UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

DONG PHUONG BAKERY, INC., **Plaintiff,**	**CIVIL ACTION NO. 21-01109**
versus	**SECTION: J (1)**
THE GEMINI SOCIETY, LLC, **Defendant.**	**Judge: Barbier** **Magistrate Judge: van Meerveld**

SETTLEMENT AGREEMENT

To avoid the risk and expense of litigation and without admitting any liability or fault, Dong Phuong Bakery, Inc. ("Dong Phuong"), Linh Garza, and Huong Tran (collectively, the "Dong Phuong Parties"), and The Gemini Society LLC ("Gemini Society" and, together with the Dong Phuong Parties, collectively, the "Parties" and each a "Party") agree:

I. General Provisions:

A. No Admissions; Further Assurances. No Party admits to any liability or fault. The Parties agree to execute any additional documents needed to effect the transfer of rights set forth herein and/or to appoint Dong Phuong as the designated agent of Gemini Society for the copyright application for the DP Bakeshop Mark as set forth in Paragraph II.C.

B. Releases. Gemini Society settles, compromises, novates, extinguishes, and releases all claims, known and unknown, including rights to appeal, against the Dong Phuong Parties and their directors, members, officers, agents, attorneys, insurers, and employees, including the defamation and other claims that were dismissed pre-trial. The Dong Phuong Parties settle, compromise, novate, extinguish, and release all claims, known and unknown, including rights to appeal, against Gemini Society and their directors, members, officers, agents, attorneys, insurers, and employees, including James Martis, Deziderio Ramirez, and Nelly Paulina Ramirez, including

the fraud and other claims that were dismissed pre-trial. Dong Phuong hereby grants an irrevocable covenant not to sue for any use of the Gemini Society Art or Trade Dress authorized by Gemini Society; provided, however, Dong Phuong reserves the right to enforce this Agreement against Gemini Society. Gemini Society hereby grants an irrevocable covenant not to sue for any use of the Assigned Trademarks; provided, however, Gemini Society reserves the right to enforce this Agreement against Dong Phuong.

II. Dong Phuong Provisions:

A. Payment. Gemini Society shall cause $200,000 to be paid to Dong Phuong within three (3) days of the date the last Party executes this Agreement.

B. Trademark Assignment. Gemini Society hereby conveys, transfers and assigns to Dong Phuong all its rights, title, and interest in all trademark rights and related goodwill in the following (collectively, the "Assigned Trademarks"):

i. DP Bakeshop Mark, including U.S. Trademark App. Ser. No. 90/321,808 ("the '808 Application"), La. Reg. No. 68-6857 (the "Louisiana Registration"), and the domain name DPBakeshop.com;

ii. Dong Phuong Banh Mi And Baked Good Logo; and

iii. Dong Phuong Logoscript.

C. Ownership. Gemini Society stipulates and agrees that Dong Phuong owns all trademark rights in the Assigned Trademarks,. As such, Gemini Society disclaims any copyright protection afforded the Assigned Trademarks, if any, under Reg. Nos. VA 2-258-630, VAu 1-435-4493 and VAu 1-446-658. Gemini Society believes the Assigned Trademarks are uncopyrightable. However, Dong Phuong may try to apply to register with the U.S. Copyright Office the DP Bakeshop Mark as a graphic work authored by Gemini Society; Gemini Society will not object to or oppose such application provided that the title is "DP Bakeshop Logo" and the deposit material is limited to the DP Bakeshop Mark, as reflected in Exhibit "A" to Exhibit 1, and

does not include the Gemini Society Art; and, if the U.S. Copyright Office issues a registration on such application, Gemini Society will assign to Dong Phuong all its rights, title, and interest in such registration, including all copyrights in the DP Bakeshop Mark. If the U.S. Copyright Office issues a final rejection or denial of such application, then upon such date, Gemini Society shall and hereby does quitclaim any and all other rights and goodwill in the DP Bakeshop Mark. Upon such date, Gemini Society acknowledges and confirms that it has no copyright interest, including moral rights, in the Assigned Trademark.

D. Short Form Assignment. Gemini Society will execute a non-confidential short form assignment regarding each of the Assigned Trademarks, substantially in the form reflected in Exhibit 1. Gemini Society agrees to execute any additional documents needed to effect the transfer of rights set forth herein.

E. No Challenge of Trademarks. Gemini Society covenants and agrees to not in any manner challenge or object to the use, registration or validity of the Assigned Trademarks or any derivatives thereof, including but not limited to the initiation or participation in any proceeding before the United States Patent and Trademark Office.

F. Destruction of King Cake Boxes and Gemini Society Art. Within one (1) day of the date the last Party executes this Agreement, the Dong Phuong Parties must certify under oath that it has permenantly destroyed all King Cake boxes displaying Gemini Society's Art and all Gemini Society Art produced in discovery by Gemini Society in this action currently in Dong Phuong's possession, custody, or control. Nothing in this paragraph shall be construed to require the Dong Phuong Parties to destroy copies of Gemini Society Art in emails, but the Dong Phuong Parties agree that they have no right to use any Gemini Society Art.

G. Exhibit 35 Withdrawn. Gemini Society will join a motion by Dong Phuong to withdraw Exhibit 35 to Gemini Society's Motion for Partial Summary Judgment, R. Doc. 165-59, reflecting an email from Linh Garza to Amanda Butler.

III. Gemini Society Provisions:

A. Copyright Assignment. Dong Phuong hereby assigns to Gemini Society all its rights, title, and interest in all copyrights in all artwork previously delivered by Gemini Society to Dong Phuong or created by Gemini Society for Dong Phuong (except the Assigned Trademarks, which Gemini Society believes are uncopyrightable), including but not limited to artwork for Mardi Gras, King Cakes Boxes, DPBakeshop.com, social media, mural, Mooncake boxes, banh mi, and banh mi boxes (collectively, the "Gemini Society Art").

B. Ownership. Dong Phuong stipulates and agrees that Gemini Society owns all copyrights in the Gemini Society Art. Gemini Society shall have the right to record non-confidential assignments or apply to register the Gemini Society Art with any governmental authority provided that the Gemini Society Art does not incorporate the terms DONG PHUONG, DP BAKESHOP, the Assigned Trademarks or any other Dong Phuong trademarks or references to Dong Phuong. Upon request, Dong Phuong will execute a non-confidential short form assignment of the copyrights in the Gemini Society Art, substantially in the form reflected in Exhibit 2. Dong Phuong Parties agree to execute any additional documents needed to effect the transfer of rights set forth herein.

C. King Cake Boxes. For the 2024 and 2025 King Cake seasons, Gemini Society shall include on all King Cake boxes a logo or logoscript provided or approved by Gemini Society's customers. After the 2025 King Cake season, Gemini Society shall not be required to include a logo or logoscript on King Cake boxes.

D. Termination of Licenses. Gemini Society hereby terminates, effective January 4, 2023, all licenses to Dong Phuong in the copyrights in the Gemini Society Art. Dong Phuong agrees not to use, reproduce, display, distribute, or create derivative works from the Gemini Society Art.

E. Payment. Dong Phuong shall cause $150,000 to be paid to Gemini Society within three (3) days of the date the last Party executes this Agreement. This payment is allocated among the following claims, including claims dismissed and that are subject to Gemini Society's appeal rights, as follows:

i. $145,500 in damages for Gemini Society's state law tort claims; and

ii. $4,500 for licensing fees, breach of contract, and all other claims.

IV. Other Provisions:

A. Complete Agreement. All materials terms of the Parties' settlement are reflected herein.

B. Mutual Representations and Warranties. Each Party represents and warrants that nothing in this Agreement will violate any obligation of the Parties to any third party, including their insurers. Gemini Society represents and warrants that it has not assigned, encumbered or licensed any of its rights in the Assigned Trademarks to any third parties. Gemini Society is authorized to enter into this Agreement. Dong Phuong represents and warrants that it has not assigned, encumbered or licensed any of its rights in the Gemini Society Art or the Trade Dress to any third parties. Dong Phuong is authorized to enter into this Agreement.

C. Joint Consent Judgment. Upon execution of this Settlement Agreement, the Parties will notify the Court that the Parties have resolved this matter and request a stay of all deadlines for 30 days. Within 5 days of receipt by Dong Phuong and Gemini Society of all payments due

hereunder, the Parties will file a motion to enter a Joint Consent Judgment ordering the Parties to comply with this Agreement and dismissing all claims with prejudice, each party bearing their own costs and attorney's fees, substantially in the form attached as Exhibit 3.

D. Waiver. The failure of any Party to object to or take action with regard to any breach or noncompliance with any provision of this Agreement shall not be construed as a waiver or modification of that or any other provision, or a waiver of any remedy for the breach or noncompliance; and, the Parties shall be deemed to have waived their respective rights hereunder only if such waiver is in a writing executed by the Party waiving the right.

E. Jurisdiction. The Parties agree that the Court retains jurisdiction to enforce this Agreement and the Joint Consent Judgment, and any motion for sanctions or to enforce this Agreement shall be referred to Judge Janis van Meerveld. The prevailing party in any proceeding to interpret or enforce this Agreement shall be awarded reasonable attorney's fees. If the requested relief is granted-in-part and denied-in-part, the Court shall award attorney's fees to each Party according to the merits of its arguments.

[SIGNATURES ON NEXT PAGE]

By authorizing their representatives to sign below, the Parties agree to the foregoing Settlement Agreement.

The Gemini Society, LLC

By: _____
Name: _____
Title: _____

Dong Phuong Bakery, Inc.

By: _____
Name: Linh Garza
Title: President

_____
Linh Garza

_____
Huong Tran

Exhibit 1

(Short Form Assignment Agreement)

SHORT FORM ASSIGNMENT AGREEMENT

This Short Form Assignment Agreement ("Assignment"), effective as of January 4, 2023 (the "Effective Date") is by and between The Gemini Society, LLC, having an address at 1213 W Slaughter Ln Ste 110 Austin, TX, 78748 ("Gemini Society") and Dong Phuong Bakery, Inc., having an address at 14207 Chef Menteur Hwy, New Orleans, LA 70129 ("Dong Phuong").

Background. Dong Phuong owns the following, copies of which are attached as Exhibit "A" and are collectively referred to as "Assigned Trademarks":

i. DP Bakeshop Mark, including U.S. Trademark App. Ser. No. 90/321,808 ("the '808 Application"), La. Reg. No. 68-6857 (the "Louisiana Registration"), and the domain name DPBakeshop.com;

ii. Dong Phuong Banh Mi And Baked Goods Logo; and

iii. Dong Phuong Logoscript.

Gemini Society and Dong Phuong have executed that certain Settlement Agreement dated as of the Effective Date (the "Agreement"), and, under the Agreement, Gemini Society agreed to assign to Dong Phuong all its rights, title, and interest in all trademark right and related goodwill in the Assigned Trademarks. Gemini Society and Dong Phuong have prepared and executed this Assignment for the purpose of recording it with U.S. Patent and Trademark Office or any other governmental agency.

Agreement Provisions. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, Gemini Society and Dong Phuong agree:

1. Agreement Definitions; Conflicts. All terms defined in the Agreement have the same meaning in this Assignment, unless otherwise defined herein. Subject to the foregoing, if any provision of this Assignment conflicts with any provision of the Agreement, the latter shall control.

2. Assignment. Gemini Society hereby assigns to Dong Phuong all its rights, title, and interest in all trademark right and related goodwill in the Assigned Trademarks and Gemini Society consents that Dong Phuong may record this Assignment to register Assigned Marks with the U.S. Patent and Trademark Office or any other governmental agency.

The Gemini Society, LLC	Dong Phuong Bakery, Inc.
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

Exhibit A

(Assigned Trademarks)

DP Bakeshop Mark:



Dong Phuong Banh Mi And Baked Goods Logo:



Dong Phuong Logoscript:



Exhibit 2

SHORT FORM ASSIGNMENT AGREEMENT

This Short Form Assignment Agreement ("Assignment"), effective as of January 4, 2023 (the "Effective Date") is by and between The Gemini Society, LLC, having an address at 1213 W Slaughter Ln Ste 110 Austin, TX, 78748 ("Gemini Society") and Dong Phuong Bakery, Inc., having an address at 14207 Chef Menteur Hwy, New Orleans, LA 70129 ("Dong Phuong").

Background. [Gemini Soceity or Dong Phuong] owns the following: [identify and define intellectual property]. Gemini Society and Dong Phuong have executed that certain Settlement Agreement dated as of the Effective Date (the "Agreement"), and, under the Agreement, [Gemini Society or Dong Phuong] agreed to assign to [Dong Phuong or Gemini Society] all its rights, title, and interest in [the intellectual property]. Gemini Society and Dong Phuong have prepared and executed this Assignment for the purpose of recording it with [identify governmental authority].

Agreement Provisions. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, Gemini Society and Dong Phuong agree:

1. Agreement Definitions; Conflicts. All terms defined in the Agreement have the same meaning in this Assignment, unless otherwise defined herein. Subject to the foregoing, if any provision of this Assignment conflicts with any provision of the Agreement, the latter shall control.

2. Assignment. [Gemini Society or Dong Phuong] hereby assigns to [Dong Phuong or Gemini Society] all its rights, title, and interest in [the intellectual property], and [Gemini Society or Dong Phuong] consents that [Dong Phuong or Gemini Society] may record this Assignment to register [the intellectual property] with [the governmental authority].

The Gemini Society, LLC	Dong Phuong Bakery, Inc.
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

Exhibit 3

(Joint Consent Judgement)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

DONG PHUONG BAKERY, INC., **Plaintiff,**	**CIVIL ACTION NO. 21-01109**
versus	**SECTION: J (1)**
THE GEMINI SOCIETY, LLC, **Defendant.**	**Judge: Barbier** **Magistrate Judge: van Meerveld**

JOINT CONSENT JUDGMENT

The parties, Dong Phuong Bakery, Inc., Linh Garza, Huong Tran, and The Gemini Society, LLC, have resolved all their disputes, and they have signed a Settlement Agreement. The Court retains jurisdiction to enforce the Settlement Agreement, and any motion filed in this case for sanctions or to enforce the Agreement shall be referred to Judge Janis van Meerveld. All parties agree to strictly abide by the terms of the Settlement Agreement. All claims and counterclaims are hereby dismissed with prejudice, each party bearing their own costs and attorney's fees.

New Orleans, Louisiana, this ___ day of _____ 2023.

_____
UNITED STATES DISTRICT JUDGE