 States Code, Section 545 and Rule 32.2(b) of the Federal Rules of
10 Criminal Procedure;

11 IT IS FURTHER ORDERED that the United States, through its
12 appropriate agency, having previously seized the forfeited
13 property, shall forthwith publish on www.forfeiture.gov, a
14 government website, for at least thirty days, notice of this
15 Order, notice of the government’s intent to dispose of the
16 property in such manner as the Attorney General may direct and
17 notice that any person, other than the defendant, having or
18 claiming a legal interest in the property must file a petition
19 with the Court and serve a copy on government counsel within
20 thirty (30) days of the final publication of notice or of receipt
21 of actual notice, whichever is earlier;

22 IT IS FURTHER ORDERED that the United States District Court
23 shall retain jurisdiction in the case for the purpose of
24 enforcing this Order;

25 IT IS FURTHER ORDERED that pursuant to Rule 32.2(b)(3), this
26 Order of Forfeiture shall become final as to defendant at the
27

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1 time of sentencing, and shall be made part of the sentence and
2 included in the judgment;

3 IT IS FURTHER ORDERED that the United States may, at any
4 time, move pursuant to Rule 32.2(e), and 21 U.S.C. § 853(p)(1)(B)
5 and (p)(2), and 28 U.S.C. § 2461(c), to amend this Order of
6 Forfeiture to substitute property having a value not to exceed
7 \$3,041,398.97 for defendant Lam to satisfy the money judgment in
8 whole or in part; and

9 IT IS FURTHER ORDERED that the Clerk of the Court shall
10 forward four certified copies of this Order to Senior Trial
11 Attorney Elinor Colbourn, U.S. Department of Justice, Environment
12 and Natural Resources Section, 601 D St., NW, Room 2132,
13 Washington, D.C. 20004.

14
15 SO ORDERED:

16 DATED this 18th day of ^{May}~~February~~, 2009.

17
18 PHILIP S. GUTIERREZ
19 HONORABLE PHILIP S. GUTIERREZ
UNITED STATES DISTRICT JUDGE

20 ATTEST:

21 CLERK OF THE COURT
22

23 BY: Irene Ramirez
24 Deputy Clerk
25
26
27
28

EXHIBIT E

1 GEORGE S. CARDONA
Acting United States Attorney
2 CHRISTINE C. EWELL
Assistant United States Attorney
3 Chief, Criminal Division
JOSEPH O. JOHNS (Cal. Bar No. 144524)
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E-FILED 12-07-09
LINK TO DOC. # 502

CC: PTS/USPO/FISCAL

8 Attorneys for Plaintiff
9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12

13 UNITED STATES OF AMERICA,)
14 Plaintiff,)
15 v.)
16 PETER X. LAM,)
17 Defendant.)
18

Case No. CR 07-00449-6 PSG
[PROPOSED] FINAL ORDER OF
FORFEITURE

19 On May 18, 2009, the Court entered a Preliminary Order of Forfeiture forfeiting the
20 following property, 267,570 pounds of frozen fish fillets, and a money judgment of \$12,578,676,
21 pursuant to Title 21, United States Code, Sections 853(p)(1)(B) and (p)(2); and Title 28, United
22 States Code, Section 2461(c).

23 The United States represents that it has complied with the publication and notice
24 requirements of the Preliminary Order and that no petitions have been filed.

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1 THEREFORE, it is ordered that the above-described property shall be forfeited to the United
2 States, pursuant to Title 21, United States Code, Sections 853(p)(1)(B) and (p)(2); and Title 28,
3 United States Code, Section 2461(c). All right, title, and interest in said property is vested in the
4 United States of America. The appropriate federal agency shall dispose of the forfeited property
5 according to law.

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Dated: 12/04/09

PHILIP S. GUTIERREZ
HONORABLE PHILIP S. GUTIERREZ
United States District Judge