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7 AUDREY DONALDSON

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SANTA CLARA
11 UNLIMITED CIVIL JURISDICTION
12

13 AUDREY DONALDSON,

14 Plaintiff,

15 v.

16 UNEMPLOYED PHILOSOPHERS, INC.;
17 POTPOURRI GROUP, INC.; and DOES 1-
18 150, inclusive,

18 Defendants.

Case No. _____

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Audrey Donaldson
4 (“Donaldson”) and defendant Unemployed Philosophers, Inc. (“Unemployed Philosophers”), with
5 Donaldson and Unemployed Philosophers each referred to individually as a “Party” and collectively
6 as the “Parties.”

7 **1.2 Plaintiff**

8 Donaldson is a resident of the State of California who seeks to promote awareness of
9 exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful
10 substances contained in consumer and commercial products.

11 **1.3 Defendant**

12 Unemployed Philosophers employs ten or more persons and is a person in the course of
13 doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
14 California Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Donaldson alleges that Unemployed Philosophers manufactures, sells, and distributes for
17 sale in California, shot glasses with exterior designs containing lead. Lead is listed pursuant to
18 Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Donaldson
19 alleges that Unemployed Philosophers failed to provide the health hazard warning required by
20 Proposition 65 for exposures to lead.

21 **1.5 Product Description**

22 The products covered by this Consent Judgment are specifically defined as shot
23 glasses with exterior designs, including but not limited to, the *Mug Shots 6 Arresting Shotglasses*,
24 UPC: 8 14229 00690 9, manufactured, sold, or distributed for sale in California by Unemployed
25 Philosophers (hereinafter referred to as “Products”).

26 **1.6 Notice of Violation**

27 On March 26, 2021, Donaldson served Unemployed Philosophers, Potpourri Group, Inc.
28 and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”),

1 alleging that Unemployed Philosophers violated Proposition 65 when it failed to warn its customers
2 and consumers in California of the health hazards associated with exposures to lead from the
3 Products. No public enforcer has commenced and is diligently prosecuting the allegations set forth
4 in the Notice.

5 **1.7 Complaint**

6 On November 5, 2021, Donaldson commenced the instant action, naming Unemployed
7 Philosophers as one of the defendants for the alleged violations of Proposition 65 that are the
8 subject of the Notice.

9 **1.8 No Admission**

10 Unemployed Philosophers denies the material, factual, and legal allegations contained in the
11 Notice and maintains that all of the products that it has sold and distributed in California, including
12 the Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment
13 shall be construed as an admission by Unemployed Philosophers of any fact, finding, conclusion,
14 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
15 construed as an admission by Unemployed Philosophers of any fact, finding, conclusion, issue of
16 law, or violation of law, such being specifically denied by Unemployed Philosophers. This Section
17 shall not, however, diminish or otherwise affect Unemployed Philosophers' obligations,
18 responsibilities, and duties under this Consent Judgment.

19 **1.9 Jurisdiction**

20 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
21 jurisdiction over Unemployed Philosophers as to the allegations contained in the Complaint, that
22 venue is proper in the County of Santa Clara, and that the Court has jurisdiction to enter and
23 enforce the provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil
24 Procedure section 664.6.

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that
27 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5,
28 including any unopposed Tentative Ruling approving this Consent Judgment.

1 **2. INJUNCTIVE RELIEF: REFORMULATION/WARNINGS**

2 **2.1 Reformulation Standards**

3 “Reformulated Products” are defined as those Products that: (a) contain no more than 90
4 parts per million (“ppm”) lead in any decoration, colored artwork, designs and/or marking on the
5 surface of the Products when analyzed pursuant to U.S. Environmental Protection Agency testing
6 methodologies 3050B or equivalent methodologies utilized by federal or state agencies for the
7 purpose of determining lead content in a solid substance; (b) yield a result of non-detect (defined as
8 no more than 25 ppm by weight of lead) for any decorations or design located in the upper 20
9 millimeters of a Product, i.e., the “Lip-and-Rim” area, when analyzed pursuant to EPA testing
10 methodologies 3050B and 6010B, or equivalent methodologies used by state and federal agencies
11 to determine lead content on a solid substance; *and* (c) yield no more than 1.0 microgram of lead on
12 any surface sampled and analyzed pursuant to the NIOSH 9100 testing protocol.

13 If the decoration/design is tested after it is affixed to the Product, the percentage of the lead
14 by weight must relate only to the decorating materials and must not include any quantity
15 attributable to non-decorating material (e.g., glass substrate), except for the NIOSH 9100 testing
16 protocol.

17 **2.2 Reformulation Commitment**

18 No later than sixty (60) days after the Effective Date, Unemployed Philosophers shall not
19 manufacture, import, distribute, sell and/or offer the Products for sale in the State of California
20 unless they are Reformulated Products pursuant to Section 2.1 or contain appropriate health-hazard
21 warnings pursuant to Section 2.3.

22 **2.3 Product Warnings**

23 No later than sixty (60) days after the Effective Date, all Products Unemployed Philosophers
24 distributes for sale, sells or offers for sale in California, that do not qualify as Reformulated
25 Products per Section 2.2, shall bear a clear and reasonable warning pursuant to this Section. The
26 warning will be prominently placed with such conspicuousness when compared with other words,
27 statements, designs or devices as to render it likely to be read and understood by an ordinary
28 individual under customary conditions of use. For purposes of this Settlement Agreement, a clear

1 and reasonable warning for the Products shall consist of a warning affixed directly to the product or
2 product packaging, label, or tag, and contain one of the following statements:

3 **⚠ WARNING:** [Cancer and]Reproductive Harm- www.P65Warnings.ca.gov

4 OR

5 **⚠ WARNING:** This product can expose you to chemicals including lead, which are
6 known to the State of California to cause [cancer and] birth defects and other
reproductive harm. For more information go to www.P65Warnings.ca.gov.

7 Unemployed Philosophers shall include the bracketed text in the warnings if it knows or has reason
8 to know that a warning for a listed carcinogen is required. No Proposition 65 warning shall be
9 required as to any Products that are already in the stream of commerce as of the date that is sixty
10 (60) days after the Effective Date, and all such Products are hereby deemed to be exempt from the
11 requirements of this Section 2 and shall not be deemed to violate Proposition 65 as to alleged
12 exposures to lead, as they have been included in the calculation of civil penalties required pursuant
13 to Section 3.1.

14 **3. MONETARY SETTLEMENT TERMS**

15 **3.1 Civil Penalty Payment**

16 Pursuant to Health and Safety Code section 25249.7(b)(2), and as consideration for the
17 releases contained in Sections 4.1 and 4.2 of this Consent Judgment, Unemployed Philosophers
18 agrees to pay \$2,800 in civil penalties within two (2) business days of the Effective Date. The
19 penalty payment will be allocated in accordance with California Health and Safety Code section
20 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of
21 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty
22 amount paid to Donaldson and delivered to the address in Section 3.3 herein. Unemployed
23 Philosophers will provide its payment in two checks as follows: (1) “OEHHA” in the amount of
24 \$2,100; and (2) “Audrey Donaldson” in the amount of \$700.

25 **3.2 Attorneys’ Fees and Costs**

26 The Parties acknowledge that Donaldson and her counsel offered to resolve this dispute
27 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
28 the issue to be resolved after the material terms of the agreement had been settled. Shortly after the

1 other settlement terms had been reached, Unemployed Philosophers expressed a desire to resolve
2 Donaldson’s fees and costs. The Parties reached an accord on the compensation due to Donaldson
3 and her counsel under general contract principles and the private attorney general doctrine codified
4 at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal
5 principles, within two (2) business days of the Effective Date, Unemployed Philosophers agrees to
6 pay \$22,400, in the form of a check made payable to “Voorhees & Bailey, LLP,” for all fees and
7 costs incurred investigating, bringing this matter to the attention of Unemployed Philosophers’
8 management, and negotiating a settlement in the public interest, but exclusive of fees and costs on
9 appeal, if any.

10 **3.3 Payment Address**

11 All payments under this Consent Judgment shall be delivered to the following address:

12 Voorhees & Bailey, LLP
13 990 Amarillo Avenue
14 Palo Alto, CA 94303

14 **4. CLAIMS COVERED AND RELEASED**

15 **4.1 Donaldson’s Release of Proposition 65 Claims**

16 This Consent Judgment is a full, final, and binding resolution of all claims relating to
17 alleged exposures to lead in the Products that were or could have been asserted in the Notice and
18 Complaint against Unemployed Philosophers, Releasees and Downstream Releasees as those terms
19 are defined herein. Donaldson, acting on her own behalf and in the public interest, releases
20 Unemployed Philosophers and its parents, subsidiaries, affiliated entities under common ownership,
21 directors, officers, employees, and attorneys (“Releasees”) and each entity to whom Unemployed
22 Philosophers directly or indirectly distributes or sells the Products including, but not limited to, its
23 downstream distributors, wholesalers, customers, retailers (including but not limited to Potpourri),
24 franchisers, marketplace hosts, cooperative members, licensors and licensees, (“Downstream
25 Releasees”) for any violations arising under Proposition 65 for alleged unwarned exposures to lead
26 from the Products manufactured, imported, distributed or sold by Unemployed Philosophers prior to
27 sixty (60) days after the Effective Date, as set forth in the Notice and Complaint. The Parties
28 further understand and agree that this Section 4.1 release shall not extend upstream to any entities

1 that manufactured the Products or any component parts thereof, or any distributors or suppliers who
2 sold the Products or any component parts thereof to Unemployed Philosophers. Compliance with
3 Section 2 of this Consent Judgment shall be deemed compliance with Proposition 65 as to alleged
4 exposures to lead from the Products.

5 **4.2 Donaldson's Individual Release of Claims**

6 Donaldson, in her individual capacity only and *not* in her representative capacity, also
7 provides a release to Unemployed Philosophers, Releasees, and Downstream Releasees which shall
8 be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
9 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of
10 Donaldson of any nature, character or kind, whether known or unknown, suspected or unsuspected,
11 arising out of alleged or actual exposures to lead in Products manufactured, imported, distributed or
12 sold by Unemployed Philosophers before sixty (60) days after the Effective Date. The Parties
13 further understand and agree that this Section 4.2 release shall not extend upstream to any entities
14 that manufactured the Products, or any component parts thereof, or any upstream distributors or
15 suppliers who sold the Products, or any component parts thereof to Unemployed Philosophers.
16 Nothing in this Section affects Donaldson's right to commence or prosecute an action under
17 Proposition 65 against a Releasee that does not involve Unemployed Philosophers' Products.

18 **4.3 Unemployed Philosophers' Release of Donaldson**

19 Unemployed Philosophers, on its own behalf and on behalf of its past and current agents,
20 representatives, attorneys, successors and/or assignees, hereby waive any and all claims against
21 Donaldson and her attorneys and other representatives, for any and all actions taken or statements
22 made (or those that could have been taken or made) by Donaldson and her attorneys and other
23 representatives, whether in the course of investigating claims, seeking to enforce Proposition 65
24 against it in this matter, or with respect to the Products.

25 **4.4 California Civil Code Section 1542**

26 It is possible that other claims not known to the Parties arising out of the facts alleged in the
27 Notice and Complaint relating to the Products will develop or be discovered. Donaldson, on behalf
28 of herself only, on one hand, and Unemployed Philosophers, on the other hand, acknowledge that this

1 Consent Judgment is expressly intended to cover and include all such claims up through sixty (60)
2 days after the Effective Date, including all rights of action therefor. The Parties acknowledge that the
3 claims released in Sections 4.1 and 4.2 above may include unknown claims, and nevertheless waive
4 California Civil Code section 1542 as to any such unknown claims. California Civil Code section
5 1542 reads as follows:

6 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
7 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
8 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
9 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
10 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
11 PARTY.

12 Donaldson and Unemployed Philosophers each acknowledge and understand the significance and
13 consequences of this specific waiver of California Civil Code section 1542.

14 **5. COURT APPROVAL**

15 This Consent Judgment is not effective until it is approved and entered by the Court and
16 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
17 after it has been fully executed by all Parties. Donaldson and Unemployed Philosophers agree to
18 support the entry of this agreement as a judgment, and to obtain the Court's approval of their
19 settlement in a timely manner. The Parties acknowledge that, pursuant to California Health and
20 Safety Code section 25249.7(f), a noticed motion is required for judicial approval of this Consent
21 Judgment, which motion Donaldson shall draft and file and Unemployed Philosophers shall
22 support, appearing at the hearing if so requested. If any third-party objection to the motion is filed,
23 Donaldson and Unemployed Philosophers agree to work together to file a reply and appear at any
24 hearing. This provision is a material component of the Consent Judgment and shall be treated as
25 such in the event of a breach.

26 **6. SEVERABILITY**

27 If, subsequent to the execution of this Consent Judgment, any provision of this Consent
28 Judgment is deemed by a court to be unenforceable, the validity of the remaining provisions shall
not be adversely affected.

1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of California
3 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
4 rendered inapplicable by reason of law generally, or as to the Products, then Unemployed
5 Philosophers may provide written notice to Donaldson of any asserted change in the law and shall
6 have no further injunctive obligations pursuant to this Consent Judgment with respect to, and to the
7 extent that, the Products are so affected. If the Office of Environmental Health Hazard Assessment
8 (“OEHHA”) amends any of the Proposition 65 warning regulations (beginning at Title 27,
9 California Code of Regulations, Section 25600), Unemployed Philosophers may, at its sole
10 discretion, implement the applicable provisions of such amended regulations for the Products
11 without being deemed in violation of this Consent Judgment.

12 **8. NOTICE**

13 Unless specified herein, all correspondence and notice required to be provided pursuant to
14 this Consent Judgment shall be in writing and sent by electronic mail and: (a) personal delivery; (b)
15 first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight
16 courier on any Party by the other at the following addresses:

17 For Unemployed Philosophers:

For Donaldson:

18 Ann G. Grimaldi
19 Grimaldi Law Offices
20 75 Broadway St., Suite 202
San Francisco, CA 94111
ann.grimaldi@grimaldilawoffices.com

Voorhees & Bailey, LLP
Proposition 65 Coordinator
990 Amarillo Avenue
Palo Alto, CA 94303
troy@voorheesbailey.com

21 Stephan Shaw
22 Unemployed Philosophers, Inc.
23 105 Atlantic Ave.
Brooklyn NY 11201
stephan@philosophersguild.com

24 Any Party may, from time to time, specify in writing to the other a change of address to which all
25 notices and other communications shall be sent.

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1 **9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

2 This Consent Judgment may be executed in counterparts and by facsimile or portable
3 document format (PDF) signature, each of which shall be deemed an original, and all of which,
4 when taken together, shall constitute one and the same document.

5 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

6 Donaldson and her attorneys agree to comply with the reporting form requirements
7 referenced in California Health and Safety Code section 25249.7(f).

8 **11. MODIFICATION**

9 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
10 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
11 any party and the entry of a modified Consent Judgment by the Court thereon.

12 **12. AUTHORIZATION**

13 The undersigned are authorized to execute this Consent Judgment on behalf of their
14 respective Parties and have read, understand, and agreed to all of the terms and conditions of this
15 Consent Judgment.

16 **AGREED TO:**

17
18 Date: _____

19
20 By: _____

21 AUDREY DONALDSON

AGREED TO:

12/13/2021
Date: _____

By: Stephan Shaw _____

Stephan Shaw _____, President/CEO

UNEMPLOYED PHILOSOPHERS

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AGREED TO:

AGREED TO:

Date: Nov 29, 2021

Date: _____

By: 
AUDREY DONALDSON

By: _____
_____, President/CEO
UNEMPLOYED PHILOSOPHERS