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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

CENTER FOR ENVIRONMENTAL
HEALTH, a non-profit corporation,

Plaintiff,

v.

FAYEON DISTRIBUTORS, INC., *et al.*,

Defendants.

CASE NO. CGC-12-526396

**[PROPOSED] CONSENT JUDGMENT
AS TO ROXY TRADING INC.**

File Date: November 27, 2012

Trial Date: None Set

1. INTRODUCTION

1.1 The Parties to this Consent Judgment are the Center For Environmental Health, a California non-profit corporation (“CEH”), and Roxy Trading Inc. (“Settling Defendant”). CEH and Settling Defendant are referred to herein as the Parties. The Parties enter into this Consent Judgment to settle certain claims asserted by CEH against Settling Defendant as set forth in the operative complaint (“Complaint”) in the above-captioned matter. This Consent Judgment covers

1 the lead content of crystallized ginger snack food (“Covered Products”) sold or offered for sale by
2 Settling Defendant.

3 1.2 On September 4, 2013, CEH served a 60-day Notice of Violation under Proposition
4 65, alleging that Settling Defendant violated Proposition 65 by exposing persons to lead and lead
5 compounds (“Lead”) contained in Covered Products without first providing a clear and reasonable
6 Proposition 65 warning.

7 1.3 Settling Defendant is a corporation that manufactures, distributes, sells or offers for
8 sale Covered Products that are offered for sale in the State of California or has done so in the past.

9 1.4 On November 27, 2012, CEH filed the original Complaint in this matter. On
10 December 20, 2012, CEH filed the operative First Amended Complaint in this matter. The First
11 Amended Complaint has since been amended to add additional named defendants.

12 1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
13 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
14 over Settling Defendant as to the acts alleged in the Complaint, that venue is proper in the County
15 of San Francisco, and that this Court has jurisdiction to enter this Consent Judgment as a full and
16 final resolution of all claims which were or could have been raised in the Complaint based on the
17 facts alleged therein with respect to Covered Products manufactured, distributed, and/or sold by
18 Settling Defendant.

19 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by the
20 Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with
21 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
22 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
23 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any
24 other pending or future legal proceedings. This Consent Judgment is the product of negotiation
25 and compromise and is accepted by the Parties solely for purposes of settling, compromising, and
26 resolving issues disputed in this Action.

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2. INJUNCTIVE RELIEF

2.1 **Specification Compliance Date.** To the extent Settling Defendant sells any Covered Products that will be sold or offered for sale in California and it has not already done so, no more than fifteen days after the date of entry of this Consent Judgment (“Effective Date”), Settling Defendant shall provide the reformulation specification set forth in Section 2.2 to each supplier of Covered Products and shall instruct each such Covered Products supplier to provide it with Covered Products that comply with the reformulation specification set forth in Section 2.2. If in the future Settling Defendant purchases Covered Products that will be sold or offered for sale in California from a new third party that it has not previously provided with instructions regarding the reformulation specification set forth in Section 2.2, Settling Defendant shall provide the reformulation specification set forth in Section 2.2 prior to placing an initial order for Covered Products and instruct the new Covered Products supplier to provide it with Covered Products that comply with the reformulation specification set in Section 2.2. Settling Defendant shall retain records of communications sent to and received from suppliers that are related to the requirement of this Section 2.1 for a period of five years from the Effective Date.

2.2 **Reformulation of Covered Products.** After the Effective Date, Settling Defendant shall not purchase, manufacture, ship, sell or offer for sale any Covered Product that Settling Defendant knows or reasonably should know will be sold or offered for sale in California that contains a concentration of more than seventeen (17) parts per billion (“ppb”) Lead by weight, such concentration to be determined by use of a test performed by an accredited laboratory using inductively coupled plasma mass spectrometry (ICP-MS) equipment with a level of detection of at least ten (10) ppb that meets standard laboratory QA/QC requirements (the “Reformulation Level”). Subject to Section 7 below, no allocation is made for naturally occurring Lead in food pursuant to 27 Cal. Code of Regs. § 25501.

3. ENFORCEMENT

1 3.1 **Enforcement Procedures.** Prior to bringing any motion or order to show cause to
2 enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the violating
3 party thirty (30) days advanced written notice of the alleged violation. The Parties shall meet and
4 confer during such thirty (30) day period, exchanging any relevant information, in an effort to try
5 to reach agreement absent Court intervention. After such thirty (30) day period, the Party seeking
6 to enforce may, by new action, motion or order to show cause before the Superior Court of San
7 Francisco, seek to enforce the terms and conditions contained in this Consent Judgment.

8 **4. PAYMENTS**

9 4.1 **Payments by Settling Defendants.** Within ten (10) days of the entry of this
10 Consent Judgment, Settling Defendant shall pay the sum set forth on Exhibit A as further set forth
11 in this Section and on Exhibit A.

12 4.2 **Allocation of Payments.** The total settlement amount for Settling Defendant shall
13 be paid in four separate checks in the amounts specified on Exhibit A and delivered as set forth
14 below. The funds paid by Settling Defendant shall be allocated as set forth on Exhibit A for
15 Settling Defendant between the following categories and made payable as follows:

16 4.2.1 A civil penalty pursuant to Health & Safety Code § 25249.7(b). The civil
17 penalty payment shall be apportioned in accordance with Health & Safety Code § 25249.12 (25%
18 to CEH and 75% to the State of California's Office of Environmental Health Hazard Assessment
19 (“OEHHA”). Accordingly, the OEHHA portion of the civil penalty payment for the amount
20 designated for Settling Defendant on Exhibit A as “Civil Penalty OEHHA Portion” shall be made
21 payable to OEHHA and associated with taxpayer identification number 68-0284486. This
22 payment shall be delivered as follows:

23 For United States Postal Service Delivery:
24 Attn: Mike Gyurics
25 Fiscal Operations Branch Chief
26 Office of Environmental Health Hazard Assessment
27 P.O. Box 4010, MS #19B
28 Sacramento, CA 95812-4010

1 For Non-United States Postal Service Delivery:
2 Attn: Mike Gyurics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
5 1001 I Street, MS #19B
6 Sacramento, CA 95814

7 The CEH portion of the civil penalty payment for the amount designated for Settling
8 Defendant on Exhibit A as “Civil Penalty CEH Portion” shall be made payable to the Center For
9 Environmental Health and associated with taxpayer identification number 94-3251981. This
10 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
11 94117.

12 4.2.2 A payment in lieu of civil penalty to CEH pursuant to Health & Safety
13 Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH shall use such
14 funds to continue its work educating and protecting people from exposures to toxic chemicals,
15 including heavy metals. In addition, as part of its Community Environmental Action and Justice
16 Fund, CEH will use four percent of such funds to award grants to grassroots environmental justice
17 groups working to educate and protect people from exposures to toxic chemicals. The method of
18 selection of such groups can be found at the CEH web site at www.ceh.org/justicefund. The
19 payment pursuant to this Section shall be made payable to the Center For Environmental Health
20 and associated with taxpayer identification number 94-3251981.

21 4.2.3 A reimbursement of a portion of CEH’s reasonable attorneys’ fees and
22 costs. The attorneys’ fees and cost reimbursement check shall be made payable to the Lexington
23 Law Group and associated with taxpayer identification number 94-3317175. This payment shall
24 be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

25 **5. MODIFICATION AND DISPUTE RESOLUTION**

26 5.1 **Modification.** This Consent Judgment may be modified from time to time by
27 express written agreement of the Parties, with the approval of the Court, or by an order of this
28 Court upon motion and in accordance with law.

1 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
2 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
3 modify the Consent Judgment.

4 **6. CLAIMS COVERED AND RELEASE**

5 6.1 This Consent Judgment is a full, final and binding resolution between CEH on
6 behalf of itself and the public interest and Settling Defendant, and Defendants Shun Fat
7 Supermarket, Inc., San Pablo Supermarket, Inc., and Garden Grove Superstore, Inc., Korean Farm,
8 Inc., Tawa Supermarket, Inc., Whole Foods Market California, Inc. and the parents, subsidiaries,
9 affiliated entities that are under common ownership, directors, officers, employees, and attorneys
10 (“Defendant Releasees”), and all entities, other than those listed on Exhibit B, to which Settling
11 Defendant distributes or sells Covered Products and/or the Settling Defendant’s ginger candy,
12 including but not limited to distributors, wholesalers, customers, retailers, franchisees, licensors
13 and licensees (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on
14 failure to warn about alleged exposure to Lead contained in Covered Products or ginger flavored
15 candy (“Released Covered Products”) that were sold by Settling Defendant prior to the Effective
16 Date.

17 6.2 CEH, for itself releases, waives, and forever discharges any and all claims against
18 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any
19 violation of Proposition 65 or any other statutory or common law claims that have been or could
20 have been asserted in the public interest regarding the failure to warn about exposure to Lead
21 arising in connection with Released Covered Products that were manufactured, distributed or sold
22 by Settling Defendant prior to the Effective Date.

23 6.3 Compliance with the terms of this Consent Judgment by Settling Defendant and
24 Settling Defendant’s Defendant Releasees shall constitute compliance with Proposition 65 by
25 Settling Defendant, Settling Defendant’s Defendant Releasees and Settling Defendant’s
26 Downstream Defendant Releasees with respect to any alleged failure to warn about Lead in
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1 Covered Products that are manufactured, distributed or sold by Settling Defendant after the
2 Effective Date.

3 **7. EFFECT OF SUBSEQUENT SETTLEMENTS**

4 7.1 The Parties contemplate that future Consent Judgments entered with other
5 defendants including farmers, processors and manufacturers may involve a higher Reformulation
6 Level due to an allocation of Lead that is naturally occurring under 27 Cal. Code Regs. § 22501.
7 This higher Reformulation Level may also include additional injunctive requirements that will
8 ensure that the Lead in the Covered Products is not avoidable by good agricultural or good
9 manufacturing practices and that the producer, manufacturer, distributor, or holder of the food is at
10 all times utilizing quality control measures that reduce natural occurring Lead to the lowest level
11 currently feasible, as such term is defined in 27 Cal. Code Regs. § 22501.

12 7.2 Accordingly, if on or before January 1, 2019, the Court enters a Judgment or a
13 Consent Judgment to which the Attorney general or CEH is a party that resolves Proposition 65
14 claims regarding failure to warn about Lead in Covered Products that: (i) sets forth a
15 Reformulation Level containing an allocation of Lead that is naturally occurring under 27 Cal.
16 Code Regs. §22501; or (ii) includes injunctive relief designed to ensure that the Lead in the
17 Covered Products is not avoidable by good agricultural or good manufacturing practices and that
18 the producer, manufacturer, distributor, or holder of the food is at all times utilizing quality control
19 measures that reduce natural occurring Lead to the “lowest level currently feasible” as such term is
20 defined in 27 Cal. Code Regs. § 22501; or (iii) a combination of both, then Settling Defendant
21 may move the Court to modify the Reformulation Level in this Consent Judgment so that it is
22 consistent with the reformulation requirement of such future Judgment or Consent Judgment.
23 Prior to filing any such Motion the Parties shall meet and confer in an attempt to agree on specific
24 language regarding the modification pursuant to this Section. If the parties are unable to agree on
25 specific language, Settling Defendant shall inform the Court of both Parties’ position in the papers
26 filed in support of the Motion to Modify this Consent Judgment.

1 **8. PROVISION OF NOTICE**

2 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
3 notice shall be sent by first class and electronic mail to:

4 Eric S. Somers
5 Lexington Law Group
6 503 Divisadero Street
7 San Francisco, CA 94117
8 esomers@lexlawgroup.com

9 8.2 When Settling Defendant is entitled to receive any notice under this Consent
10 Judgment, the notice shall be sent by first class and electronic mail to the person(s) identified in
11 Exhibit A.

12 8.3 Any Party may modify the person and address to whom the notice is to be sent by
13 sending the other Party notice by first class and electronic mail.

14 **9. COURT APPROVAL**

15 9.1 This Consent Judgment shall become effective on the Effective Date, provided
16 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
17 Settling Defendant shall support approval of such Motion.

18 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect
19 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

20 **10. GOVERNING LAW AND CONSTRUCTION**

21 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
22 California.

23 **11. ATTORNEYS' FEES**

24 11.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
25 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs
26 unless the unsuccessful Party has acted with substantial justification. For purposes of this Consent
27 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
28 Discovery Act of 1986, Code of Civil Procedure §§ 2016.010, *et seq.*

1 11.2 Notwithstanding Section 11.1, a Party who prevails in a contested enforcement
2 action brought pursuant to Section 3 may seek an award of attorneys' fees pursuant to Code of
3 Civil Procedure §1021.5 against a Party that acted with substantial justification. The Party
4 seeking such an award shall bear the burden of meeting all of the elements of §1021.5, and this
5 provision shall not be construed as altering any procedural or substantive requirements for
6 obtaining such an award.

7 11.3 Nothing in this Section 11 shall preclude a party from seeking an award of
8 sanctions pursuant to law.

9 **12. ENTIRE AGREEMENT**

10 12.1 This Consent Judgment contains the sole and entire agreement and understanding
11 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
12 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
13 and therein. There are no warranties, representations, or other agreements between the Parties
14 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
15 other than those specifically referred to in this Consent Judgment have been made by any Party
16 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
17 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
18 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
19 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
20 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
21 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
22 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
23 whether or not similar, nor shall such waiver constitute a continuing waiver.

24 **13. RETENTION OF JURISDICTION**

25 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
26 Consent Judgment.

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1 **14. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

2 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
3 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
4 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

5 **15. NO EFFECT ON OTHER SETTLEMENTS**

6 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
7 against an entity that is not Settling Defendant on terms that are different than those contained in
8 this Consent Judgment.

9 **16. EXECUTION IN COUNTERPARTS**

10 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by
11 means of facsimile or portable document format (pdf), which taken together shall be deemed to
12 constitute one document.

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14 IT IS SO ORDERED, ADJUDGED,
15 AND DECREED

16 Dated:

Judge of the Superior Court of the State of California

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1 IT IS SO STIPULATED:

2 Dated: October 14, 2014

CENTER FOR ENVIRONMENTAL HEALTH



CHARLIE PIZARRO

Printed Name

ASSOCIATE DIRECTOR

Title

10 Dated: _____, 2014

ROXY TRADING, INC.

Printed Name

Title

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IT IS SO STIPULATED:

Dated: _____, 2014

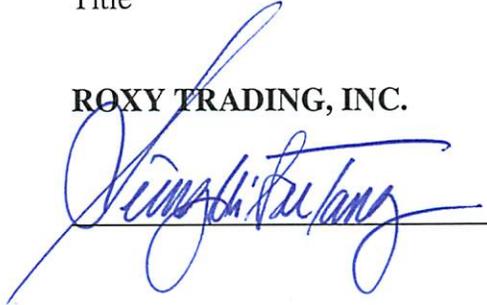
CENTER FOR ENVIRONMENTAL HEALTH

Printed Name

Title

Dated: Oct 8, _____, 2014

ROXY TRADING, INC.



SIENG SAETANG
Printed Name

Printed Name

President
Title

Title

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EXHIBIT A

Settling Defendant: Roxy Trading Inc.

1. Defendant’s Settlement Payment and Allocation:

Total Settlement Payment	\$ 15,000
Civil Penalty OEHHA Portion	\$ 1,449
Civil Penalty CEH Portion	\$ 483
Payment in Lieu of Civil Penalty	\$ 2,900
Attorneys’ Fees and Costs	\$ 10,168

2. Person(s) to Receive Notices Pursuant to Section 8:

Arthur Fine
Mitchell Silberberg & Knupp LLP
11377 W. Olympic Blvd.
Los Angeles, CA 90064-1683
abf@msk.com

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EXHIBIT B
(LIST OF ENTITIES NOT SUBJECT TO DOWNSTREAM DEFENDANT RELEASE)

List of non-settling defendants that have received
60-Day Notices re lead in Covered Products from CEH

- B & V Enterprises, Inc.
- Buderim Ginger Limited
- Dakota Brothers, Inc.
- Falcon Trading Company
- Foodnet Supermarkets, Inc.
- Fresh & Easy Neighborhood Market Inc.
- Goldstar Supermarket
- Island Pacific Supermarkets, Inc.
- Kam Lee Yuen Trading Co., Inc.
- Longchamp Corporation dba Lion Supermarket
- Marra Bros. Dist., Inc.
- Mrs. Gooch's Natural Food Markets, Inc.
- Nature's World LLC
- Piedmont Grocery Company
- Reed's, Inc.
- Rhee Bros., Inc.
- Safeway Inc.
- San Young Market, Inc.
- Sunflower Farmers Markets, LLC
- Torn & Glasser, Inc.
- The Yucaipa Companies, LLC
- Trader Joe's Company