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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

FILED  
JUL 12 2001  
CLERK OF COURT

COMMONWEALTH OF MASSACHUSETTS  
and STATE OF MAINE,

Plaintiffs,

vs.

SUIZA FOODS CORPORATION and  
STOP & SHOP SUPERMARKET COMPANY,

Defendants

01 CV 11097 DPW

Civil Action No.

FINAL JUDGMENT BY CONSENT AND ORDER

WHEREAS:

Plaintiffs, the Commonwealth of Massachusetts and the State of Maine, ("Plaintiffs") have filed their Complaint herein. Defendants Suiza Foods Corporation ("Suiza") and The Stop & Shop Supermarket Company ("Stop & Shop") (collectively "Defendants"), by their respective attorneys, have consented to the entry of this Final Judgment By Consent and Order ("Final Judgment") without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein except as to jurisdiction as set forth in Paragraph II;

Plaintiffs allege in the complaint filed in this action that the consummation of the Contemplated Transactions, as defined below, between Stop & Shop and Suiza would

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substantially lessen competition in New England in the processing of fluid milk and its sale to retailers and consumers, violating: (a) Section 7 of the Clayton Act, 15 U.S.C. § 18, Section 1 of the Sherman Act, 15 U.S.C. § 1, and other federal antitrust and unfair competition laws; and (b) state antitrust, unfair competition, and consumer protection laws, including the Massachusetts Antitrust Act and Consumer Protection Act and the Maine Mini-Sherman Act and Unfair Trade Practices Act.

Defendant Suiza admits to this Court's jurisdiction over the subject matter of this action, as well as the Court's personal jurisdiction over Suiza in this action;

Defendant Stop & Shop admits to this Court's jurisdiction over the subject matter of this action, as well as the Court's personal jurisdiction over Stop & Shop in this action;

Defendants do not admit and continue to deny that the Contemplated Transactions are unlawful;

Plaintiffs and Defendants now desire to resolve Plaintiffs' concerns as alleged in the Complaint, and have concluded that it is their interests to enter into this Final Judgment;

Plaintiffs have required the relief specified herein for the purpose of remedying the loss of competition alleged in the Complaint; and

Defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I.

**DEFINITIONS**

As used in this Final Judgment:

- A. **“Attorneys General,”** except where noted, means the Attorney General of the Commonwealth of Massachusetts or a duly authorized deputy, assistant or representative, and the Attorney General of the State of Maine or a duly authorized deputy, assistant, or representative.
- B. **“Asset Maintenance Agreement”** means an agreement entered into between Suiza, Stop & Shop, and the Commonwealth of Massachusetts and the States of Connecticut and Vermont on May 30, 2000 (attached as Exhibit A), and extended on September 21, 2000 and May 23, 2001, whereby Stop & Shop has agreed to preserve, and not to sell or otherwise dispose of the Readville Assets.
- C. **“Contemplated Transactions”** means those provided for in the Asset Purchase Agreement entered into on February 10, 2000 by and between Stop and Shop and SDG.
- D. **“Fee Information”** means the Packaging Reimbursement Fee, Processing Fee, and Half-Pint Processing Fee applicable under the Processing Agreement, as set forth in a Fee Information Sheet to be held by Suiza and the Attorneys General, and to be provided by Suiza to a Reseller who has executed the Confidentiality and Non-disclosure Agreement attached to the Processing Agreement Term Sheet as Exhibit 2.
- E. **“Fluid Cream Products”** means pasteurized fluid cream sold in a variety of sizes and packages.
- F. **“Fluid Milk Plant”** means a facility engaged in the production of branded and/or private

label fluid milk.

- G. **“Fluid Milk Products”** means pasteurized milk in the following SKUs: 4 SKUs in gallon plastic containers (homogenized, 2%, 1%, skim); 4 SKUs in half-gallon plastic containers (homogenized, 2%, 1%, skim); 4 SKUs in half-gallon paper containers (homogenized, 2%, 1%, skim); 4 SKUs in quart paper containers (homogenized, 2%, 1%, skim); and 4 SKUs in half-pint containers (homogenized, chocolate, 2%, 1%).
- H. **“Lynn Excess Orders”** means orders for Fluid Milk Products in plastic gallon and half gallon containers that cause Processor to exceed the 125,000 gallon per week limit but not exceed the 300,000 gallon per week aggregate delivery limit at Processor’s Lynn, Massachusetts facility.
- I. **“New England”** means, collectively, the geographic region encompassing Maine, Massachusetts, Rhode Island, Vermont, Connecticut and New Hampshire.
- J. **“Notification”** means the provision of notice to the Attorneys General on the Notification and Report Form set forth in the Appendix to part 803 of Title 16 of the Code of Federal Regulations as amended, and prepared in accordance with the requirements of that part, except that it shall not be subject to any limitations based on the value of the acquisition, and shall not require any filing fee.
- K. **“Orange Juice Products”** means products from concentrate orange juice in the following SKUs: 1 SKU in gallon plastic containers; 1 SKU in half-gallon plastic containers.
- L. **“Processing Agreement”** means an agreement between SDG and a Reseller subject to the terms contained in the Processing Agreement Term Sheet attached as Exhibit B to this Final Judgment.

- M. **“Readville Assets”** means the assets formerly used at Shop & Shop’s Readville, Massachusetts plant for the processing and packaging of fluid milk products.
- N. **“Reseller”** means any entity that has entered into a Processing Agreement with SDG and shall not include any entity entering into a Processing Agreement that has been voided by any of the States within ten (10) days of receipt from SDG.
- O. **“SDG”** means Suiza Dairy Group, L.P. and includes its predecessors, successors and assigns, and their subsidiaries, divisions, groups, partnerships and joint ventures, affiliates, directors, officers, managers, agents and employees.
- P. **“SKU”** means Stock Keeping Unit.
- Q. **“States”** means the States of Connecticut, Maine, New Hampshire, Rhode Island and Vermont and the Commonwealth of Massachusetts.
- R. **“Stop & Shop”** means defendant The Stop & Shop Supermarket Company, and includes its predecessors, successors and assigns, and their subsidiaries, divisions, groups, partnerships and joint ventures, affiliates, directors, officers, managers, agents and employees.
- S. **“Suiza”** means defendant Suiza Foods Corporation and includes its predecessors, successors and assigns, and their subsidiaries, divisions, groups, partnerships and joint ventures, affiliates, directors, officers, managers, agents and employees.

## II.

### JURISDICTION

This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § § 1331, 1337 and 1367 and personal jurisdiction over each of the Defendants subject to this Final

Judgment. The Complaint states a claim upon which relief may be granted against the Defendants under the antitrust laws of the United States and of the Commonwealth of Massachusetts and the State of Maine. The Attorneys General have the authority to bring this action.

### III.

#### APPLICABILITY

A. The provisions of this Final Judgment apply to Defendants, their predecessors, successors and assigns, their subsidiaries, directors, officers, managers, agents, employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Each Defendant has represented that it is capable of complying with the obligations set forth in this Final Judgment.

C. Defendants have agreed to be bound by the provisions of this Final Judgment, and there is no just reason for delay in its entry. The parties intend that Defendants shall undertake the actions described herein for the periods so indicated.

D. The definitions provided in this Final Judgment are for purposes of this Decree only and do not indicate a representation by the parties or a finding of this Court that such definitions apply to terms in any other legal context.

### IV.

#### PROCESSING AGREEMENTS

A. Suiza shall promptly make known to *bona fide*, prospective Resellers, by usual and customary means, the availability of a Processing Agreement, pursuant to which SDG will

process bulk milk supplied by Reseller and orange juice concentrate supplied by SDG, and convert it into Fluid Milk Products and Orange Juice Products to be delivered to Reseller.

B. Suiza shall offer to enter into Processing Agreements with Resellers pursuant to the terms stated in the Processing Agreement Term Sheet, attached as Exhibit B, for a period of five (5) years from the later of the date that this Final Judgment is approved and entered by this Court, or the date the Half-Pint Processing Fee (as defined in Exhibit B) is determined.

C. Prior to receiving the Fee Information for the Processing Agreement, each prospective Reseller must enter into a confidentiality agreement in the form of Exhibit 2 to the Processing Agreement Term Sheet.

D. Suiza shall provide notice to the Attorneys General of any Processing Agreement entered into pursuant to this Final Judgment. The Attorneys General shall have ten (10) days from receipt of notice to review and determine whether to void any such Processing Agreement before any order is filled or payment made under the Processing Agreement.

E. Suiza shall in good faith carry out the terms of any Processing Agreement.

V.

**SALE OF BRANDED FLUID MILK PRODUCTS AND  
FLUID CREAM PRODUCTS BY STOP & SHOP**

A. Defendants shall not enter into any agreement, and shall not honor any previously existing agreement, that restricts or prevents Stop & Shop stores in New England from selling branded Fluid Milk Products or branded Fluid Cream Products supplied by firms other than Suiza.

B. Nothing in the foregoing paragraph shall operate to force Stop & Shop stores in

New England to carry a particular brand or more than one brand of Fluid Milk Products or Fluid Cream Products. Nothing in the foregoing paragraph shall operate to limit the discretion of Stop & Shop to choose a supplier or suppliers to meet its private label fluid milk and private label cream needs.

## VI.

### SALE OF READVILLE ASSETS BY STOP & SHOP

A. Stop & Shop shall sell the Readville Assets to a party other than Suiza as soon as practicable and in any event within 120 days from the day this Final Judgment is entered. In accomplishing the sale ordered by this Final Judgment, Stop & Shop shall make known, by usual and customary means, the availability of the assets to dairy processors in New England.

B. Stop & Shop shall inform the Attorneys General of the details of the divestiture sale of the Readville Assets. The Attorneys General shall have ten (10) business days to disapprove of any part or the whole of such asset sale, in which case that part of the sale to which the Attorneys General have objected shall not be consummated and Stop & Shop shall have additional time as is mutually agreed to by Stop & Shop and the States to be reasonably necessary to complete the sale of the Readville Assets to a party or parties other than Suiza.

C. Pending divestiture of the Readville Assets, Defendants shall comply with all the terms of the Asset Maintenance Agreement, which shall continue in effect as to the unsold Readville Assets until such time as the Readville Assets have been divested.

## VII.

### PRIOR NOTIFICATION OF FUTURE ACQUISITIONS

A. Suiza shall not, without providing Notification to the Attorneys General, through



subsidiaries, partnerships, joint ventures or otherwise, directly or indirectly:

- (1) Acquire any ownership or leasehold interest in any facility that has engaged in the production of Fluid Milk Products or Fluid Cream Products in New England within six (6) months of the date of such proposed acquisition; or
- (2) Acquire any stock, share capital, equity or other interest in any entity that: (a) owns a facility that is, or within the six (6) months prior to such proposed acquisition has been, engaged in the processing of Fluid Milk Products or Fluid Cream Products; or (b) operates any facility in New England engaged in the processing of Fluid Milk Products or Fluid Cream Products.

B. Suiza shall provide the Notification at least (30) thirty days prior to acquiring any such interest.

C. If, within the thirty (30) days after receiving such Notification, either Attorney General makes a written request for additional information or documentation, Suiza shall not consummate the proposed acquisition until thirty (30) days after substantially complying with such request.

D. Early termination of the waiting periods in this section may be requested and, where appropriate, granted at the discretion of the States when all agree in writing to do so.

## VIII.

### **PRIOR NOTICE OF PLANT CLOSINGS OR SALE**

Suiza shall not sell, close, or cease operations of any of its Fluid Milk Plants in New England or its Fluid Milk Plant in East Greenbush, NY, without providing written notice to the Attorneys General at least sixty (60) days prior to such action. This notice requirement shall not

apply to temporary shutdowns for maintenance and other routine needs arising in the ordinary course of business, or in response to food safety emergencies, fires, accidents, equipment failures, utility or transportation interruptions, labor disputes, and other circumstances beyond the reasonable control of Suiza.

## IX.

### INSPECTION

- A. For the purpose of determining or securing compliance with this Final Judgment,
- (1) Duly authorized representatives of the Attorneys General shall, upon the written request of the Attorneys General, on reasonable notice to Defendants, and subject to all applicable privileges, be permitted to: (a) inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Defendants, which may have counsel present, with respect to any of the matters contained in this Final Judgment; and (b) subject to the reasonable convenience of Defendants and without restraint or interference from them, interview directors, officers, employees, and agents of Defendants, which may have counsel present, regarding any such matters; and
  - (2) Upon the request of the Attorneys General, or either of them, made to Defendants with reasonable notice as provided in Section XI, Defendants shall answer written questions, under oath, with respect to matters related to compliance with this Final Judgment.
- B. No information nor any documents obtained by the means provided in this section shall be divulged by the Attorneys General to any person other than duly authorized

representatives of the States, except in the course of legal proceedings to which one of the States is a party, or for the purpose of enforcing compliance with this Final Judgment, or as otherwise required by law.

C. If at the time information or documents are furnished by a Defendant to one or both of the Plaintiffs, such Defendant represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then Plaintiffs shall give ten (10) business days' notice to Defendant prior to divulging such material in any legal proceeding to which Defendant is not a party.

## X.

### REPORTING

A. Suiza shall provide to Plaintiffs, on a monthly basis, copies of all newly entered Processing Agreements and monthly reconciliation statements provided to Resellers as required by Processing Agreements. In addition, if, after commercially reasonable efforts, SDG determines that it does not have sufficient available capacity to fulfill a Lynn Excess Order on an ongoing basis, then, in the month following that determination, SDG shall report SDG's available capacity at its Lynn, Massachusetts facility to package Fluid Milk Products in plastic gallon and plastic half gallon containers for delivery over the time period relevant to each Lynn Excess Order that SDG does not fulfill. SDG shall base its determination on the shifts per day and days per week in which the Lynn, Massachusetts facility is then in operation and on the requirements of existing customers.

B. Stop & Shop shall provide a detailed report to Plaintiffs, on or before September 1, 2001, and at least once each sixty (60) days thereafter until divestiture of the Readville Assets is complete, regarding the status of the Readville Assets, progress made toward notice to qualifying purchasers of their availability for sale, and their sale and disposition.

## XI.

### NOTICES

Any notices required by this Final Judgment shall be delivered to the parties at the following addresses:

For Defendant Suiza:

Attn: General Counsel  
Suiza Foods Corporation  
2515 McKinney Ave., Suite 1200  
Dallas, Texas 75201

with a copy to:  
Paul T. Denis, Esq.  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, NW Suite 300  
Washington, DC 20007

For Defendant Stop & Shop:

Attn: General Counsel  
The Stop & Shop Company  
P.O. Box 1942  
Boston, MA 02105

with a copy to:  
J. Mark Gidley, Esq.  
White & Case LLP  
601 13th Street, N.W.  
Suite 600  
Washington, DC 20005

For the Commonwealth of Massachusetts: Chief, Consumer Protection and  
Antitrust Division  
Public Protection Bureau  
Office of the Attorney General

One Ashburton Place  
Boston, Massachusetts 02108

For the State of Maine:

Chief, Public Protection Division  
Department of the Attorney General  
State House Station 6  
Augusta, Maine 04333-0006

**XII.**

**TERMINATION**

This Final Judgment will terminate ten years after its entry by the Court.

**XIII.**

**COSTS AND ATTORNEYS' FEES**

Within seven days after the entry of this Final Judgment, Defendant Suiza shall pay a total amount of \$300,000 to the States as partial reimbursement for their incurred costs and attorneys' fees, as follows:

A. Suiza shall pay the Commonwealth of Massachusetts \$100,000:

(1) By delivering a check payable to the order of the National Association of Attorneys General (NAAG) in the amount of \$16,666.67, as proportionate repayment of a \$50,000.00 grant from the New York Milk Antitrust Fund for consulting economists retained and paid by the states. This payment, when combined with payments provided on behalf of Connecticut and Vermont, will total \$50,000.00; and

(2) By delivering a check payable to the order of the Commonwealth of Massachusetts in the amount of \$83,333.33.

B. Suiza shall pay a total of \$200,000 to the States of Connecticut and Vermont

pursuant to related consent orders being filed in the respective United States District Court in Connecticut and Vermont.

#### XIV.

#### RETENTION OF JURISDICTION

This Court retains jurisdiction for the purpose of enabling any party to apply for such further orders and directions as may be necessary and appropriate for the modification or enforcement of this Final Judgment to the extent any such modification is permitted, and for the punishment of any violation of the provisions contained in this Final Judgment. This Court shall have the authority specifically to enforce the provisions of this Final Judgment, and to award appropriate additional relief for violations, including imposition of appropriate penalties.

Signed this 22 day of June, 2001.

**COMMONWEALTH OF MASSACHUSETTS**

THOMAS F. REILLY

Attorney General

By: Mary B. Freeley  
Freda Fishman (MA BBO #168080 )  
Chief, Consumer Protection and Antitrust Division  
Mary B. Freeley (MA BBO#544788)  
Assistant Attorney General  
One Ashburton Place  
Boston, Massachusetts 02108  
617-727-2200

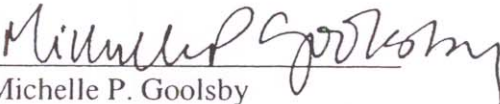
**STATE OF MAINE**

G. STEVEN ROWE

Attorney General

By: Francis Ackerman  
Francis Ackerman  
BBO#011640  
Chief, Public Protection Division  
Department of the Attorney General  
6 State House Station  
Augusta, Maine 04333-0006  
(207) 626-8800

**SUIZA FOODS CORPORATION**

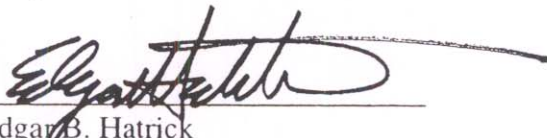
By:   
Michelle P. Goolsby  
Executive Vice President, Chief Administrative Officer and  
General Counsel

By: \_\_\_\_\_  
Paul T. Denis  
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP  
Counsel for SUIZA FOODS CORPORATION

**THE STOP & SHOP SUPERMARKET COMPANY, A  
CORPORATION**

By: \_\_\_\_\_  
David J. Kramer  
Senior Vice President and General Counsel

By: \_\_\_\_\_  
J. Mark Gidley  
WHITE & CASE LLP  
Counsel for THE STOP & SHOP SUPERMARKET  
COMPANY

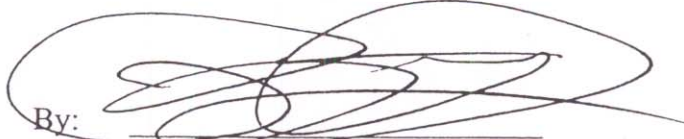
By:   
Edgar B. Hatrick  
DAY, BERRY & HOWARD LLP  
Local Counsel for SUIZA FOODS CORPORATION  
and THE STOP & SHOP SUPERMARKET COMPANY



**SUIZA FOODS CORPORATION**

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

Michelle P. Goolsby  
Executive Vice President, Chief Administrative Officer and  
General Counsel

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

Paul T. Denis  
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP  
Counsel for SUIZA FOODS CORPORATION

**THE STOP & SHOP SUPERMARKET COMPANY, A  
CORPORATION**

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

David J. Kramer  
Senior Vice President and General Counsel

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

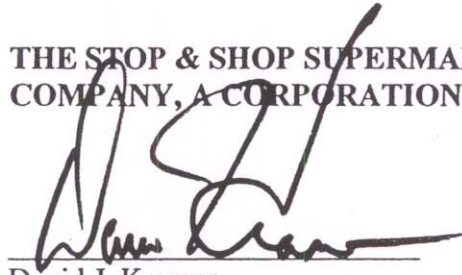
J. Mark Gidley  
WHITE & CASE LLP  
Counsel for THE STOP & SHOP SUPERMARKET  
COMPANY

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

Edgar B. Hatrick  
DAY, BERRY & HOWARD LLP  
Local Counsel for SUIZA FOODS CORPORATION  
and THE STOP & SHOP SUPERMARKET COMPANY

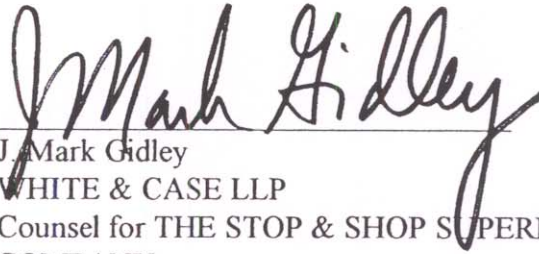
THE STOP & SHOP SUPERMARKET  
COMPANY, A CORPORATION

By:

A handwritten signature in black ink, appearing to read 'David J. Kramer', is written over a horizontal line.

David J. Kramer  
Senior Vice President and General Counsel

By:

A handwritten signature in black ink, reading "J. Mark Gidley". The signature is written in a cursive style and is positioned above a horizontal line.

J. Mark Gidley  
WHITE & CASE LLP  
Counsel for THE STOP & SHOP SUPERMARKET  
COMPANY

IT IS SO ORDERED, ADJUDGED, AND DECREED:

July 6, 2001  
Date

Wm. P. Woodhill  
Judge, United States District Court

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