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8 BEFORE THE DEPARTMENT OF CORPORATIONS  
9 OF THE STATE OF CALIFORNIA

10  
11 In the Matter of the Order of THE ) SETTLEMENT AGREEMENT  
CALIFORNIA CORPORATIONS )  
12 COMMISSIONER, )  
13 )  
Complainant, )  
14 )  
v. )  
15 )  
16 FRESH HEALTHY VENDING, LLC )  
17 Respondent. )  
18 )

1 This Settlement Agreement (“Agreement”) is entered into between the California  
2 Corporations Commissioner (“Commissioner”) and Fresh Healthy Vending, LLC (“FHV”) with  
3 respect to the following facts:

4 **RECITALS**

5 A. Fresh Healthy Vending, LLC (“FHV”) is a California limited liability company formed  
6 February 8, 2010 with a principal place of business at 9605 Scranton Road, Suite 350, San Diego,  
7 California 92121. FHV engages in the business of offering and selling franchises under the brand  
8 name “Fresh Healthy Vending.”

9 B. FHV Holdings Corp. (“FHVHC”), formerly known as YoNaturals Incorporated, is a  
10 California corporation formed April 24, 2006 with a principal place of business at 6577 Mira Mesa  
11 Blvd. #123-158, San Diego, California 92121. FHVHC is FHV’s parent and predecessor.

12 C. At all relevant times, Nicholas Yates (“Yates”) was a principal and manager of FHV, and  
13 owned sixty-five percent (65%) of FHVHC.

14 D. At all relevant times, Mark Trotter (“Trotter”) was a principal and manager of FHV.  
15 Trotter was also the President, Chief Executive Officer and Chief Financial Officer of FHVHC, and  
16 owned thirty-five percent (35%) of FHVHC.

17 E. FHV offers and sells franchises in California as well as other states pursuant to franchise  
18 agreements. The agreements grant the right to engage in the business of offering, selling and  
19 distributing healthy snacks and beverages through vending machines under FHV’s brand name and  
20 trademark.

21 F. On April 26, 2010, FHV filed its initial Uniform Franchise Registration Application with  
22 the Commissioner to offer and sell franchises in California (the “2010 Franchise Application”). The  
23 Commissioner granted the registration, effective through April 20, 2011.

24 G. On March 25, 2011, FHV submitted a registration renewal statement with the  
25 Commissioner to continue to offer and sell franchises in California (the “2011 Franchise  
26 Application”). The Commissioner granted the registration, effective through April 20, 2012.

1 H. On April 20, 2012, FHV filed a registration renewal statement with the Commissioner to  
2 continue to offer and sell franchises in California (the “2012 Franchise Application”), which has not  
3 been granted.

4 I. The Commissioner, acting to protect the public from unlawful practices in the offer and  
5 sale of franchises, commenced an investigation into Respondents’ offer and sale of franchises.

6 J. As a result of the investigation, the Commissioner found that Respondent had violated  
7 multiple provisions of the Franchise Investment Law, including but not limited to Corporations Code  
8 sections 31200 and 31123,<sup>1</sup> by (a) making material misstatements or omissions in a franchise  
9 registration application filed with the Commissioner in violation of Section 31200; and (b) failing to  
10 notify the Commissioner of material changes made to the terms of the registered franchise offer in  
11 violation of Section 31123.

12 K. It is the intention and desire of the parties to resolve this matter without the necessity of a  
13 hearing and/or other litigation.

14 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set  
15 forth herein, the parties agree as follows:

16 **TERMS AND CONDITIONS**

17 1. This Agreement is entered into for the purpose of judicial economy and expediency,  
18 and to avoid the time and expense of a hearing and possible further court proceedings.

19 2. Without admitting or denying the allegations contained in the Statements in Support  
20 of Orders and Orders Revoking Effectiveness of Franchise Registration and Renewal and Desist and  
21 Refrain Order (“Order”), Respondent hereby stipulates to issuance of the Order, a true and correct  
22 copy of which is attached hereto as Exhibit A. In the event that any future proceedings are initiated  
23 by or brought before the Commissioner against Respondent, Respondent shall not dispute the  
24 allegations contained in the Order or this Agreement, including the Recitals.

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27 \_\_\_\_\_  
28 <sup>1</sup> All statutory references are to the California Corporations Code unless otherwise noted.

1           3.       Respondent waives any right to a hearing on the allegations set forth in the Order.  
2 Respondent acknowledges its right to an administrative hearing under sections 31406 and 31117 in  
3 connection with the Order, and hereby waives that right to a hearing, and to any reconsideration,  
4 appeal, or other right which may be afforded pursuant to the Franchise Investment Law, the  
5 California Administrative Procedure Act, the California Code of Civil Procedure or any other  
6 provision of law in connection with this matter.

7           4.       Respondent agrees to comply with the terms of the Order, including the provision of a  
8 notice of violation and offer to rescind to all California franchisees whose franchised businesses are  
9 located in California (“California Franchisees”) in accordance with section 31303 and California  
10 Code of Regulations section 310.303, within ninety (90) days of the Commissioner’s execution of  
11 this Agreement by delivering the approved notice of violation to all such California Franchisees in  
12 the form attached hereto as Exhibit B, along with a copy of the Order.

13           5.       If Respondent fails to comply with any of the terms of this Order, the Commissioner  
14 may institute proceedings for any and all violations otherwise resolved pursuant to this Agreement  
15 and the Order.

16           6.       The parties hereby acknowledge and agree that this Agreement is intended to and  
17 shall constitute a final and complete resolution of the Order, and constitutes the entire Agreement  
18 between the parties with respect thereto. This Agreement supercedes any and all prior or  
19 contemporaneous agreements between the parties hereto.

20           7.       Notwithstanding any other provision contained herein, nothing in this Agreement  
21 shall operate to limit the Commissioner’s ability to investigate and prosecute violations of the  
22 Franchise Investment Law not addressed herein, or to assist any other agency (county, state or  
23 federal) with any prosecution, administrative, civil or criminal, brought by such agency against  
24 Respondent concerning violations alleged herein or otherwise.

25           8.       Each party hereto represents and warrants that it has received independent advice  
26 from its attorney(s) and/or other representatives prior to entering into this Agreement, and in  
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1 executing this Agreement relied solely on this statements set forth herein and the advice of its own  
2 counsel and/or representative.

3 9. In that the parties have had the opportunity to draft, review and edit the language of  
4 this Agreement, no presumption for or against any party arising out of drafting all or any part of this  
5 Agreement will be applied in any action relating to or arising out of this Agreement. Accordingly,  
6 the parties hereby waive the benefit of California Civil Code section 1654 and any successor statute.

7 10. The waiver of any provision of this Agreement shall not operate to waive any other  
8 provision set forth herein, and any waiver, amendment and/or change to the terms of this Agreement  
9 must be in writing signed by the parties hereto.

10 11. The parties agree that any and all claims and disputes arising out of or related to the  
11 allegations set forth in the Order and/or this Agreement shall be governed by and interpreted in  
12 accordance with California law, and shall be resolved in the Superior Court of California, County of  
13 Los Angeles, Central District (“Court”). Each of the parties hereto consents to the jurisdiction of the  
14 Court, and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an  
15 inconvenient forum to the maintenance of such action or proceeding in Court.

16 12. Each signatory hereto represents and warrants that he/she possesses the necessary  
17 capacity and authority to execute this Agreement and bind the parties hereto.

18 13. This Agreement may be executed in one or more counterparts, each of which shall be  
19 an original but all of which, together, shall be deemed to constitute a single document. A fax  
20 signature shall be deemed the same as an original signature.

21 Dated: March 18, 2013 JANLYNN OWEN  
22 California Corporations Commissioner

23  
24 By \_\_\_\_\_  
25 Mary Ann Smith  
26 Deputy Commissioner

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Dated: March 15, 2013 FRESH HEALTHY VENDING, LLC

By \_\_\_\_\_  
Jolly Backer, Chairman

APPROVED AS TO FORM:

Dated: March 15, 2013 KURTZ LAW GROUP

By \_\_\_\_\_  
Barry Kurtz, counsel for Respondent Fresh  
Healthy Vending, LLC