

## SETTLEMENT AGREEMENT

This Stipulation and Agreement of Compromise and Settlement (the "Settlement Agreement") is made by and among Kyle Gray ("Plaintiff"), on the one hand, and Defendant PepsiCo, Inc., sued as Pepsi Cola Corporation, and Tropicana Corporation (collectively, "Defendants"), on the other hand, by and through their respective counsel and representatives as of August 11, 2005.

### I. CLAIMS OF THE PARTIES

A. On or about February 24, 2005, Plaintiff, individually and on behalf of all others similarly situated, filed the Action (as defined below) against Defendants. Plaintiff alleged that Defendants violated the New Jersey Consumer Fraud Act, N.J.S.A 56:8-1 *et seq.*

B. All of the claims in the Action arise out of allegations that Defendants' label on the Tropicana Peach Papaya Juice Drink violated the New Jersey Consumer Fraud Act. Plaintiff has sought declaratory judgment, injunctive relief, disgorgement of profits, restitution, compensatory and punitive damages, and attorneys' fees and costs.

C. Defendants deny all of these allegations and state that the label on the product at issue is not misleading, false or deceptive in any manner and is in accordance with applicable laws and regulations.

D. Plaintiff, by and through his counsel, has conducted an investigation of the facts and has analyzed the relevant legal issues. While Plaintiff and his counsel believe that the claims asserted in this Action have merit, they have concluded that the Settlement Agreement will achieve the desired relief sought by this Action in the most expeditious and efficient manner practicable, and that such relief would be received much sooner than would be possible were the claims asserted to be litigated successfully through trial and appeal. Accordingly, Plaintiff desires to resolve his claims asserted against Defendants.

E. Defendants, by and through their counsel, also have conducted an investigation of the facts and analyzed the relevant legal issues. Defendants vigorously deny that they engaged in any misrepresentation or unlawful, unfair, fraudulent or deceptive act, engaged in

any false advertising, or otherwise violated any law or committed any actionable misconduct, and they assert that they have substantial, meritorious factual and legal defenses to all claims alleged and that such claims are without merit. Defendants also have weighed the risks and potential costs of continued litigation of the Action against the benefits of the proposed settlement, and desire to resolve the claims asserted against them.

F. The parties and their counsel believe that, in consideration of all the circumstances and after prolonged and adversarial arms-length settlement negotiations between counsel, the proposed settlement embodied in this Settlement Agreement is fair, reasonable, adequate and in the best interests of the parties.

G. The parties intend that the proposed settlement embodied in this Settlement Agreement will resolve all claims and disputes among Plaintiff and Defendants and all other Released Parties (defined in Paragraph II(D) below), but not the claims of members of the putative class. NOW, THEREFORE, IT IS HEREBY AGREED by and between the parties, by and through their respective counsel and representatives, that: (i) the Action is settled and compromised as between Plaintiff and Defendants; (ii) Plaintiff will file a Stipulation of Dismissal of the Action with prejudice as to Plaintiff Kyle Gray and without prejudice as to any class claims.

## **II. DEFINITIONS**

In addition to the foregoing defined terms, for purposes of the Settlement Agreement and all Exhibits hereto, the following terms shall have the meanings as set forth below:

A. "Action" means the lawsuit entitled "Kyle Gray v. Tropicana Corporation, Pepsi Cola Corporation and John Doe Corporation, Case No. CAM-L-1393-05, filed in the Superior Court of New Jersey, Camden County, on or about February 24, 2005.

B. "Released Claims" means any and all claims, rights, damages, losses, demands, obligations, actions, causes of action, suits, cross-claims, matters, issues, debts, liens, contracts, liabilities, agreements, costs, or expenses, of any nature whatsoever, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including "Unknown Claims" (defined in Paragraph E, below) relating to or arising out of (i) the claims which were

made, or which could have been made, in the Action; and (ii) any Defendants' characterization, labeling or advertising, in any manner whatsoever, of the Tropicana Peach Papaya Fruit Drink or Fruit Juice, at issue in the Action, as well as Tropicana's Strawberry Melon Fruit Drink or Fruit Juice, but excluding all claims of members of the putative class.

C. "Released Parties" means Defendants PepsiCo, Inc., Tropicana Corporation and their wholly owned subsidiaries and all of their past and present officers, directors, agents, designees, servants, sureties, attorneys, employees, associates, shareholders, partners, parents, subsidiaries, divisions, affiliates, insurers, licensors, licensees, successors or predecessors in interest, assigns and representatives.

D. "Unknown Claims" means any and all claims arising out of any matter covered by the Released Claims which in the future are or may be found to be other than or different from the facts now believed to be true. Any person providing releases under this Settlement Agreement may hereafter discover facts other than or different from those which he or she now knows or believes to be true with respect to the subject matter of the Released Claims, but such person upon the entry of the Stipulation of Dismissal shall be deemed to have, fully, finally, and forever settled and released any and all such claims, whether known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future.

### **III. STIPULATION OF DISMISSAL**

Plaintiff shall submit to the Court a Stipulation of Dismissal:

A. Dismissing the Action on the merits, with prejudice as to Plaintiff and without prejudice as to any class claims and without costs;

B. Releasing and discharging the Released Parties from any and all liability with respect to the Released Claims;

### **IV. RELEASES**

A. In accordance with the provisions of the Stipulation of Dismissal, for good and sufficient consideration, the receipt of which is hereby acknowledged, upon the date of the

Stipulation of Dismissal, Plaintiff shall have, fully, finally, and forever released, relinquished and discharged the Released Claims.

B. In accordance with the provisions of the Stipulation of Dismissal, for good and sufficient consideration, the receipt of which is hereby acknowledged, Plaintiff shall be deemed to have, and by operation of the Stipulation of Dismissal shall have, fully, finally and forever released, relinquished and discharged Defendants, the Released Parties, and their counsel in the Action from any and all claims arising out of, relating to, or in connection with the defense of the Action, the Released Claims, or any litigation related to the Released Claims.

## **V. CONSIDERATION**

A. As consideration for the agreement to dismiss the Action and for entry of the Order of Dismissal as provided for in the Settlement Agreement, Defendants agree that by January 1, 2006, they will modify the labels on the Tropicana Peach Papaya Juice Drink and Tropicana Strawberry Melon Juice Drink in the manner as set out in Exhibits A and B, respectively, to this Agreement. Notwithstanding the foregoing, Defendants are entitled to make future modifications to the labels to the products which are the subject of this Agreement so long as the modifications are materially consistent with the changes Defendants have agreed to make in consideration for the settlement of Plaintiff's claims. Plaintiff understands that even though Defendants will make the modifications to the labels as set forth in Exhibit A and B, products which were produced prior to January 1, 2006, using the prior version of the labeling may continue to be available for sale beyond January 1, 2006. Plaintiff and her counsel represent that these modifications adequately satisfy and resolve the claims of misrepresentation, fraudulent or deceptive acts, false advertising, violation of law and any other actionable misconduct regarding the marketing or labeling of these products that were or could have been alleged in the Action.

B. Defendants will deliver to the Center for Science in the Public Interest ("CSPI"), simultaneous with the execution and delivery of this Agreement, a check payable to Plaintiff Kyle Gray for \$2,500.00.

C. Defendants will deliver to CSPI, simultaneous with the execution and delivery of this Agreement, a check for \$100,000.00, payable to the American Heart Association.

D. Defendants will deliver to CSPI, simultaneous with the execution and delivery of this Agreement, a check payable to Williams Cuker Berezofsky for \$50,000 to pay the legal fees of counsel to Plaintiff and counsel to CSPI.

## **VI. OTHER PROVISIONS OF THE SETTLEMENT**

A. The parties agree to use their best efforts to implement the settlement of the Action and to comply with and effectuate the terms of this Settlement Agreement.

B. This Settlement Agreement is conditioned upon the filing of a Stipulation of Dismissal. If the Stipulation of Dismissal is reversed or vacated, or for whatever reason does not become a "final" dismissal of the Action, this Settlement Agreement shall be terminated.

C. This Settlement Agreement contains the entire agreement among the parties hereto and supersedes any prior agreements or understandings between them.

D. The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all affected parties or their successors-in-interest.

E. This Settlement Agreement shall be construed and enforced in accordance with the laws of New Jersey. Any orders or judgments entered by the Court in conjunction with the proceedings relating to or arising out of this Settlement Agreement shall be construed and enforced, and all issues relating to the preclusive effect of such orders or judgments, shall be determined by the laws of New Jersey relating to the construction, enforcement, and preclusive effect of orders and judgments entered by federal courts.

F. This Settlement Agreement was entered into after significant good faith, arms-length negotiations between the parties' counsel. Plaintiff executes this Settlement Agreement only after carefully reviewing this Settlement Agreement and all related documents and consulting with her counsel. This Settlement Agreement has been entered into without any coercion and under no duress. This Settlement Agreement reflects the conclusion of each party that this Settlement Agreement and the Stipulation of Dismissal are in the best interest of that party.

G. The Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

H. In the event the settlement is not consummated for any reason, this Settlement Agreement and any other past, present or future settlement communications shall be deemed confidential and shall not be used for any purpose in this action or any other proceeding.

DATED: August \_\_, 2005

KYLE GRAY

By: \_\_\_\_\_

DATED: August \_\_, 2005

WILLIAMS CUKER BEREZOFSKY

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: August \_\_, 2005

WILLIAM A. RIBACK, ESQ.

By: \_\_\_\_\_

DATED: August 11, 2005

CENTER FOR SCIENCE IN THE PUBLIC INTEREST

By:  \_\_\_\_\_

Its: Director of Litigation \_\_\_\_\_

DATED: August \_\_, 2005

PEPSICO, INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

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DATED: August \_\_, 2005

KYLE GRAY

By: \_\_\_\_\_

DATED: August \_\_, 2005

WILLIAMS CUKER BEREZOFSKY

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: August \_\_, 2005

WILLIAM A. RIBACK, ESQ.

By: \_\_\_\_\_

DATED: August \_\_, 2005

CENTER FOR SCIENCE IN THE PUBLIC INTEREST

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: August 10, 2005

PEPSICO, INC.

By: Robert K. [Signature]

Its: Vice President

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H. In the event the settlement is not consummated for any reason, this Settlement Agreement and any other past, present or future settlement communications shall be deemed confidential and shall not be used for any purpose in this action or any other proceeding.

DATED: August 10, 2005

KYLE GRAY

By: 

DATED: August \_\_, 2005

WILLIAMS CUKER BEREZOFSKY

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: August 10, 2005

WILLIAM A. RIBACK, ESQ.

By: 

DATED: August \_\_, 2005

CENTER FOR SCIENCE IN THE PUBLIC INTEREST

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: August \_\_, 2005

PEPSICO, INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_



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H. In the event the settlement is not consummated for any reason, this Settlement Agreement and any other past, present or future settlement communications shall be deemed confidential and shall not be used for any purpose in this action or any other proceeding.

DATED: August \_\_, 2005

KYLE GRAY

By: \_\_\_\_\_

DATED: August 10, 2005

WILLIAMS CUKER BEREZOFSKY

By: Mark Kucke

Its: PARTNER

DATED: August \_\_, 2005

WILLIAM A. RIBACK, ESQ.

By: \_\_\_\_\_

DATED: August \_\_, 2005

CENTER FOR SCIENCE IN THE PUBLIC INTEREST

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: August \_\_, 2005

PEPSICO, INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_



**EXHIBIT A**

**Tropicana**  
**STRAWBERRY MELON**  
 FLAVORED JUICE DRINK  
 FROM CONCENTRATE WITH OTHER NATURAL FLAVORS

CONTAINS 5% JUICE

**Nutrition Facts**  
 Serving Size 8 fl oz (240 mL)  
 Servings Per Container About 2.5

Amount Per Serving	8 fl oz % DV*	Per Bottle % DV*
<b>Calories</b>	<b>110</b>	<b>220</b>
<b>Total Fat</b>	0g 0%	0g 0%
<b>Sodium</b>	50mg 2%	100mg 4%
<b>Total Carb</b>	29g 10%	58g 20%
<b>Sugars</b>	27g	54g
<b>Protein</b>	0g	0g
<b>Vitamin C</b>	100%	100%

Not a significant source of vitamin A, calcium and iron.  
 \*Percent Daily Values (DV) are based on a 2,000 calorie diet.

CONTAINS: WATER, HIGH FRUCTOSE CORN SYRUP, FILTERED PEAR JUICE FROM CONCENTRATE, CITRIC ACID, PHOSPHORIC ACID, POTASSIUM CITRATE, ASCORBIC ACID (VITAMIN C), SODIUM POLYPHOSPHATES (PRESERVES FRESHNESS), NATURAL FLAVOR, POTASSIUM BENZOATE (PRESERVES FRESHNESS), GUM ARABIC, POTASSIUM SORBATE (PRESERVES FRESHNESS), XANTHAN GUM, ESTER GUM, CALCIUM DISODIUM EDTA (TO PROTECT FLAVOR), RED 40 AND BLUE 1. FOR COMMENTS OR QUESTIONS, CALL 1-800-433-2452.

100% JUICE  
 100% NATURAL

20 FL OZ  
 (1.25 PT)  
 591 mL

NON-CARBONATED • NO CAFFEINE

FOR BAR CODE PLACEMENT

ME-H150-CA-CRV

STORE IN A COOL PLACE PLEASE RECYCLE

**EXHIBIT B**