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8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO

11 PRECILA BALABBO,

12 Plaintiff,

13 v.

14 2428392 INC.,

15 Defendant.

Case No.: CGC-23-608908

**CONSENT JUDGMENT**

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: December 1, 2023

Hearing Time: 9:30 AM

Complaint Filed: September 7, 2023

1     **1.     INTRODUCTION**

2             **1.1     The Parties.** This Consent Judgment is entered into by and between Precila Balabbo  
3 acting on behalf of the public interest (hereinafter “Balabbo”) and 2428392 Inc. (“FYE” or  
4 “Defendant”) with Balabbo and Defendant collectively referred to as the “Parties” and each of them  
5 as a “Party.” Balabbo is an individual residing in California that seeks to promote awareness of  
6 exposures to toxic chemicals and improve human health by reducing or eliminating hazardous  
7 substances contained in consumer products. FYE is alleged to be a person in the course of doing  
8 business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

9             **1.2     Allegations and Representations.** Balabbo alleges that Defendant has exposed  
10 individuals to lead from its sales of (a) *Riot Society*® Panda Rose Drip mugs, UPC #  
11 810077990810, and (b) *Riot Society*® sake sets, UPC # 810077990827, without providing a clear  
12 and reasonable exposure warning pursuant to Proposition 65. Lead is listed pursuant to Proposition  
13 65 as a chemical known to the State of California to cause cancer and birth defects or other  
14 reproductive harm.

15             **1.3     Notice of Violation/Complaint.** On or about September 20, 2022, Balabbo served  
16 L.A. TShirt & Print, Inc., The T-Shirt Screenery, FYE and various public enforcement agencies  
17 with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code  
18 §25249.7(d) (the “Notice”), alleging that Defendant violated Proposition 65 for failing to warn  
19 consumers and customers that use of (a) *Riot Society*® Panda Rose Drip mugs, UPC #  
20 810077990810, and (b) *Riot Society*® sake sets, UPC # 810077990827, exposes users in California  
21 to lead. No public enforcer has brought and is diligently prosecuting the claims alleged in the  
22 Notice. On September 7, 2023, Balabbo filed a complaint (the “Complaint”).

23             **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
24 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that  
25 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,  
26 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution  
27 of all claims which were or could have been raised in the Complaint based on the facts alleged  
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1 therein and in the Notice.

2 1.5 Defendant denies the material allegations contained in Balabbo's Notice and  
3 Complaint and maintains that it has not violated Proposition 65. Further, promptly after receipt of  
4 the Notice, FYE removed all such Products from its retail stores. Nothing in this Consent Judgment  
5 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of  
6 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission  
7 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being  
8 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the  
9 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

10 **2. DEFINITIONS**

11 2.1 **Covered Products.** The term "Covered Products" means (a) *Riot Society*® Panda  
12 Rose Drip mugs, UPC # 810077990810, and (b) *Riot Society*® sake sets, UPC # 810077990827,  
13 that are manufactured, distributed, shipped into California and offered for sale in California by  
14 FYE.

15 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is  
16 entered as a Judgment of the Court.

17 **3. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**

18 3.1 **Reformulation of Products.** As of the Effective Date, and continuing thereafter,  
19 Products that FYE directly manufactures, imports, distributes, sells, or offers for sale in California  
20 shall either be: (a) reformulated Products pursuant to § 3.2, below; or (b) labeled with a clear and  
21 reasonable exposure warning pursuant to §§ 3.3 - 3.4, below. For purposes of this Settlement  
22 Agreement, a "Reformulated Product" is a Product that is in compliance with the standard set forth  
23 in § 3.2, below. The warning requirement set forth in §§ 3.3 - 3.4 shall not apply to any  
24 Reformulated Product.

25 3.2 **Reformulation Standard.** "Reformulated Products" shall mean Products that  
26 produce a wipe test result no higher than 1 microgram ( $\mu\text{g}$ ) of lead when analyzed pursuant to  
27 NIOSH method no. 9100.

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1           **3.3 Clear and Reasonable Warning.** As of the Effective Date, and continuing  
2 thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3 and 3.4 must be  
3 provided for all Products that FYE manufacturers, imports, distributes, sells, or offers for sale in  
4 California that is not a Reformulated Product. There shall be no obligation for FYE to provide an  
5 exposure warning for Products that entered the stream of commerce prior to the Effective Date. The  
6 warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b),  
7 respectively:

8           (a)     **Warning.** The “Warning” shall consist of the statement:

9           ⚠ **WARNING:** This product can expose you to chemicals including lead, which  
10 is known to the State of California to cause cancer and birth defects or other  
11 reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

12           (b)     **Alternative Warning:** FYE may, but is not required to, use the alternative  
13 short-form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

14           ⚠ **WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

15           **3.4 A Warning or Alternative Warning** provided pursuant to § 3.3 must print the word  
16 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to  
17 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral  
18 triangle with a black outline, except that if the sign or label for the Products does not use the color  
19 yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the  
20 height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed to or  
21 printed on the Products’ packaging or labeling, or on a placard, shelf tag, sign or electronic device  
22 or automatic process, provided that the **Warning** or **Alternative Warning** is displayed with such  
23 conspicuousness, as compared with other words, statements, or designs as to render it likely to be  
24 read and understood by an ordinary individual under customary conditions of purchase or use. The  
25 **Warning** or **Alternative Warning** may be contained in the same section of the packaging, labeling,  
26 or instruction booklet that states other safety warnings, if any, concerning the use of the Product  
and shall be at least the same size as those other safety warnings.

27           In addition to affixing the **Warning** or **Alternative Warning** to the Product’s packaging or  
28 labeling, the **Warning** or **Alternative Warning** shall be posted on websites where FYE offers

1 Products for sale to consumers in California. The requirements of this Section shall be satisfied if  
2 the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word  
3 “**WARNING**,” appears on the product display page, on the same page as the price for the covered  
4 Product, or on one or more web pages displayed to the purchaser prior to completing the purchase.  
5 Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral  
6 triangle may appear adjacent to or immediately following the display, description, price, or  
7 checkout listing of the Covered Product, if the Warning or Alternative Warning appears elsewhere  
8 on the same web page in a manner that clearly associates it with the product(s) to which the Warning  
9 or Alternative Warning applies. If FYE has actual knowledge third-party internet sellers it has  
10 agreements concerning the Covered Products with are offering Covered Products for sale in  
11 California, FYE shall provide such sellers with written notice in accordance with Title 27,  
12 California Code of Regulations, § 25600.2. Third-party internet sellers of the Product that have  
13 been provided with written notice in accordance with Title 27, California Code of Regulations,  
14 Section 25600.2 are not released in Section 5 of this Agreement if they fail to meet the warning  
15 requirements of this Section.

16 **3.5 Compliance with Warning Regulations.** The Parties agree that FYE shall be  
17 deemed to be in compliance with this Settlement Agreement by either adhering to § 3 of this  
18 Settlement Agreement or by complying with warning requirements adopted by the State of  
19 California’s Office of Environmental Health Hazard Assessment (“OEHHA”) applicable to the  
20 Product and the exposure at issue after the Effective Date.

#### 21 **4. MONETARY TERMS**

22 **4.1 Civil Penalty.** FYE shall pay \$1,000.00 as a Civil Penalty pursuant to Health and  
23 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety  
24 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil  
25 Penalty remitted to Balabbo, as provided by California Health & Safety Code § 25249.12(d).

26 **4.1.1** Within twenty (20) days of the Effective Date, FYE shall issue two  
27 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$750.00; and to  
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1 (b) "Brodsky Smith in Trust for Balabbo" in the amount of \$250.00. Payment owed to Balabbo  
2 pursuant to this Section shall be delivered to the following payment address:

3 Evan J. Smith, Esquire  
4 Brodsky Smith  
5 Two Bala Plaza, Suite 805  
6 Bala Cynwyd, PA 19004

7 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly  
8 to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

9 For United States Postal Service Delivery:

10 Mike Gyurics  
11 Fiscal Operations Branch Chief  
12 Office of Environmental Health Hazard Assessment  
13 P.O. Box 4010  
14 Sacramento, CA 95812-4010

15 For Non-United States Postal Service Delivery:

16 Mike Gyurics  
17 Fiscal Operations Branch Chief  
18 Office of Environmental Health Hazard Assessment  
19 1001 I Street  
20 Sacramento, CA 95814

21 A copy of the check payable to OEHHA shall be mailed to Brodsky Smith at the address set forth  
22 above as proof of payment to OEHHA.

23 4.2 **Attorneys' Fees.** Within twenty (20) days of the Effective Date, FYE shall pay  
24 \$16,500.00 to Brodsky Smith as complete reimbursement for Balabbo's attorneys' fees and costs  
25 incurred as a result of investigating, bringing this matter to the attention of FYE, litigating and  
26 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code  
27 of Civil Procedure § 1021.5.

28 **5. RELEASE OF ALL CLAIMS**

5.1 This Consent Judgment is a full, final, and binding resolution between Balabbo  
acting on her own behalf, and on behalf of the public interest, and FYE, and its parents,  
shareholders, members, directors, officers, managers, employees, representatives, agents,  
attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their  
predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they

1 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but  
2 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees  
3 retailers, including but not limited to, FYE, and its parents, subsidiaries, and affiliates, franchisees,  
4 and cooperative members (“Downstream Releasees”), of all claims for violations of Proposition 65  
5 based on exposure to lead from use of the Covered Products manufactured, distributed, or sold by  
6 FYE prior to the Effective Date as set forth in the Notice. It is the Parties’ intention that this Consent  
7 Judgment shall have preclusive effect such that no other Complaints by private enforcers, whether  
8 purporting to act in his, her, or its interests or the public interest shall be permitted to pursue and  
9 take any Complaint with respect to any violation of Proposition 65 based on exposure to lead from  
10 use of the Covered Products that was alleged in the Complaint, or that could have been brought  
11 pursuant to the Notice against FYE and the Downstream Releasees (“Proposition 65 Claims”).  
12 FYE’s compliance with the terms of this Consent Judgment constitutes compliance with  
13 Proposition 65 by FYE with regard to exposure to lead from use of the Covered Products.

14           5.2 In addition to the foregoing, Balabbo, on behalf of herself, her past and current  
15 agents, representatives, attorneys, and successors and assignees, and *not* in her representative  
16 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
17 legal Complaint and releases FYE, Defendant Releasees, and Downstream Releasees from any and  
18 all manner of Complaints, causes of Complaint, claims, demands, rights, suits, obligations, debts,  
19 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and  
20 attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,  
21 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising  
22 from Covered Products manufactured, distributed, or sold by FYE, Defendant Releasees or  
23 Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph,  
24 Balabbo hereby specifically waives any and all rights and benefits which she now has, or in the  
25 future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which  
26 provides as follows:

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

7 5.3 FYE waives any and all claims against Balabbo, her attorneys and other  
8 representatives, for any and all Complaints taken, or statements made (or those that could have  
9 been taken or made) by Balabbo and her attorneys and other representatives, whether in the course  
10 of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
11 and with respect to Covered Products.

12 **6. INTEGRATION**

13 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and  
14 any and all prior negotiations and understandings related hereto shall be deemed to have been  
15 merged within it. No representations or terms of agreement other than those contained herein exist  
16 or have been made by any Party with respect to the other Party or the subject matter hereof.

17 **7. GOVERNING LAW**

18 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
19 California and apply within the State of California. In the event that Proposition 65 is repealed or  
20 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then  
21 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and  
22 to the extent that, Covered Products are so affected.

23 **8. NOTICES**

24 8.1 Unless specified herein, all correspondence and notices required to be provided  
25 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-  
26 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party  
27 by the other party at the following addresses:  
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1 For Defendant:

2 Andrew Cummings  
3 Holland & Knight LLP  
4 4675 MacArthur Court, Suite 900  
5 Newport Beach, CA 92660

6 And

7 For Balabbo:

8 Evan Smith  
9 Brodsky Smith  
10 9595 Wilshire Blvd., Ste. 900  
11 Beverly Hills, CA 90212

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

14 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

15 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of  
16 which shall be deemed an original, and all of which, when taken together, shall constitute one and  
17 the same document.

18 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**  
19 **APPROVAL**

20 10.1 Balabbo agrees to comply with the requirements set forth in California Health &  
21 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.  
22 Defendant agrees it shall support approval of such Motion.

23 10.2 This Consent Judgment shall not be effective until it is approved and entered by the  
24 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the  
25 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30  
26 days, the case shall proceed on its normal course.

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1           10.3 If the Court approves this Consent Judgment and is reversed or vacated by an  
2 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent  
3 Judgment. If the Parties do not jointly agree on a course of Complaint to take, the case shall proceed  
4 on its normal course on the trial court's calendar.

5 **11. MODIFICATION**

6           11.1 This Consent Judgment may be modified only by further stipulation of the Parties  
7 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

8 **12. ATTORNEY'S FEES**

9           12.1 A Party who unsuccessfully brings or contests an Complaint arising out of this  
10 Consent Judgment shall be required to pay the prevailing party's reasonable attorney's fees and  
11 costs.

12           12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions  
13 pursuant to law.

14 **13. RETENTION OF JURISDICTION**

15           13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
16 Consent Judgment.

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**14. AUTHORIZATION**

14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this document and certify that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.

**AGREED TO:**

**AGREED TO:**

Date: \_\_\_\_\_

Date: 9/18/23

By: \_\_\_\_\_  
PRECILA BALABBO

By: \_\_\_\_\_  
2428392 INC.

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court

1 **14. AUTHORIZATION**

2 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their  
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this  
4 document and certify that he or she is fully authorized by the Party he or she represents to execute  
5 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as  
6 explicitly provided herein each Party is to bear its own fees and costs.

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**AGREED TO:**

**AGREED TO:**

Date: 10/13/2023

Date: \_\_\_\_\_

By:   
PRECILA BALABBO

By: \_\_\_\_\_  
2428392 INC.

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court