STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCIAL REGULATION

In the Matter of: EMILY L. PHILLIPS, RANDOLPH "STUART" PHILLIPS, EUGENE ARTISAN FOODS, LLC D/B/A RED WAGON CREAMERY, AND RED WAGON FOODS, INC., Respondents.	Case No. S-19-0002 FINAL ORDER TO CEASE AND DESIST; FINAL ORDER ASSESSING CIVIL PENALTIES; AND FINAL ORDER DENYING USE OF EXEMPTIONS, ENTERED BY DEFAULT AS TO EUGENE ARTISAN FOODS, LLC D/B/A RED WAGON CREAMERY, AND RED WAGON FOODS, INC. ONLY

On August 1, 2019, the Director of the Department of Consumer and Business Services for the State of Oregon ("Director"), by and through the Division of Financial Regulation ("Division"), properly served Orders to Cease and Desist, Proposed Order Assessing Civil Penalties, Proposed Order Denying Use of Exemptions, and Notice of Right to Hearing ("the Notice Order") on Emily L. Phillips, Randolph "Stuart" Phillips, Eugene Artisan Foods, LLC d/b/a Red Wagon Creamery and Red Wagon Foods, Inc. (collectively, "Respondents").

The Notice Order offered Respondents an opportunity for a hearing, if requested within 20 days from the service of the Notice Order. The Notice Order designated the relevant portions of the Director's file on this matter, including all materials submitted by a party, as the record for purposes of default. The Notice further informed Respondents that if a hearing was not conducted because a respondent did not timely request a hearing or otherwise defaulted, then the designated portion of the Director's file and all materials submitted by a party in this case would automatically become part of the contested case record for the purpose of proving a prima facie case.

The Director did not receive a hearing request from Eugene Artisan Foods, LLC

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d/b/a Red Wagon Creamery and Red Wagon Foods, Inc. and did not conduct a hearing.

NOW THEREFORE, after considering the relevant portions of the Division's file relating to this matter, the Director enters the following Final Order, entered by default, as to Eugene Artisan Foods, LLC d/b/a Red Wagon Creamery and Red Wagon Foods, Inc. only.

FINDINGS OF FACT

The Director FINDS that:

Section I: Respondents

1. Eugene Artisan Foods, LLC ("EAF") was an Oregon limited liability company formed on October 4, 2010. The principal place of business of EAF was in Eugene, Oregon.

2. Red Wagon Creamery was registered with the Oregon Secretary of State, Corporation Division as an assumed business name of EAF from February 3, 2011, to February 4, 2017.

3. In early 2015, EAF converted from an Oregon limited liability company to an Oregon corporation, Red Wagon Foods, Inc. ("RWF"), according to documents filed with the Oregon Secretary of State, Corporation Division on February 6, 2015.

4. The primary business purpose of EAF and RWF was ice cream production and sales.

5. Emily L. Phillips ("Emily Phillips") and Randolph "Stuart" Phillips ("Stuart Phillips") were co-owners of EAF and RWF.

6. Emily Phillips was a managing member of EAF, and she was the corporate president and managing director of RWF.

7. Stuart Phillips was the organizer and a managing member of EAF; the authorized representative of RWC; and the registered agent, corporate secretary, and

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director of sales and marketing of RWF.

8. At no time has Emily Phillips or Stuart Phillips held an Oregon securities salesperson license, or otherwise been licensed with the Director to sell securities in Oregon pursuant to ORS 59.165.

Section II: Business Debts Incurred 2012-2014

Small Business Loans

9. Emily Phillips, by and through EAF, entered into a business loan agreement on or about March 25, 2012, to borrow $51,500 from The Urban Renewal Agency of the City of Eugene ("City of Eugene"). The loan terms included a rate of interest of 4.5 percent per annum. On or about March 25, 2013, Emily Phillips, as managing member of EAF, signed a security agreement with the City of Eugene, granting the City of Eugene a security interest in collateral of EAF. On or about March 25, 2013, Emily Phillips and Stuart Phillips signed a loan guaranty of the business loan agreement with the City of Eugene.

10. Emily Phillips and Stuart Phillips, by and through EAF, entered into a loan agreement on or about March 15, 2013, to borrow $25,250 from Community Lending Works of Springfield, Oregon. The loan terms included a rate of interest of 9 percent per annum.

Notes issued by EAF

11. Beginning in 2012 and continuing through 2014, Emily Phillips and Stuart Phillips, by and through EAF, raised a total of $233,000 by selling notes to nine investors. In exchange for the funds they invested, five investors received promissory notes issued by EAF, and four investors received convertible promissory notes issued by EAF.

12. The terms of the EAF promissory notes and convertible promissory notes required EAF to repay the investors the principal amount and interest at the rate of 7%

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per annum, to be paid in monthly installments.

13. The terms of the EAF convertible promissory notes included an option for the investors to elect, after one year, to convert the outstanding principal amount of the note and a pro rata share of the accrued interest on the then-outstanding balance into an ownership percentage in the company.

14. The investors did not have control over the use of funds they invested after they provided their funds to Emily Phillips, Stuart Philips and EAF.

15. The investors were passive, in that they did not have an active role in the business operations of EAF and relied solely on the efforts and expertise of Emily Phillips and Stuart Phillips to realize a return on their investments.

16. Emily Phillips, Stuart Phillips and EAF represented to investors, before they invested, that the funds from the investors would be used to grow and expand the ice cream business.

17. At no time were the EAF promissory notes or the convertible promissory notes registered with the Director pursuant to ORS 59.055.

18. In connection with the sales of the EAF notes to investors, Emily Phillips, Stuart Phillips and EAF did not adequately disclose the following to the investors before they invested:

A. The financial condition and history of EAF and its control persons when the investments were made, including EAF's lack of sustained profitable operations; and

B. The risks of the investments, including but not limited to Emily Phillips and Stuart Phillips lacked experience managing a business, so their management and business decision-making were untested and may affect EAF's profitability or even survival.

Section III. Oregon Intrastate Offering during 2015

19. During 2015, Emily Phillips and Stuart Phillips, by and through RWF, used

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crowdfunding to raise a total of $120,000 from 169 investors who reside in Oregon.

20. The Oregon Securities Law includes an exemption, the Oregon Intrastate Offering ("OIO") exemption, designed to allow Oregon small businesses to participate in crowdfunded securities offerings. The OIO exemption is available to businesses with 50 or fewer employees, if the principal place of business is in Oregon and the issuer meets all the other requirements to qualify for the exemption from the registration requirements of the Oregon Securities Law.

21. On or about January 21, 2015, Emily Phillips and Stuart Phillips, by and through RWF, paid an initial filing fee of $200 and filed a notice with the Director, pursuant to OAR 441-035-0110 (2015), that RWF intended to advertise, offer and sell securities, shares of preferred stock, to Oregon residents for a price of $100 per share, in reliance on the Oregon Intrastate Offering ("OIO") exemption. The Division assigned file number is # 2015-198 to the stock offering.

22. In exchange for the funds they invested, 169 investors received shares of preferred stock issued by RWF.

23. In connection with the sales of the preferred stock, Emily Phillips and Stuart Phillips, by and through RWF, made the following representations to the OIO investors before they invested:

A. The funds raised from the OIO investors would be used to pay for new equipment and bulk purchases of ingredients to lower costs.

B. The company earned $400,000 in revenue from sales of their ice cream products in 2014.

24. The representations listed in paragraph 23 were false or misleading when the OIO investments were made.

25. Before they invested, the OIO investors were provided an Offering Disclosure Document for RWF. The Offering Disclosure Document includes a chart of the company's

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sales history, including sales of their ice cream products during 2014. The chart in the Offering Disclosure Document depicts sales in 2014 totaling $400,000. An income statement for 2014, however, shows the amount of the company's sales for 2014 was $372,272.03.

26. Emily Phillips, Stuart Phillips and RWF used some of the funds raised from the OIO investors to make investment-related payments to some of the earlier investors.

27. In connection with the sales of the shares of preferred stock to the OIO investors, Emily Phillips, Stuart Phillips and RWF did not adequately disclose the following to the investors before they invested:

A. The financial condition of the company and its control persons when the OIO investments were made, including but not limited to:

(1) RWF was not earning profits in 2015, and the company had not been profitable in 2012, 2013 or 2014;

(2) The amount of debt the company and their control persons owed before the OIO investments were made; and

(3) The company's bank accounts frequently had negative account balances.

B. The risks of the investments, including:

(1) The Respondents' lack of profitable business operations since 2011; and

(2) Emily Phillips and Stuart Phillips lacked experience managing a business.

C. The actual use of investor funds, including but not limited to:

(1) Respondents used some of the investor funds to pay personal expenses of Emily Phillips and Stuart Phillips; and

(2) Respondents used some funds from the OIO investors to make investment-related payments to some of the earlier investors.

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28. The Director issued a notice of cancellation of registration to Stuart Phillips and RWF regarding the stock offering #2015-198. The cancellation date is January 21, 2016.

Section IV: OIO Reports

Financial Reports

29. Issuers of OIO securities were required to file a financial report with the Director at least twice each year pursuant to OAR 441-035-0200(1) (2015). The financial reports were required to contain the following information:

A. Compensation received by each Director and executive officer, or person occupying a substantially similar role, including cash compensation earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or other compensations received; and

B. An explanation and discussion of the business operations and financial condition of the issuer such as a recent financial statement and profit and loss statement.

30. RWF did not file with the Director the financial reports required by OAR 441-035-0220(1) (2015).

Sales Report

31. Issuers of OIO securities were required to file a sales report with the Director pursuant to OAR 441-035-0020(2) (2015) within 30 days after the expiration of the OIO.

32. RWF filed one sales report, which was dated May 7, 2016, with the Director. RWF filed the sales report more than 30 days after the expiration of the OIO.

33. RWF did not timely file the sales report required by OAR 441-035-0020(2) (2015).

V. Sales of stock and notes during 2016 and 2017

34. After the OIO expired, Emily Phillips, Stuart Phillips and RWF continued to raise funds from investors.

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35. In 2017, Stuart Phillips filed a notice with the Director regarding a second OIO, but the required filing fee for the OIO notice was not paid, and the filing for the second OIO was incomplete.

36. During 2016 and 2017, Emily Phillips, Stuart Phillips and RWF raised a total of at least $64,000 from at least five investors, including some investors who previously purchased stock in RWF during 2015 through the OIO.

37. Emily Phillips, Stuart Phillips and RWF raised the funds during 2016 and 2017 through sales of promissory notes issued by RWF to three investors, sales of a convertible note issued by RWF to one investor, and shares of stock in RWF to one investor.

38. The stock and notes issued by RWF and sold by Emily Phillips and Stuart Phillips to investors during 2016 and 2017 were not registered with the Director pursuant to ORS 59.055.

39. The terms of the notes issued in 2016 and 2017 required RWF to repay the investors the principal amount and interest at the rates ranging from 5% per annum to 7% per annum, to be paid in monthly installments.

40. The terms of the RWF convertible promissory note included an option for the investor to elect, after one year, to convert the outstanding principal amount of the note and a pro rata share of the accrued interest on the then-outstanding balance into an ownership percentage in the company.

41. The investors who purchased notes issued by RWF during 2016 and 2017 did not have control over the use of funds they invested after they provided their funds to Emily Phillips, Stuart Phillips and RWF.

42. The investors who purchased notes issued by RWF during 2016 and 2017 were passive, in that they did not have an active role in the business operations of RWF and relied solely on the efforts and expertise of Emily Phillips and Stuart Phillips to

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realize a return on their investments.

43. In connection with the sales of the notes and shares of stock during 2016 and 2017, Emily Phillips and Stuart Phillips, by and through RWF, represented to the investors before they invested, the funds raised from the investors would be used for expansion of the ice cream business.

44. In connection with the sales of the notes and shares of stock to the investors during 2016 and 2017, Respondents did not adequately disclose the following to the investors before they invested:

A. The financial condition of the company and its control persons when the stock and notes were sold, including:

(1) The company was not earning profits in 2016 and 2017 and had not been profitable since 2011;

(2) The amount of debt the Respondents owed before the investments during 2016 and 2017 were made;

(3) Respondents owed unpaid taxes to the Oregon Department of Revenue and the Internal Revenue Service; and

(4) The company's bank accounts frequently had negative account balances.

B. The risks of the investments, including:

(1) The company's lack of profitable business operations since 2011; and

(2) Emily Phillips and Stuart Phillips lacked experience managing a business.

C. The actual use of investor funds, including:

(1) Respondents used some of the investor funds to pay personal expenses of Emily Phillips and Stuart Phillips; and

(2) Respondents used some funds from the later investors to make

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investment-related payments to some of the earlier investors.

Section VI. Dissolution of Business

45. RWF ceased business operations in 2017. RWF administratively dissolved on or about November 30, 2017.

46. Respondents defaulted on business loans, promissory notes and convertible promissory notes described in sections II and V above.

CONCLUSIONS OF LAW

The Director CONCLUDES that:

47. The promissory notes and convertible promissory notes issued by EAF or RWF and sold to the investors are notes, evidence of indebtedness, or investment contracts, and therefore, are "securities" as defined by ORS 59.015(19)(a).

48. The shares of stock issued by RWF and sold to the investors are "securities" as defined by ORS 59.015(19)(a).

49. RWF was an "issuer" as defined by ORS 59.015(9) of the shares of stock sold to the investors.

50. By selling unregistered securities, including the promissory notes and convertible promissory notes described in Section II above, and the stock and notes described in Section V above, EAF and RWF violated ORS 59.055.

51. In connection with the sales of stock and notes described above, EAF and RWF directly and indirectly made untrue statements of a material fact and/or omitted to state material facts necessary in order to make the statement made, not misleading in violation of ORS 59.135(2) as follows:

A. by failing to inform investors of the financial condition of the company and the company's control persons, failing to disclose the nature and extent of the debts owed by the Respondents before the investments were made, overstating the company's revenue

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from sales for 2014, failing to disclose the company's bank accounts frequently had negative account balances; and failing to disclose the company had not been profitable since 2011;

B. by failing to adequately inform investors of the risks of the investments, including the company's lack of profitable business operations since 2011, and Emily Phillips and Stuart Phillips lacked experience managing a business; and

C. by failing to inform investors regarding the actual use of investor funds, representing to investors their funds would be used for expansion of the ice cream business without disclosing that Respondents would use some of the investment funds from the later investors to pay debts Respondents owed to earlier investors, and some investor funds would be diverted to Emily Phillips and Stuart Phillips for their personal use.

52. EAF and RWF engaged in an act, practice or course of business which operated as fraud or deceit upon the investors, and violated ORS 59.135(3), as follows:

A. by failing to disclose to the investors that Respondents would use some of the investment funds from the later investors to pay debts Respondents owed to earlier investors;

B. by overstating the company's sales revenue for 2014; and

C. by failing to inform investors of the nature and extent of the debts owed by Respondents.

53. RWF violated OAR 441-035-0200(1) and OAR 441-035-0020(2) (2015) by failing to timely file the required reports with the Director regarding the OIO.

54. Because the Director has reason to believe that Respondents have engaged, are engaging, or are about to engage in violations of the Oregon Securities Law, the Director may issue an order to Respondents to cease and desist from violations of the Oregon Securities Law under ORS 59.245(4).

55. Because the Director has reason to believe that Respondents have engaged or

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are about to engage in violations of the Oregon Securities Law, or that the use of any exemption by Respondents would work as a fraud or imposition on purchasers, the Director may deny Respondents the use of exemptions to the securities registration requirements under ORS 59.045(2).

56. According to ORS 59.995, any person who violates or who procures, aids or abets in the violation of the Oregon Securities Law may be subject to a civil penalty in an amount not to exceed $20,000 per violation, and every violation is a separate offense.

ORDERS

The Director issues the following ORDERS:

57. As authorized by ORS 59.245(4), the Director hereby ORDERS Eugene Artisan Foods, LLC d/b/a Red Wagon Creamery and Red Wagon Foods, Inc.to CEASE AND DESIST from violating ORS 59.055, ORS 59.135(2), ORS 59.135(3), OAR 441-035-0200(1) and OAR 441-035-0020(2) (2015).

58. As authorized by ORS 59.045(2), the Director hereby DENIES Eugene Artisan Foods, LLC d/b/a Red Wagon Creamery and Red Wagon Foods, Inc., and any business entity owned, operated or controlled by them, the use of any exemptions that would otherwise be available under ORS 59.025 and ORS 59.035, concerning securities and transactions exempt from the registration requirements of the Oregon Securities Law.

59. As authorized by ORS 59.995(1), the Director hereby ORDERS Eugene Artisan Foods, LLC d/b/a Red Wagon Creamery and Red Wagon Foods, Inc.to pay CIVIL PENALTIES, jointly and severally, as follows:

A. $5,000 for violations of ORS 59.055;

B. $20,000 for violations of ORS 59.135(2); and

C. $20,000 for violations of ORS 59.135(3).

60. As authorized by ORS 59.995(1), the Director hereby ORDERS Red Wagon

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Foods, Inc. to pay civil penalties of $5,000 for violations of OAR 441-035-0200(1) and OAR 441-035-0020(2) (2015).

SO ORDERED this 7th day of October, 2019.

CAMERON C. SMITH, Director
Department of Consumer and Business Services

/s/ Dorothy Bean
Dorothy Bean, Chief of Enforcement
Division of Financial Regulation

NOTICE OF RIGHT TO JUDICIAL APPEAL

You are entitled to judicial review of this order in accordance with ORS 183.482. You may request judicial review by filing a petition with the Court of Appeals in Salem, Oregon, within sixty (60) days from the service of this Final Order.

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