

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE**

Index No. 2014-11757

The PEOPLE OF THE STATE OF NEW YORK,
The NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION and JOSEPH
J. MARTENS, as COMMISSIONER of the NEW YORK
STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION, the NEW YORK STATE DEPARTMENT
OF TAXATION AND FINANCE, and THOMAS H.
MATTOX, as COMMISSIONER of the NEW YORK
STATE DEPARTMENT OF TAXATION AND FINANCE,
by ERIC T. SCHNEIDERMAN,
Attorney General for the State of New York,

CONSENT JUDGMENT

Petitioners,

-against-

THE JUICE FACTORY CORP.,

Respondent.

WHEREAS, petitioners the State of New York, the New York State Department of Environmental Conservation ("DEC") and its Commissioner, and the New York State Department of Taxation and Finance ("State Tax Department") and its Commissioner (collectively, the "State" or "Petitioners") by their attorney, Eric T. Schneiderman, Attorney General of the State of New York, commenced this action on October 24, 2014 by filing with this Court a Notice of Petition and Petition together with the Affidavit of DEC Investigator Christopher T. Didion; the Affirmation of State Tax Department Deputy Counsel Deborah R. Liebman; the Affidavit of State Tax Department Taxpayer Assistance Specialist David Foster; the Affirmation of Assistant Attorney General Jane C. Cameron, all with supporting exhibits; and a Memorandum of Law, alleging violations of New York's Returnable Container Act (the

“RCA”), Environmental Conservation Law (“ECL”) Article 27, Title 10 (collectively, the “Petition”); and

WHEREAS, the State served the Petition upon Respondent The Juice Factory Corp. (“The Juice Factory” or “Respondent”), through the Secretary of State, on October 24, 2014; and

WHEREAS, this Court and counsel for The Juice Factory have reviewed the State’s Petition; and

WHEREAS, the Petition alleges and The Juice Factory admits that it is a “deposit initiator” for Day’s Brand Soda Beverages in Monroe and Erie Counties as defined by ECL § 27-1003(5-a); and

WHEREAS, the Petition alleges that The Juice Factory was required, commencing August 14, 2009, to register with the State Tax Department as a deposit initiator, to maintain a refund value account (“Refund Value Account”) for container deposit collection and redemption transactions, to file quarterly reports on those transactions, and to quarterly remit 80% of the money remaining in the account – the unclaimed deposit money – to the State Tax Department pursuant to ECL §§ 27-1005, 27-1012(1), 27-1012(2), 27-1012(3), 27-1012(4)(a) and 27-1012(7)(a); and

WHEREAS, the Petition alleges that The Juice Factory’s failure to timely register, remit, and otherwise comply with the deposit initiator provisions of the RCA allowed it to profit in the amount of \$79,571.36, which represents 80% of the five-cent deposits it collected from customers for empty regulated beverage containers that were not redeemed; and

WHEREAS, the Petition alleges that The Juice Factory is liable for penalties based upon its repeated violations of ECL §§ 27-1005, 27-1012(1), 27-1012(2), 27-1012(3), 27-1012(4)(a) and 27-1012(7)(a); and

WHEREAS, The Juice Factory has provided the State with a sworn statement of its financial assets and liabilities, as well as three years of tax returns, and has thereby presented proof of its inability to pay the full statutory penalty amounts for which the Petition alleges it is liable; and

WHEREAS, the parties agree that settlement of this proceeding is in the best interest of the parties, the public and the environment of the State of New York, and the entry of this Consent Judgment and the attached stipulation of discontinuance ("Stipulation of Discontinuance," Exhibit A hereto) is the most appropriate and expeditious means of resolving this matter;

IT IS HEREBY ORDERED AND AGREED as follows:

1. **Financial Disclosure.** The Juice Factory stipulates that the sworn Financial Disclosure Form dated December 9, 2014, and the supporting documents submitted in relation to same, are complete and accurate.
2. **Payments.** On or before December 31, 2014, The Juice Factory shall remit \$79,571.36 in the form of a certified check, cashier's check, or money order made payable to the State of New York, and sent by U.S.P.S. certified mail to the Attorney General, Environmental Protection Bureau, Buffalo Regional Office, 350 Main Street, Suite 300A, Buffalo NY 14202 (attention: Jane C. Cameron, A.A.G.). The State will deposit the funds into the Environmental Protection Fund established pursuant to State Finance Law § 92-s.

3. **Suspended Penalty.** The Juice Factory is subject to a suspended penalty in the amount of \$25,000. The suspended penalty will become due and owing if, but only if, the Respondent violates any term of this Consent Judgment.
4. **Stipulation of Discontinuance.** Upon receipt of the payment made by The Juice Factory in accordance with the terms of paragraph 2, the State shall execute and file the Stipulation of Discontinuance, which shall discontinue this proceeding, with prejudice, subject to the terms of this Consent Judgment, without costs or attorneys' fees to any party.
5. **Respondent's Waiver of Rights.** Subject to the provisions of this Consent Judgment, The Juice Factory waives any and all rights to judicial or administrative review of its terms.
6. **Entire Agreement.** This Consent Judgment and the Stipulation of Discontinuance memorialize and constitute the entire, final, full, and exclusive agreement and understanding between the State and The Juice Factory with respect to the matters covered herein, and supersede and replace all prior negotiations and proposed agreements whether written or unwritten.
7. **Modifications.** This Consent Judgment shall not be modified unless the modification is in writing, signed by the parties, and approved by the Court.
8. **Effective Date.** The effective date of this Consent Judgment and the Stipulation of Discontinuance shall be the date of their entry by the Clerk of this Court.
9. **Execution in Counterparts.** The parties agree that this Consent Judgment and the Stipulation of Discontinuance may be executed in counterparts, and that the separate execution of the attached signature pages shall not affect their validity. Copies of

signatures, including copies transmitted electronically, shall be treated as originals. The parties warrant that the signatories to this Consent Judgment and the Stipulation of Discontinuance are fully authorized to bind the party or parties they represent.

10. Reservation of Rights. Nothing in this Consent Judgment shall be construed as barring, diminishing, adjudicating, or in any way affecting: (a) any legal, administrative or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the State may have against any person or entity other than The Juice Factory; or (b) the right of the State to bring any further action either administrative, or at law or in equity for violations of law except as otherwise provided herein.

11. Choice of Law. This Consent Judgment and Stipulation of Discontinuance shall be administered, construed, and enforced according to the laws of the State of New York.

12. Statements. The Juice Factory shall not take any action or make any statement denying, directly or indirectly, the propriety of this Consent Judgment and the Stipulation of Dismissal. Nothing in this paragraph affects The Juice Factory's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which the State is not a party.

Consented to and Agreed:

Rochester, New York
12/22, 2014

The Juice Factory Corp.

By:



John J. Costello, Esq.
Attorney for The Juice Factory Corp.
36 West Main Street
Suite 707
Rochester, New York 14614
585 546-5960

Consented to and Agreed:

Buffalo, New York

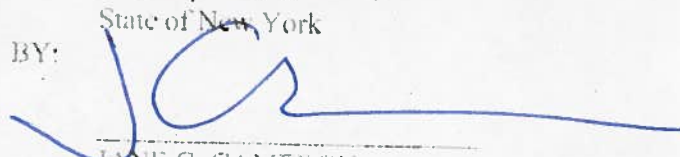
Dec. 22, 2014

ERIC T. SCHNEIDERMAN

Attorney General of the

State of New York

BY:



JANE C. CAMERON

Assistant Attorney General

Main Place Tower, Suite 300A

350 Main Street

Buffalo, New York 14202

(716) 853-8579

Albany, New York
December 19, 2014

New York State Department of
Environmental Conservation

By: 

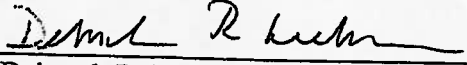
Edward F. McTiernan
Deputy Commissioner
and General Counsel

Office of General Counsel
625 Broadway, 14th Floor
Albany, New York 12233-1010
(518) 402-9401

Consented to and Agreed:

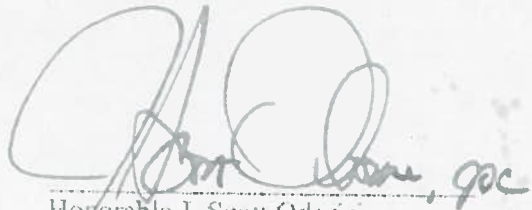
Albany, New York
December 22, 2014

New York State Department of
Taxation and Finance

By: 
Deborah R. Liebman
Deputy Counsel

So Ordered:

Rochester, New York
December 22, 2014

A handwritten signature in dark ink, appearing to read "J. Scott Odorisi", written over a horizontal line.

Honorable J. Scott Odorisi
Justice State Supreme Court
State of New York, Monroe County