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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

CHURCH OF THE HOLY LIGHT OF
THE QUEEN, et al.,

Plaintiffs,

CV 08-3095-PA

v.

AMENDED JUDGMENT

MICHAEL B. MUKASEY, et al.,

Defendants.

Judgment is entered for Plaintiffs.

The Court permanently enjoins Defendants from prohibiting or penalizing the sacramental use of Daime tea by Plaintiffs during Plaintiffs' religious ceremonies, under the terms and conditions set forth below.

1. The Defendants, their agencies, agents, employees, and those persons under their control are enjoined from directly or indirectly treating Plaintiffs' importation, possession, and distribution of Daime tea for use in Plaintiffs' religious ceremonies as unlawful under the Controlled Substances Act (CSA). Defendants, their agencies, agents, employees, and those persons under their control shall not (a) intercept or cause to be intercepted shipments of Daime tea imported by Plaintiffs for religious use; (b) prosecute or threaten to prosecute Plaintiffs or participants in Plaintiffs'

ceremonies for religious use of Daime tea; or (c) otherwise interfere with the religious use of Daime tea by Plaintiffs or participants in Plaintiffs' religious ceremonies, subject to the terms and conditions set forth below.

2. Plaintiffs shall conduct themselves in accordance with the conduct that is described in the laws and regulations governing the importation and distribution of Schedule I Controlled Substances as set forth at 21 U.S.C. §§ 801-971 and 21 C.F.R. §§ 1300-1316, except as indicated below.

Where this Judgment enjoins or modifies the application of a particular regulatory provision, the corresponding statutory provision shall be enjoined or modified accordingly. The Court enjoins the Defendants from imposing on Plaintiffs regulatory or other requirements, which by their terms apply to the importation, distribution, possession, or religious use of Daime tea.

3. Defendants are enjoined from requiring Plaintiffs to conform their conduct to any regulations except as set forth herein.
4. In applying for registration to import and distribute a controlled substance, Plaintiffs may strike out the word "business" on the relevant application form and specify that they are importing and distributing Daime tea for religious purposes only. This modification of the form may not be deemed inconsistent with any appropriate regulations.

Plaintiff Church of the Holy Light of the Queen (CHLQ) shall apply for registration as an importer, with distribution being a coincidental activity. CHLQ shall also apply on behalf of each individual congregation for registration as a distributor.

5. Where the relevant application form asks for information pertaining to "any officer, partner, stockholder or proprietor" of CHLQ, these terms shall be deemed to apply to the officers of CHLQ.
6. Plaintiffs shall provide the identities and social security numbers of those persons who routinely handle Daime tea outside of ceremonies. Plaintiffs shall not be required to provide the identities or social security numbers of any other members.
7. Because persons of authority within CHLQ are not CHLQ "employees," the requirements of 21 C.F.R. §§ 1301.72(d), 1301.90-93, shall not apply. Instead, Plaintiffs are required to adhere to the conduct set forth in those sections, replacing the word "employee" with "person of authority within CHLQ," defined as CHLQ members who are authorized to handle Daime tea outside of ceremonies.
8. If someone, other than a person of authority within CHLQ, is present in the room in which the Daime tea is stored or a vehicle in which the Daime tea is being conveyed (other than

delivery by common carrier), that person shall be accompanied at all times by a person of authority within CHLQ.

9. The information required under the regulations may be stated in liters or other measure of volume rather than kilograms.
10. Physical inventories shall be conducted by DEA, except that the actual handling of the containers of Daime tea will be by the responsible CHLQ representatives under the direction and oversight of DEA personnel.
11. If DEA asks to inspect an item or items and Plaintiffs believe that DEA's inspection of such item or items would violate their right to freedom of association or the freedom of association of others associated with CHLQ, Plaintiffs may withhold such items from inspection.
12. The requirement that inspections be carried out at reasonable times and in a reasonable manner shall prohibit inspections during Plaintiffs' religious ceremonies.
13. Plaintiffs and Defendants shall arrive at a mutually acceptable means of disposal of any Daime tea that must be disposed of, which shall not include forfeiture to Defendants.
14. Defendants are enjoined from requiring Plaintiffs to specify the amount of dimethyltryptamine (DMT) to be imported in their application for an import permit, as provided for

under 21 C.F.R. § 1312.12(a). Plaintiffs shall instead specify the volume of Daime tea to be imported, and indicate that the concentration of DMT in the imported Daime tea is the concentration contained in the sample provided to DEA.

15. Plaintiffs shall assign a unique identifying number to each batch of Daime tea that is received through international shipment. Immediately upon receipt of such shipment, Plaintiffs shall extract an unadulterated small sample (not significantly more or less than 60 ml) from each batch shipped, and shall label each sample with the number of the batch from which it was taken. Plaintiffs shall also arrange to have a small sample of each batch of shipped Daime tea preserved in Brazil, labeled with the number that corresponds to the batch of Daime tea from which the sample was taken. These samples shall be made available to DEA on request, and shall in any case be preserved for three years. Any untested samples made available to DEA shall be returned to Plaintiffs after three years.
16. Each container of Daime tea in Plaintiffs' possession and control will be labeled with the number of the batch from which its contents were taken. If Daime tea originating from one batch is mixed with Daime tea originating from a different batch, the resulting mix shall be stored in containers labeled with the numbers of any and all

originating batches and the precise volume that was taken from each such batch.

17. Defendants are enjoined from denying Plaintiffs' applications for registration to import and distribute Daime tea or for an import permit.
18. Defendants are enjoined from charging Plaintiffs an application fee in connection with their applications for registration to import and distribute Daime tea.
19. The initial on-site inspection by the DEA of each CHLQ location applying for registration will take place within two weeks of receipt of the application for registration of that location. The Daime tea will be stored in a padlocked refrigerator in a locked room at each CHLQ location where it is stored. The highest CHLQ authority at each location will retain custody of the keys to the locks for the refrigerator and to the room where the Daime tea is stored. If DEA after its onsite inspections takes the position the Plaintiffs' security measures are not in substantial compliance with the DEA's regulatory standards for the physical security controls and operating procedures necessary to prevent diversion of the Daime tea, and if DEA and Plaintiffs are unable to agree on a mutually acceptable means and time frame for resolving the issue, Defendants shall, within one week of the onsite inspection, apply to the Court for

resolution of the issue by filing a statement setting forth the basis for DEA's position.

20. The DEA will expedite Plaintiffs' applications for registration to import and distribute Daime tea and Plaintiffs' application for an import permit. The DEA shall issue Plaintiffs a registration to import Daime tea, a registration to distribute Daime tea, and an import permit within thirty days of receipt of Plaintiffs' applications for such items.
21. Plaintiffs shall keep records relating to their dispensation of Daime tea, and as set forth at 21 C.F.R. § 1304.24(a), with the following qualifications: subsection (a)(2) shall not apply, and Plaintiffs shall instead be required to list the appropriate batch number (as discussed above in paragraphs 16-17); subsection (a)(5) shall not apply, and Plaintiffs shall instead be required to indicate the number of participants in the religious ceremony or event who received Daime tea; Plaintiffs shall specify the total amount of Daime tea consumed during the ceremony or event.
22. If Defendants confiscate any shipment of Daime tea under 21 C.F.R. § 1312.15(a) because the amount imported exceeds the amount specified on the import permit, they shall preserve all of the confiscated Daime tea and return it to Plaintiffs promptly upon a satisfactory, non-diversion explanation by

Plaintiffs as to the additional amount. If any of the confiscated Daime tea is delivered to any other departments, bureaus, or agencies of the United States or any State pursuant to 21 C.F.R. § 1307.22, those departments, bureaus, or agencies will preserve the Daime tea pending Plaintiffs' explanation.

23. CHLQ will fill out the order forms when sending any Daime tea to any congregation. When the Daime tea is sent to the congregation, CHLQ will mail one copy of the form to the site receiving the Daime tea and one copy to the DEA, and will retain its own copy. The site receiving the Daime tea will annotate the form to specify the volume of Daime tea received. If the volume received differs from the volume shipped (as indicated on the form), Plaintiffs shall notify DEA immediately of the discrepancy.

24. The Defendants, their agencies, agents, employees, and persons under their control, are enjoined from applying or enforcing any of the laws, regulations, and treaties that govern the legal importation and distribution of Schedule I substances for the purpose of prohibiting, preventing, unduly delaying, or otherwise interfering with Plaintiffs' religious use of Daime tea in a manner that is inconsistent with this Court's Findings of Fact and Conclusions of Law dated March 18, 2009.

25. Plaintiffs shall inform all current and prospective members in writing that if they have a history of psychosis or psychotic episodes they may be particularly susceptible to an adverse reaction in using Daime tea, and shall encourage such persons to seek the advice of a health care professional if they fall within this category. These communications shall take place before any ingestion of Daime tea, and shall be accomplished in one or both of the following ways: (a) direct mailing to the individual member or potential member; (b) hand delivery to the individual member or potential member.
26. Plaintiffs will designate one person to coordinate importation, storage, and distribution of the Daime tea, and to serve as a liaison with DEA. DEA will designate one person, or a small number of persons, to serve as a liaison with Plaintiffs.

IT IS SO ORDERED.

DATED this 27 day of March, 2009.


OWEN M. PANNER
U.S. DISTRICT JUDGE