

SUPREME COURT OF THE STATE OF NEW YORK
FOR THE COUNTY OF WESTCHESTER

THE STATE OF NEW YORK *ex rel.*
ROBERT M. STOEVER,

Plaintiff,

-against-

OAK BEVERAGES, INC., BOENING
BROS., INC., DEBRA E. BOENING, and
MANUEL BUSTO, SR., 3rd GENERATION
ENTERPRISES d/b/a TOP POP SODA,

Defendants.

Index No. 68674/2016

STIPULATION AND SETTLEMENT AGREEMENT

This Stipulation and Settlement Agreement (“Agreement”) is entered into among (i) the State of New York (the “State”); (ii) relator Robert Stoever (the “Relator”); and (iii) Oak Beverages, Inc. (“Oak Beverages” or “Defendant”), Boening Bros., Inc. (“Boening”), 3rd Generation Enterprises (d/b/a Top Pop Soda), and Debra Boening (collectively, the “Settling Defendants”), through their authorized representatives. The above-named parties are hereinafter collectively referred to as “the Parties.”

PREAMBLE

WHEREAS, on or about December 9, 2016, Relator filed a *qui tam* action (the “Action”) captioned *State of New York ex rel. Robert M. Stoever v. Oak Beverages, Inc., et al.*, Index No. 68674/2016 (N.Y. Sup. Ct., Westchester County) pursuant to the New York False Claims Act, N.Y. State Finance Law §§ 187 *et seq.* (“NYFCA”), alleging that Defendant knowingly made, used, or caused to be made or used, false statements that were material to Defendants’ obligations to pay or transmit money to the State of New York; and

WHEREAS, the Office of the Attorney General (“NYAG”) thereafter commenced an investigation in connection with the allegations of the Relator’s complaint; and

WHEREAS, as a result of that investigation, the State contends that it has certain civil claims against Defendant Oak Beverages under the NYFCA; and

WHEREAS, to avoid the time, expense, and distraction of litigation, the Parties have determined and hereby agree that settlement is in each of their best interests, and the NYAG has agreed to accept the terms of the Agreement; and

WHEREAS, Relator claims entitlement under State Fin. Law § 190(6) to a share of the proceeds of this Agreement and to Relator’s reasonable expenses, attorney’s fees and costs; and

NOW THEREFORE, in consideration of the mutual promises and obligations of the Agreement, the Parties agree fully and finally to settle this Action pursuant to the Terms and Conditions below:

COVERED CONDUCT

1. The conduct described in Paragraphs 2 through 20 below is hereinafter referred to as the “Covered Conduct.”
2. Oak Beverages, a corporation with its headquarters in Blauvelt, New York, distributes beer to customers throughout New York City and several counties in New York (Westchester, Putnam, Dutchess, Rockland, Sullivan, Orange, and Ulster).
3. As described below, from 2013 to 2016, Oak Beverages falsely inflated the number of bottle returns received by Oak Beverages in order to minimize the amount payable to the State under New York’s Bottle Bill. This conduct, which was initiated and directed by Oak Beverages’ General Manager, was intentional and involved the routine alteration of company invoices and records to conceal the scheme.

Obligations Under the New York Returnable Container Act

4. New York enacted the Bottle Bill, otherwise known as the Returnable Container Act, to combat the problem of litter caused by discarded bottles and cans. *See* ECL § 27-1001. The law required soft-drink, beer and ale containers sold or offered for sale in New York to have a refund value of at least five cents. *Id.* at § 27-1005.

5. The New York State Department of Environmental Conservation credits the Bottle Bill with reducing roadside container litter by 70%, helping to recycle over 5.1 billion plastic, glass and aluminum beverage containers, and eliminating 200,000 metric tons of greenhouse gasses each year.

6. Under the law, “no person shall sell or offer for sale a beverage container” unless “the deposit on such beverage container is or has been collected by a registered deposit initiator.” *Id.* A “deposit initiator” includes a “distributor,” which is defined as “any person, firm or corporation which engages in the sale or offer for sale of beverages in beverage containers to a dealer.” ECL § 27-1003[5-a] & [6].

7. Oak Beverages is a registered deposit initiator.

8. Deposit initiators are required to register with the Commissioner of Taxation and Finance (*id.* at § 27-1012[7(a)]), and are required to both collect bottle deposits upon sales and reimburse retailers for empty containers. Specifically, deposit initiators are required to place bottle deposits in a “refund value account.” ECL § 27-1012[1].

9. Likewise, deposit initiators are required to accept all qualifying empty containers and issue refunds to those returning the containers, as long as the containers being returned are for the type of beverages sold by the deposit initiator. *Id.* at § 27-1007[4].

Deposit initiators are required to pay to the retailer/dealer an additional handling fee of \$0.035 per container. *Id. at* § 27-1007[6].

10. The deposit initiator must hold the amounts in the refund value account in trust for the state, *id. at* § 27-1012[1], and must file quarterly reports with the New York State Department of Tax and Finance (“DTF”) detailing topline activity and balances in the account, *id. at* § 27-1012[3]. Also quarterly, the deposit initiator must pay to the New York State DTF 80% of the balance in the account. After making this payment and submitting the quarterly report, the deposit initiator may withdraw the remaining 20% in the account, which becomes its property. *Id. at* § 27-1012[4].

11. The quarterly reports must include (a) the balance in the refund value account at the beginning of the quarter; (b) all deposits credited, and all interest, dividends or returns received on the account; (c) all withdrawals from the account; and (d) the balance in the account at the end of the quarter. ECL § 27-1012[3]; 6 NYCRR § 367.11.

Oak Beverages Falsely Inflated the Amount of Empty Containers It Collected

12. Oak Beverages’ General Manager systematically inflated the amount of empty containers collected by the company’s drivers, and caused the falsely inflated number to be reported to the State in the company’s quarterly reports. The larger number of empty containers collected meant a corresponding increase in amounts reported as purportedly paid in returned deposits. Oak Beverages did not in fact pay out these deposit returns, but instead retained the money for its own use.

13. Oak Beverages’ General Manager, Manuel Busto Sr., initiated and directed the scheme.

14. On a routine basis, Mr. Busto would select between three and five of the driver's daily route records and take them to his office where he would—by manually altering certain individual customer invoices—dramatically increase the amount of empty containers collected. Specifically, Mr. Busto handwrote additions to the “EMPTIES” section of customer invoices.

15. The alternations in the records exaggerated the numbers of empty containers actually picked up in a single route. For instance, Mr. Busto modified one invoice for the Sweet Corner Grocery in Queens—where in actuality no empty containers had been picked up—to indicate that this store returned 80 bags of assorted empty cans and bottles (resulting in a \$1,264.80 adjustment to the invoice).

16. After altering the records by hand, Mr. Busto gave the driver's daily route records to lower-level employees at the company with instructions to modify the company's electronic sales database to reflect the alterations. These lower-level employees entered large “credits” to the customer's account to reflect the empty containers purportedly collected, and at the same time entered corresponding “debits” in the same amount. This allowed the customer account balance to remain accurate (and for the scheme to be hidden from the customers), while at the same time falsely reflecting additional empty containers collected.

17. Mr. Busto provided instructions to the lower-level employees performing the data entry not to inform anyone else at the company about the accounting adjustments.

18. Oak Beverages submitted “Quarterly Reports of Beverage Container Deposits” to the New York State DTF in March (for December – February), June (for March – May), September (for June – August), and December (for September – November).

19. For the years 2013 through 2016, Mr. Busto’s alterations inflated the “Beverage Container Deposits Paid from Account” line of the filing to New York State DTF—the line that offsets deposits collected by Oak Beverages on behalf of the State.

20. These alterations resulted in approximately \$1,859,027 in underpayments to the State by Oak Beverages.

TERMS AND CONDITIONS

Settlement Amount

21. As a term of this Agreement, Oak Beverages admits the Covered Conduct and acknowledges that the conduct described in the Covered Conduct violated the New York False Claims Act.

22. Defendant will pay the sum of four million, three hundred and twelve thousand, four hundred eighty-three dollars (\$4,312,483.00) in U.S. dollars (the “Settlement Amount”) to resolve the Action and the NYAG’s investigation. This Settlement Amount is being paid in compromise of the damages and penalties sought by the State for alleged violations of the NYFCA, along with the Relator’s share, *i.e.*, the share to which the Relator is entitled under New York State Finance Law § 190(6), as well as the State’s attorney’s fees and costs.

23. The Settlement Amount is divided into two portions: a portion paid to the State (“State’s Share”), and a portion paid to the Relator (“Relator’s Share”). The Relator’s Share is the portion to which the Relator is entitled under New York State Finance Law §190(6).

24. Within ten (10) calendar days of the Effective Date (defined below) of this Agreement, Defendant agrees to pay the State’s Share of the Settlement Amount in the sum

of three million, three hundred and sixty-three thousand, and seven hundred thirty-seven (\$3,363,736) U.S. dollars. Such payment will be made by wire transfer pursuant to instructions provided by the NYAG.

25. In addition, within ten (10) calendar days of this Agreement, the Defendant agree to pay the Relator's Share of the Settlement Amount in the sum of nine hundred forty-eight thousand, seven hundred forty-seven (\$948,747) in U.S. dollars. Such payment shall be made through electronic transfer to a trust account for Relator, through Relator's counsel, in accordance with written instructions to be provided by Relator's counsel.

26. Defendant agrees that it will not claim, assert, or apply for a tax deduction or tax credit on any New York State or New York City tax return, for any portion of the amount due under this Agreement.

27. In consideration of the obligations of the Settling Defendants as set forth in this Agreement, Relator and the State, within thirty (30) days after the Effective Date (defined below) of this Agreement, shall file, pursuant to CPLR 3217(a), a Notice of Discontinuance of the Action with prejudice, subject to the exceptions set forth in this Agreement.

Releases

28. Subject to the exceptions in the next Paragraph, in consideration of the obligations of Defendant set forth in this Agreement, conditioned upon the full payment by Defendant of the Settlement Amount and subject to Paragraph 36 herein (concerning bankruptcy proceedings commenced within ninety-one (91) days of the Effective Date of this Agreement or any payment to the State under the Agreement, whichever is later), the State releases Settling Defendants from any civil or administrative monetary claim the State

has or may have for the Covered Conduct under the New York False Claims Act, N.Y. State Fin. Law §§ 187 *et seq.*

29. Notwithstanding any term of this Agreement, the State specifically does not release any person or entity from any of the following liabilities:

- a. Any civil, criminal, or administrative liability arising under state or municipal tax laws;
- b. Any criminal liability;
- c. Any civil liability that Settling Defendants have or may have under any state statute, regulation, or rule not covered by this Agreement;
- d. Any liability to the State (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon such obligations as are created by this Agreement;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability for personal injury or property damage arising from the Covered Conduct;
- h. Any liability for failure to deliver goods or services due; and
- i. Any civil or administrative liability of individuals, except as provided for herein.

30. In consideration of the obligations of Defendant in this Agreement, conditioned upon the full payment by Defendant of the Settlement Amount, Relator, for itself, and for its heirs, personal representatives, legal representatives, successors, attorneys,

agents and assigns, fully and finally releases Settling Defendants, and their heirs, personal representatives, legal representatives, successors and assigns, from any civil monetary claim Relator has on behalf of the State or any local governments within the State for the Covered Conduct under the New York False Claims Act, N.Y. State Fin. Law §§ 187 *et seq.*; provided, however, that nothing in this Agreement shall preclude Relator from seeking to recover Relator's expenses or attorney's fees and costs from Settling Defendants, pursuant to N.Y. State Fin. Law § 190 or for seeking redress pursuant to N.Y. State Fin. Law § 191.

31. Settling Defendants, for themselves and their respective heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, fully and finally releases the State, its agencies, officers, employees, servants, attorneys, and agents from any claims (including claims for attorney's fees, costs, and expenses of every kind and however denominated) that Settling Defendants have asserted, could have asserted, or may assert in the future against the State, its agencies, officers, employees, servants, attorneys, agents and assigns, related to the Covered Conduct and the State's investigation and prosecution thereof. Nothing in the foregoing provision shall restrict or in any manner affect Defendant's ability to amend past Bottle Bill tax filings or to seek a refund under the Bottle Bill for any overpayments Defendant may have made.

32. Settling Defendants for themselves and their respective heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns fully and finally releases Relator, its heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns from any claims (including claims for attorney's fees, costs, and expenses of every kind and however denominated) that Settling Defendants have asserted, could have asserted, or may assert in the future against the Relator, its heirs,

personal representatives, legal representatives, successors, attorneys, agents and assigns, related to the Covered Conduct and Relator's and the State's investigations and prosecution concerning the Action.

33. The Relator, for itself individually, and for its heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, fully and finally releases the State, its agencies, officers, employees, servants, attorneys, and agents from any claims (including claims for attorney's fees, costs, and expenses of every kind and however denominated) that Relator has asserted, could have asserted, or may assert in the future against the State, arising out of the filing of the Action or from any other claim for a share of the settlement proceeds. Relator accepts the payment described in Paragraph 25 in full settlement of any claims Relator may have against the State under this Agreement or as a result of the Action. This Agreement does not resolve or in any manner affect any claims the State has or may have against Relator arising under State tax laws, or any claims arising under this Agreement.

34. Relator, and each of its respective heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, agrees not to object to this Agreement and agrees and confirms that this Agreement is fair, adequate, and reasonable pursuant to New York State Finance Law § 190(5)(b)(ii).

35. The State has agreed to the terms of this Agreement based on, among other things, the representations made to the Office of the Attorney General by Settling Defendants and their counsel. To the extent that any material representations are later found to be inaccurate or misleading, this Agreement is voidable by the Office of the Attorney General in its sole discretion. No representation, inducement, promise, understanding,

condition, or warranty not set forth in this Agreement has been made to or relied upon by Settling Defendants in agreeing to this Agreement. Settling Defendants acknowledge that they have entered this Agreement freely and voluntarily and upon due deliberation with the advice of counsel.

Bankruptcy and Non-Payment

36. If within ninety-one (91) days of the Effective Date of this Agreement or of any payment made under this Agreement, the Settling Defendants or a third party commences any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of its or their debts, or seeking to adjudicate the Settling Defendants as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for the Settling Defendants or for all or any substantial part of its or their assets, Settling Defendants agree as follows:

- a. Settling Defendants' obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Settling Defendants shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) its obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) it was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment of the Settlement Amount; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Settling Defendants.

b. If Settling Defendants' obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the State, at its sole option, may rescind the releases in this Agreement insofar as it affects the State and bring any civil and/or administrative claim, action, or proceeding against Settling Defendants for the claims that would otherwise be covered by the releases provided above, and Settling Defendants agree that (i) any such claims, actions, or proceedings brought by the State are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and Settling Defendants shall not argue or otherwise contend that the State's claims, actions, or proceedings are subject to an automatic stay; (ii) it shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceedings that are brought by the State within 60 calendar days of written notification to Settling Defendants that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date of the Agreement; and (iii) the State has a valid claim against Settling Defendants in the amount of treble damages plus penalties under the New York False Claims Act, and may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

- c. Settling Defendants acknowledge that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

37. In the event of the failure by Defendant to make any or all payments of the Settlement Amount, including the State's Portion and the Relator's Share, the State will provide written notice of the non-payment to Defendant. Such notice shall be given to the person and address designated in Paragraph 48 by (i) delivery in person, (ii) a nationally recognized next-day courier service, or (iii) first class, registered or certified mail, postage prepaid. Notice so given shall be effective upon (i) receipt, or (ii) on the fifth (5th) day following mailing, whichever occurs first. Defendant shall have an opportunity to pay the unpaid balance within five (5) calendar days from the effective date of the notice. If Defendant fails to pay the overdue unpaid balance of its payment obligations under this Agreement within five (5) calendar days from the effective date of the notice of non-payment ("Default"), the State, in its sole discretion, may declare or do any or all of the following:

- a. The State may declare the entire Settlement Amount, less any payments already made, immediately due and payable, with unpaid amounts bearing the Default rate of interest at the interest rate set forth in New York Civil Practice Law and Rules § 5004 beginning as of the date of Default until payment of the remaining Settlement Amount is made in full; and/or
- b. Rescind its agreement to this Agreement as to Defendant and pursue all available remedies to enforce this Agreement. In the event of a Default as described above, Defendant agrees not to contest any action to enforce this Agreement or any other collection action undertaken by the State pursuant to

this Paragraph, and Defendant agrees to pay the State all reasonable costs of collection and enforcement of this Agreement, including attorney's fees and expenses; and/or

- c. Rescind its agreement to this Agreement as to Defendant and reinstitute an action or actions against Defendant in this Court. In the event the State reinstitutes this action, Defendant: (1) expressly agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims which (i) are filed by the State after the written notification to Defendant that this Agreement has been rescinded, and (ii) relate to the Covered Conduct, and (2) further waive and will not assert any defenses Defendant may have to any civil or administrative action relating to the Covered Conduct.

38. In the event of the failure by Defendant to make any or all payments of the Relator's Share when due, the Relator will provide written notice of the non-payment to Defendant. Such notice shall be given to the person and address designated in Paragraph 48 by (i) delivery in person, (ii) a nationally recognized next day courier service, or (iii) first class, registered or certified mail, postage prepaid. Notice so given shall be effective upon (i) receipt, or (ii) on the fifth (5th) day following mailing, whichever occurs first. Defendant shall have an opportunity to pay the unpaid balance within five (5) calendar days from the effective date of the notice. If Defendant fails to pay the overdue unpaid balance of its payment obligations for the Relator's Share under this Agreement within five (5) calendar days from the effective date of the notice of non-payment ("Relator's Share Default"), the Relator, in its sole discretion, may declare or do any or all of the following:

- a. The Relator may declare the entire Relator's Share, less any payments already made, immediately due and payable, with unpaid amounts bearing the Default rate of interest at the interest rate set forth in New York Civil Practice Law and Rules § 5004 beginning as of the date of Relator's Share Default until payment of the remaining Relator's Share is made in full; and/or
- b. Institute an action or actions against Defendant in this Court to collect the unpaid amounts of the Relator's Share plus applicable interest. Defendant agrees not to contest any action to enforce this Agreement with respect to the Relator's Share or any other collection action undertaken by the Relator pursuant to this Paragraph, and Defendant agrees to pay the Relator all reasonable costs of collection and enforcement of this Agreement, including attorney's fees and expenses.

Additional Terms

39. The Parties represent and warrant, through the signatures below, that the terms and conditions of this Agreement are duly approved, and that execution of this Agreement is duly authorized. The undersigned counsel and any other signatories represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

40. Settling Defendants shall not take any action or make any statement denying, directly or indirectly, the propriety of this Agreement or expressing the view that this Agreement is without factual basis. Nothing in this paragraph affects Settling Defendants'

testimonial obligations or their rights to take legal or factual positions in defense of litigation or other proceedings to which the State is not a party.

41. This Agreement is not intended for use by any third party in any other proceeding.

42. The Agreement and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

43. Except as provided in Paragraph 30 above, each Party shall bear its own legal and other costs incurred in connection with this matter.

44. This Agreement constitutes the complete agreement between and among the Parties, and may not be amended except by an instrument in writing signed on behalf of all the Parties to this Agreement.

45. This Agreement shall be binding on and inure to the benefit of the Parties to this Agreement and their respective successors and assigns, provided that no Party, other than the NYAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the NYAG.

46. In the event that any one or more of the provisions contained in this Agreement, other than provisions concerning payment and release, shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.

47. Any failure by the State to insist upon the strict performance by Settling Defendants and/or Relator of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and the State, notwithstanding such failure, shall

have the right thereafter to insist upon the strict performance of any and all of the provisions of this Agreement to be performed by any or all of the Parties.

48. All communications from any Party concerning the subject matter of this Agreement shall be addressed as follows:

If to the State of New York:

Justin Wagner
Assistant Attorney General
Office of the New York Attorney General
Taxpayer Protection Bureau
120 Broadway, 22nd Floor
New York, NY 10271
(212) 416-6012

If to Relator:

Kathy S. Marks
Yankwitt LLP
140 Grand Street, Suite 705
White Plains, NY 10601
(914) 686-1500

If to Settling Defendants:

Alex Spiro
Quinn, Emanuel, Urquhart & Sullivan LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010
(212) 849-7000

Richard F.X. Guay
Meyer, Suozzi, English & Klein, P.C
1350 Broadway
New York, NY 10018
(212) 239-4999

49. Except for written notices of Defendant's non-payment issued by the State or Relator, the sending and receipt of which shall be governed by the provisions in Paragraphs 37 and 38 respectively, all communications from any Party to another Party concerning this Agreement shall be sent by United States mail with return receipt requested or overnight delivery service with signature required to the signatory counsel for each Party, unless such

communications are sent by email and a reply is written without objection to the electronic means of communication.

50. In any subsequent investigation, civil action, or proceeding by the State to enforce this Agreement, or for violations of the Agreement, Settling Defendants expressly agree and acknowledge that any statute of limitations or other time-related defenses are tolled from and after the effective date of this Agreement, and that the State may use statements, documents or other materials produced or provided by the Settling Defendants prior to or after the effective date of this Assurance.

51. If a court of competent jurisdiction determines that Settling Defendants have breached this Agreement, Settling Defendants shall pay to the NYAG and/or to Relator the cost, if any, of obtaining such determination and of enforcing this Agreement, including, without limitation, legal fees, expenses, and court costs.

52. Any headings, titles and subtitles contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties, and shall not in any way affect the meaning or interpretation of this Agreement.

53. This Agreement shall be governed by the laws of the State of New York without regard to any conflict of laws principles. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the Supreme Court of the State of New York, New York County.

54. This Agreement is effective on the date of signature of the last signatory of the Agreement (the "Effective Date"). Facsimiles and .pdfs of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

55. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.


[Signature pages follow]

IN WITNESS WHEREOF, the Agreement is executed by the Parties hereto.

THE STATE OF NEW YORK

Dated: MAY 1, 2018

ERIC T. SCHNEIDERMAN
New York State Attorney General

BY: 
Thomas Teige Carroll
Justin Wagner

Office of the New York Attorney General
Taxpayer Protection Bureau
120 Broadway, 22nd Floor
New York, New York 10271
(212) 416-6012

Attorneys for the State

ROBERT M. STOEVER

Dated: _____

By: _____
Robert M. Stoever
Relator

By: _____
Kathy S. Marks

Kathy S. Marks
Yankwitt LLP
140 Grand Street, Suite 705
White Plains, NY 10601
(914) 686-1500

*Attorney for Relator
As to Form*

IN WITNESS WHEREOF, the Agreement is executed by the Parties hereto.

THE STATE OF NEW YORK

Dated: _____

ERIC T. SCHNEIDERMAN
New York State Attorney General

BY: _____

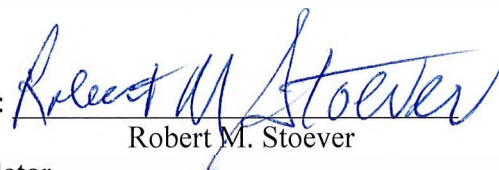
Thomas Teige Carroll
Justin Wagner

Office of the New York Attorney General
Taxpayer Protection Bureau
120 Broadway, 22nd Floor
New York, New York 10271
(212) 416-6012

Attorneys for the State

ROBERT M. STOEVER

Dated: 7/26/2018

By: 
Robert M. Stoever
Relator

By: 
Kathy S. Marks

Kathy S. Marks
Yankwitt LLP
140 Grand Street, Suite 705
White Plains, NY 10601
(914) 686-1500

*Attorney for Relator
As to Form*

SETTLING DEFENDANTS OAK
BEVERAGES, INC.; BOENING BROS.,
INC.; 3rd GENERATION ENTERPRISES;
AND DEBRA BOENING

Dated: 4/25/2018



Alex Spiro
Quinn, Emanuel, Urquhart & Sullivan LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010

*Attorney for Oak Beverages
As to Form*

Dated: _____

Richard F.X. Guay
Meyer, Suozzi, English & Klein, P.C.
1350 Broadway
New York, NY 10018

*Attorney for Debra Boening and
Boening Bros.
As to Form*

Dated: _____

Oak Beverages, Inc.
Settling Defendant

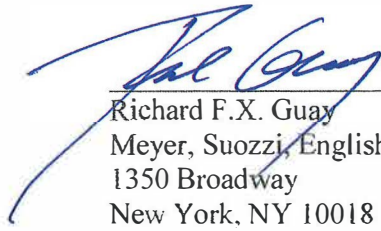
SETTLING DEFENDANTS OAK
BEVERAGES, INC.; BOENING BROS.,
INC.; 3rd GENERATION ENTERPRISES;
AND DEBRA BOENING

Dated: _____

Alex Spiro
Quinn, Emanuel, Urquhart & Sullivan LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010

*Attorney for Oak Beverages
As to Form*

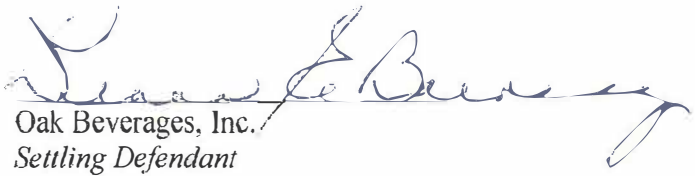
Dated: 4.30.2018



Richard F.X. Guay
Meyer, Suozzi, English & Klein, P.C.
1350 Broadway
New York, NY 10018

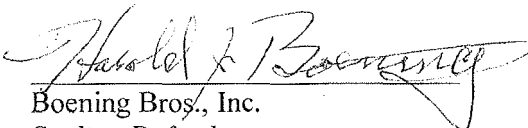
*Attorney for Debra Boening and
Boening Bros.
As to Form*

Dated: 4/30/2018



Oak Beverages, Inc.
Settling Defendant

Dated: 4/30/18
1 1


Boeing Bros., Inc.
Settling Defendant

Dated: _____

3rd Generation Enterprises
(d/b/a Top Pop Soda)
Settling Defendant

Dated: _____

Debra Boening
Settling Defendant

Dated: _____

Boeing Bros., Inc.
Settling Defendant

Dated: 4/30/18

Mauro Brosco VP
3rd Generation Enterprises
(d/b/a Top Pop Soda)
Settling Defendant

Dated: _____

Debra Boeing
Settling Defendant

Dated: _____

Boening Bros., Inc.
Settling Defendant

Dated: _____

3rd Generation Enterprises
(d/b/a Top Pop Soda)
Settling Defendant

Dated: 4/30/2018



Debra Boening
Settling Defendant

NEW JERSEY
STATE OF ~~NEW YORK~~)
) ss.:
COUNTY OF ~~ROCKLAND~~)
Bergen

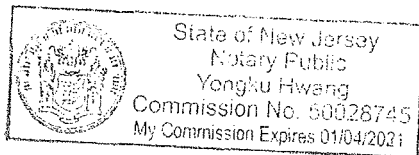
On this day 25th of April, 2018, Debra Boening known personally to me to be the President of Oak Beverages, Inc., appeared before the undersigned and acknowledged to me that she, as such officer and being authorized so to do, executed the within instrument for the purposes therein set forth, on behalf of Oak Beverages Inc. by her signature on the instrument as such officer.

Sworn to before me this

25th day of April, 2018



NOTARY PUBLIC



STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

On this day 30 of April, 2018, Harold J. Boening, Sr. known personally to me to be the President of Boening Bros. Inc., appeared before the undersigned and acknowledged to me that he, as such officer and being authorized so to do, executed the within instrument for the purposes therein set forth, on behalf of **Boening Bros., Inc.** by his signature on the instrument as such officer.

Sworn to before me this

30 day of April, 2018

Ewa Anna Bujnowska

NOTARY PUBLIC

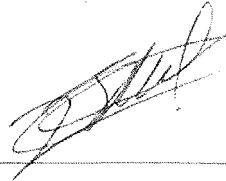
EWY ANNA BUJNOWSKA
Notary Public, State of New York
Suffolk County No. 4595495
Commission Expires April 27, 2023

STATE OF NEW JERSEY)
) ss.:
COUNTY OF BERGEN)

On this day 30th of April, 2018, Marlén L. Bracho known personally to me to be the Vice-President of 3rd Generation Enterprises (d/b/a Top Pop Soda), appeared before the undersigned and acknowledged to me that she, as such officer and being authorized so to do, executed the within instrument for the purposes therein set forth, on behalf of 3rd Generation Enterprises (d/b/a Top Pop Soda) by her signature on the instrument as such officer.

Sworn to before me this

30th day of April, 2018



NOTARY PUBLIC

