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

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 31123,¹ 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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26
27 ¹ All statutory references are to the California Corporations Code unless otherwise noted.
28

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