

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

In the Matter of:

Case No. S-19-0002

EMILY L. PHILLIPS,
RANDOLPH "STUART" PHILLIPS,
EUGENE ARTISAN FOODS, LLC
D/B/A RED WAGON CREAMERY,
AND RED WAGON FOODS, INC..

FINAL ORDER TO CEASE AND DESIST,
ORDER ASSESSING CIVIL
PENALTIES, ORDER DENYING
USE OF EXEMPTIONS, BAR FROM
FINANCIAL SERVICES BUSINESS
ACTIVITIES, AND CONSENT TO ENTRY
OF ORDER AS TO EMILY L. PHILLIPS
AND RANDOLPH "STUART" PHILLIPS
ONLY

10 The Director of the Department of Consumer and Business Services for the State
11 of Oregon (“Director”), acting in accordance with Oregon Revised Statutes (“ORS”)
12 59.005 to 59.451, 59.991 and 59.995 (“the Oregon Securities Law”), having investigated
13 the business activities of Emily L. Phillips, Randolph “Stuart” Phillips, and Red Wagon
14 Foods, Inc., determined that Respondents engaged in violations of the Oregon Securities
15 Law.

16 Respondents Emily L. Phillips and Randolph "Stuart" Phillips wish to resolve this
17 matter with the Director.¹

18 Now, therefore, as evidenced by the signature subscribed herein, Respondents
19 Emily L. Phillips and Randolph "Stuart" Phillips hereby CONSENT to the entry of this
20 Order.

FINDINGS OF FACT

The Director FINDS that:

Section I: Respondents

24 1. Eugene Artisan Foods, LLC (“EAF”) was an Oregon limited liability

²⁵ ²⁶ ¹ The Director issued 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, #S-19-0002, on October 8, 2019.

1 company formed on October 4, 2010. The principal place of business of EAF was in
2 Eugene, Oregon.

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

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

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

11 5. Emily L. Phillips (“Emily Phillips”) and Randolph “Stuart” Phillips (“Stuart
12 Phillips”) were co-owners of EAF and RWF.

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

15 7. Stuart Phillips was the organizer and a managing member of EAF; the
16 authorized representative of RWC; and the registered agent, corporate secretary, and
17 director of sales and marketing of RWF.

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

21 *Section II: Business Debts Incurred 2012-2014*

22 *Small Business Loans*

23 9. Emily Phillips, by and through EAF, entered into a business loan agreement
24 on or about March 25, 2012, to borrow \$51,500 from The Urban Renewal Agency of the
25 City of Eugene (“City of Eugene”). The loan terms included a rate of interest of 4.5
26 percent per annum. On or about March 25, 2013, Emily Phillips, as managing member of



1 EAF, signed a security agreement with the City of Eugene, granting the City of Eugene a
2 security interest in collateral of EAF. On or about March 25, 2013, Emily Phillips and
3 Stuart Phillips signed a loan guaranty of the business loan agreement with the City of
4 Eugene.

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

9 *Notes issued by EAF*

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

15 12. The terms of the EAF promissory notes and convertible promissory notes
16 required EAF to repay the investors the principal amount and interest at the rate of 7%
17 per annum, to be paid in monthly installments.

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

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

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



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

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

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

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

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

Section III. Oregon Intrastate Offering during 2015

16 19. During 2015, Emily Phillips and Stuart Phillips, by and through RWF, used
17 crowdfunding to raise a total of \$120,000 from 169 investors who reside in Oregon.

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

24 21. On or about January 21, 2015, Emily Phillips and Stuart Phillips, by and
25 through RWF, paid an initial filing fee of \$200 and filed a notice with the Director,
26 pursuant to OAR 441-035-0110 (2015), that RWF intended to advertise, offer and sell

1 securities, shares of preferred stock, to Oregon residents for a price of \$100 per share, in
2 reliance on the Oregon Intrastate Offering (“OIO”) exemption. The Division assigned file
3 number is # 2015-198 to the stock offering.

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

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

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

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

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

15 25. Before they invested, the OIO investors were provided an Offering Disclosure
16 Document for RWF. The Offering Disclosure Document includes a chart of the company’s
17 sales history, including sales of their ice cream products during 2014. The chart in the
18 Offering Disclosure Document depicts sales in 2014 totaling \$400,000. An income
19 statement for 2014, however, shows the amount of the company’s sales for 2014 was
20 \$372,272.03.

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

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

26 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
at the time 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.

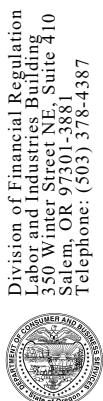
17 28. The Director issued a notice of cancellation of registration to Stuart Phillips and
18 RWF regarding the stock offering #2015-198. The cancellation date is January 21, 2016.

Section IV: OIO Reports

Financial Reports

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

24 A. Compensation received by each Director and executive officer, or person
25 occupying a substantially similar role, including cash compensation earned since the
26 previous report and on an annual basis and any bonuses, stock options, other rights to



1 receive securities of the issuer or any affiliate of the issuer, or other compensations
2 received; and

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

5 30. RWF did not file with the Director the financial reports required by OAR 441-
6 035-0220(1) (2015).

7 *Sales Report*

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

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

12 33. RWF did not timely file the sales report required by OAR 441-035-0020(2)
13 (2015).

14 *V. Sales of stock and notes during 2016 and 2017*

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

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

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

23 37. Emily Phillips, Stuart Phillips and RWF raised the funds during 2016 and
24 2017 through sales of promissory notes issued by RWF to three investors, sales of a
25 convertible note issued by RWF to one investor, and shares of stock in RWF to one
26 investor.



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

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

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

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

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

18 43. In connection with the sales of the notes and shares of stock during 2016 and
19 2017, Emily Phillips and Stuart Phillips, by and through RWF, represented to the
20 investors before they invested, the funds raised from the investors would be used for
21 expansion of the ice cream business.

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

25 A. The financial condition of the company and its control persons when the stock
26 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 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:

25 47. The promissory notes and convertible promissory notes issued by EAF or
26 RWF and sold to investors by Emily Phillips and Stuart Phillips are notes, evidence of

1 indebtedness, or investment contracts, and therefore, are “securities” as defined by ORS
2 59.015(19)(a).

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

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

7 50. Emily Phillips and Stuart Phillips each acted as a “salesperson” as defined by
8 ORS 59.015(18)(a), by representing RWF and EAF in effecting transactions in securities
9 with the investors.

10 51. By transacting business in Oregon as a securities salesperson without holding
11 an Oregon securities salesperson license, or otherwise being licensed with the Director to
12 sell securities in Oregon, Emily Phillips and Stuart Phillips each violated ORS 59.165(1).

13 52. By selling unregistered securities, including the promissory notes and
14 convertible promissory notes described in Section II above, and the stock and notes
15 described in Section V above, Respondents violated ORS 59.055.

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

20 A. by failing to inform investors of the financial condition of the company and the
21 company’s control persons, failing to disclose the nature and extent of the debts owed by
22 the Respondents before the investments were made, overstating the company’s revenue
23 from sales for 2014, failing to disclose the company’s bank accounts frequently had
24 negative account balances; and failing to disclose the company had not been profitable
25 since 2011;

26 B. by failing to adequately inform investors of the risks of the investments,



1 including the company's lack of profitable business operations since 2011, and Emily
2 Phillips and Stuart Phillips lacked experience managing a business; and
3 C. by failing to inform investors regarding the actual use of investor funds,
4 representing to investors their funds would be used for expansion of the ice cream business
5 without disclosing that Respondents would use some of the investment funds from the
6 later investors to pay debts Respondents owed to earlier investors, and some of the
7 investor funds would be used to pay personal expenses of Emily Phillips and Stuart
8 Phillips.

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

- 11 A. by failing to disclose to the investors that Respondents would use some of the
12 investment funds from the later investors to pay debts Respondents owed to earlier
13 investors;
- 14 B. by overstating the company's sales revenue for 2014; and
- 15 C. by failing to inform investors of the nature and extent of the debts owed by
16 Respondents.

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

19 56. Emily Phillips and Stuart Phillips, as control persons of RWF, aided or abetted
20 RWF in failing to timely file the required reports with the Director regarding the OIO, in
21 violation of OAR 441-035-0200(1) and OAR 441-035-0020(2) (2015).

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

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



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

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

ORDERS

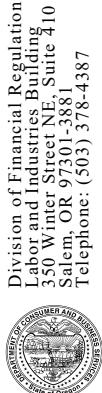
9 The Director issues the following ORDERS:

10 60. As authorized by ORS 59.245(4), the Director hereby ORDERS Respondents
11 Emily Phillips and Stuart Phillips to CEASE AND DESIST from violating ORS 59.055,
12 ORS 59.165(1), ORS 59.135(2), ORS 59.135(3), OAR 441-035-0200(1) and OAR 441-
13 035-0020(2).

14 61. As authorized by ORS 59.045(2), the Director hereby DENIES Respondents
15 Emily Phillips and Stuart Phillips, and any business entity owned, operated or controlled
16 by them, the use of any exemptions that would otherwise be available under ORS 59.025
17 and ORS 59.035, concerning securities and transactions exempt from the registration
18 requirements of the Oregon Securities Law.

19 62. As authorized by ORS 59.995(1), the Director hereby ORDERS Respondents
20 Emily Phillips and Stuart Phillips to pay CIVIL PENALTIES, jointly and severally,
21 totaling \$55,000 as follows:

- 22 A. \$5,000 for violations of ORS 59.055;
 - 23 B. \$5,000 for violations of ORS 59.165(1);
 - 24 C. \$20,000 for violations of ORS 59.135(2);
 - 25 D. \$20,000 for violations of ORS 59.135(3); and
 - 26 E. \$5,000 for violations of OAR 441-035-0200(1) and OAR 441-035-0020(2)



1 (2015).

2 63. The Director hereby suspends payment of \$55,000 of the CIVIL PENALTIES
3 for a period of three years, provided Respondents Emily Phillips and Stuart Phillips:

4 A. Pay \$11,700 in restitution directly to the investors on a pro rata basis, as set
5 forth in Exhibit A, attached hereto. Restitution payments shall be made in monthly
6 installment totaling no less than \$650, paid to each investor based on a pro rata
7 calculation, as set forth in Exhibit A, by no later than the tenth day of each month, for
8 eighteen months from the effective date of this Order, or until the full \$11,700 in
9 restitution is paid, whichever is sooner;

10 B. Provide the Oregon Division of Financial Regulation (“the Division”) with
11 monthly reports, due no later than the tenth day of each month, containing documentation
12 satisfactory to the Division of each restitution payment Respondents Emily Phillips and
13 Stuart Phillips paid directly to the investors listed in Exhibit A. These reports and
14 documentation shall be sent by email to Caroline Smith, Financial Enforcement Officer, at
15 Caroline.L.Smith@oregon.gov and shall be due every month until the \$11,700 restitution
16 payment is satisfied by Respondents; and

17 C. Do not violate ORS 59.055, ORS 59.165(1), ORS 59.135(2), ORS 59.135(3),
18 OAR 441-035-0200(1) or OAR 441-035-0020(2) within the three-year time period.

19 64. The suspended civil penalty (\$55,000) will be waived three years from the
20 effective date of this Order, provided Respondents Emily Phillips and Stuart Phillips have
21 complied with the foregoing Order terms. The Director reserves the right to immediately
22 assess and collect the suspended civil penalty upon a determination that either Respondent
23 Emily Phillips or Stuart Phillips has violated any term of this Order.

24 65. Respondents Emily Phillips and Stuart Phillips stipulate and agree that the
25 amounts assessed in are not dischargeable under 11 U.S.C. § 523(a)(7).

26 66. Respondents Emily Phillips and Stuart are permanently BARRED from all of

1 the following financial services business activities in Oregon:

- 2 A. applying for, holding, or renewing any investment adviser, investment adviser
3 representative, broker-dealer or securities salesperson license in the State of Oregon;
- 4 B. applying to register or renew any securities in the State of Oregon;
- 5 C. applying for, holding, or renewing any insurance producer license in the State of
6 Oregon; and
- 7 D. applying for, holding, or renewing any license or registration required by the
8 Director in Oregon, including but not limited to insurance, consumer finance, collection
9 agency, manufactured structure dealer, or mortgage lending.

10 67. This order is a “Final Order” under ORS 183.310(6)(b). Subject to that provision,
11 the entry of this Order does not limit other remedies available to the Director under Oregon
12 law.

13 SO ORDERED this 10th day of February, 2022.

14 ANDREW R. STOLFI, Director
15 Department of Consumer and Business Services

16 /s/ Dorothy Bean

17 Dorothy Bean, Chief of Enforcement
18 Division of Financial Regulation

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1 CONSENT OF EMILY L. PHILLIPS TO ENTRY OF ORDER

2 I, Emily L. Phillips, state that I am a resident of the State of California, that I have
3 read the foregoing Order and that I know and fully understand the contents hereof; that the
4 factual allegations stated herein are true and correct; that I have been advised of my right to
5 a hearing and of my right to be represented by counsel in this matter. I voluntarily consent to
6 the entry of this Order without any force or duress, expressly waiving any right to a hearing
7 in this matter, as well as any rights to judicial review of this Order. I understand that the
8 Director reserves the right to take further actions against me to enforce this Order or to take
9 appropriate action upon discovery of other violations of the Oregon Securities Law by me. I
10 will fully comply with the terms and conditions stated herein.

11 I understand that this Consent Order is a public document.

12
13 /s/ Emily L. Phillips
14 Emily L. Phillips

15 State of: Texas

16 County of: Dallas

17 Signed or attested before me this 21st day of December, 2021 by
18 Emily L. Phillips.
19

20 /s/ Michele L. McCarroll
21 Notary Public

Division of Financial Regulation
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387



1 CONSENT OF RANDOLPH "STUART" PHILLIPS TO ENTRY OF ORDER

2 I, Randolph "Stuart" Phillips, state that I am a resident of the State of California,
3 that I have read the foregoing Order and that I know and fully understand the contents
4 hereof; that the factual allegations stated herein are true and correct; that I have been
5 advised of my right to a hearing and of my right to be represented by counsel in this matter.
6 I voluntarily consent to the entry of this Order without any force or duress, expressly
7 waiving any right to a hearing in this matter, as well as any rights to judicial review of this
8 Order. I understand that the Director reserves the right to take further actions against me to
9 enforce this Order or to take appropriate action upon discovery of other violations of the
10 Oregon Securities Law by me. I will fully comply with the terms and conditions stated
11 herein.

12 I understand that this Consent Order is a public document.

13
14 /s/ Randolph Phillips

15 Randolph "Stuart" Phillips

16 State of: Texas

17 County of: Dallas

18 Signed or attested before me this 21st day of December, 2021 by
Randolph "Stuart" Phillips.

19
20 /s/ Michele L. McCarroll

21 Notary Public

