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**Chris Daniel
District Clerk**

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CAUSE NO. 2010-80370

Time: _____
Harris County, Texas

JYH SHYI WANG, ZHI CHUN LIU,
and TAO ZHANG,
Plaintiffs,

v.

XIANG YONG GAO, KY FU, QI MENG,
HENRY HE, AUGUSTA HAM,
BEST FRESH INC., and
BEST FRESH INTERNATIONAL, LLC,
Defendants.

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IN THE DISTRICT COURT OF
Deputy

HARRIS COUNTY, TEXAS

125TH JUDICIAL DISTRICT

FINAL JUDGMENT

On April 1, 2014, the above-captioned case came on for trial. On April 30, 2014, the jury returned a verdict in favor of Plaintiffs Jyh Shyi Wang, Zhi Chun Liu, and Tao Zhang (collectively "Plaintiffs").¹ All defendants had been previously served with process and/or appeared through counsel

The jury returned a verdict in favor of Plaintiffs against Xiang Yong Gao ("Gao"), Ky Fu ("Fu"), and Best Fresh, Inc., on Plaintiffs' causes of action for common-law fraud, statutory fraud, breach of fiduciary duty, knowing participation in breach of fiduciary duty, fraudulent transfer, breach of contract, shareholder oppression, quantum meruit, denial of books and records, and conspiracy. The jury found Gao and Fu were partners with Plaintiffs to build and operate the supermarket.

The jury made specific findings that Gao and Fu: 1) took money from the business for personal gain; 2) engaged in unrecorded sales of inventory in off-book transactions for personal gain; 3) engaged in fraudulent transfers of the assets of the business; 4) denied Plaintiffs access to the books and records of the business; 5) failed

¹ If Plaintiffs' theories of recovery fail on appeal for any reason, Plaintiffs shall recover under any alternate theory against the Non-Settling Defendants (as defined below) that entitles Plaintiffs to the greatest or most favorable relief under the jury's findings and evidence.

to share the profits of the business with the minority owners; 6) failed to share the profits of the sale of the business; 7) engaged in an insider deal involving interested directors; and 8) had actual awareness of the falsity of their misrepresentations to the Plaintiffs.

The jury also returned a verdict in favor of Plaintiffs against Xiang Jiang Gao ("Jiang Gao"), Xiang Hu Gao ("Hu Gao"), Landmart Trading, and Legend Supermarket on Plaintiffs' claim for conspiracy.

The jury awarded Plaintiffs actual damages and reasonable and necessary attorney's fees as set forth in the verdict. Additionally, the jury also found Gao and Fu were alter egos of Best Fresh, Inc. Furthermore, the jury unanimously found by clear and convincing evidence that the harm to the Plaintiffs was due to Defendant Gao's, Fu's, and Meng's fraud or malice. This judgment incorporates the jury's findings in favor of the Plaintiffs against Defendants Gao, Fu, Best Fresh, Inc., Qi Meng, Jiang Gao, Hu Gao, Landmart Trading, and Legend Supermarket (the "Non-Settling Defendants") for all purposes and the Court finds that all of these findings were supported by legally and factually sufficient evidence.

Furthermore, the jury made certain findings with respect to Plaintiffs' claims against Augusto Ham ("Ham"), Henry He ("He"), and Best Fresh International, LLC. However, Plaintiffs have resolved their dispute with Defendants Ham, He, and Best Fresh International LLC, prior to the entry of judgment and the parties have agreed to the entry of this judgment as part of that Final Settlement Agreement and Release. The Settlement Agreement has been filed of record with this Court, and the agreements found in that document are hereby incorporated in the Agreed Judgment portion of this Final Judgment. Ham, He, and Best Fresh International, LLC contest the allegations

made against them by the Plaintiffs, and, under the terms of the Settlement Agreement between these parties, the Court makes no findings as to Ham, He, and Best Fresh International, LLC.

I. Judgment Against Non-Settling Defendants in Favor of Plaintiffs

It is ORDERED, ADJUDGED, and DECREED that Plaintiffs have judgment, jointly and severally, against Defendants Xiang Yong Gao, Ky Fu, Best Fresh, Inc., Qi Meng, Xiang Jiang Gao, Xiang Hu Gao, Landmart Trading, and Legend Supermarket for the following:

1. Actual damages of \$200,000 for Jyh Shyi Wang, \$40,000 for Zhi Chun Liu, and \$40,000 for Tao Zhang.
2. Pre-judgment interest of \$33,561.64 for Jyh Shyi Wang, \$6712.39 for Zhi Chun Liu, and \$6,712.39 for Tao Zhang on the principal sums in Item 1.
3. Attorneys' fees of \$450,000 for reasonable and necessary services through trial, as well as post-judgment motions and hearings for this case.
4. Litigation costs and expenses in the amount of \$40,815.96.
5. In the event of an unsuccessful appeal to the Court of Appeals, Plaintiffs will be entitled to \$100,000 as a reasonable and necessary attorney fee.
6. If a petition for review to the Supreme Court of Texas is denied review, Plaintiffs are entitled to \$25,000 in reasonable and necessary fees.
7. If a petition for review is granted by the Supreme Court of Texas but the appeal is ultimately unsuccessful, Plaintiffs will be further entitled to \$25,000 as a reasonable and necessary attorney fee for merits briefing.

8. If the Texas Supreme Court requests oral argument but Defendant's appeal is ultimately unsuccessful, Plaintiffs will be further entitled to \$10,000 as a reasonable and necessary attorney fee.
9. Post-judgment interest at the rate of 5% per annum, compounded annually, on Items 1 through 4 from the date of Judgment until paid in full.
10. Post-judgment interest at the rate of 5% per annum compounded annually, on the appellate fees provided in Items 5 through 8 from the date each stage of the appeal commences until paid in full.

FURTHERMORE, it is ORDERED, ADJUDGED, and DECREED that Plaintiffs have judgment against Defendants Xiang Yong Gao, Ky Fu, and Best Fresh, Inc., jointly and severally, for the following in addition to the amounts listed above:

11. Unpaid compensation in the amount of \$62,500 for Jyh Shyi Wang, \$13,200 for Zhi Chun Liu, and \$9,900 for Zhang.
12. Pre-judgment interest in the amount of \$10,488.01 for Jyh Shyi Wang, \$2,215.07 for Zhi Chun Liu, and \$1,661.30 for Tao Zhang, on the principal for unpaid compensation awarded in item 11.
13. Post-judgment interest at the rate of 5% per annum compounded annually, on Items 11 and 12 from the date of Judgment until paid in full.

FURTHERMORE, after reviewing the verdict and the record as a whole, the Court finds that Xiang Yong Gao, Ky Fu committed actual fraud and misrepresentations with knowledge of the falsity of the statements upon which Plaintiffs justifiably relied, including actual fraud while Gao and Fu were acting in their role as a fiduciary to the Plaintiffs. The Court finds Gao and Fu intentionally took money and inventory they were

entrusted with from the jointly-owned business for their own personal gain with the intent to defraud the Plaintiffs. Defendants Gao and Fu then hid the sale of the business from the Plaintiffs with the intention of improperly profiting from and destroying Plaintiffs' interests in the supermarket. The Court finds Xiang Yong Gao, Ky Fu committed these and other acts willfully, maliciously, and wrongfully with intent to cause harm to Jyh Shyi Wang, Zhi Chun Liu, and Tao Zhang without justification or excuse.

It is, therefore, ORDERED, ADJUDGED and DECREED that Plaintiffs have further judgment against Xiang Yong Gao, Ky Fu for exemplary damages, in addition to the sums awarded above in the following amounts:

14. \$1,000,000 against Xiang Yong Gao as exemplary damages.
15. \$1,000,000 against Ky Fu as exemplary damages.
16. Post-judgment interest at the rate of 5% per annum compounded annually, on Items 14 and 15 from the date of Judgment until paid in full.

II. **Agreed Judgment on Plaintiffs' Claims Against Defendants Ham, He, and Best Fresh International, LLC**

Prior to entry of this Judgment, Plaintiffs along with Defendants Ham, He, and Best Fresh International, LLC, appeared before the Court and represented that all matters in dispute between those parties had been fully and finally compromised as set forth in their written Final Settlement Agreement and Release, and in this Agreed Judgment. That Settlement Agreement has been filed of record in this Court and the terms of that Agreement are incorporated into this Agreed Judgment for all purposes.

It is, therefore, ORDERED, ADJUDGED and DECREED that Plaintiffs Jyh Shyi Wang, Zhi Chun Liu, and Tao Zhang have and recover from Defendants Augusto Ham and Henry He, as provided in the terms of the Final Settlement Agreement and

Release, the terms of which are incorporated herein. Specifically, the Court ORDERS that Defendants Ham and He pay Plaintiffs the following amounts:

17. On or before January 6, 2015, Augusto Ham and Henry He shall pay the sum of \$150,000 to Plaintiffs.
18. On or before February 5, 2015, Augusto Ham and Henry He shall pay an additional sum of \$150,000 to Plaintiffs.
19. On or before March 5, 2015, Augusto Ham and Henry He shall pay the additional sum of \$150,000 into an escrow account at a mutually agreeable financial institution. The escrowed funds shall be released pursuant to the terms of the Final Settlement Agreement and Release.
20. No Non-Settling Defendant shall obtain any offset of the amounts those defendants owe to Plaintiffs under items 1-4 of this Judgment based on any payments made by Ham and/or He under this the Agreed Judgment until the funds reflected in items 17-19 are actually collected by the Plaintiffs. For the avoidance of doubt, funds being held in escrow have yet to be collected by the Plaintiffs.

III. Judgment in Favor of Augusto Ham and Henry He

In addition to the judgments issued in favor of the Plaintiffs, this Court finds that judgment should be entered in favor of Augusto Ham and Henry He against Xiang Yong Gao, Ky Fu, and Best Fresh, Inc.

Therefore, it is ORDERED, ADJUDGED, and DECREED that Augusto Ham have judgment, jointly and severally, against Defendants Xiang Yong Gao, Ky Fu, and Best Fresh, Inc. for the following:

21. \$60,000 in attorney's fees incurred to date.
22. \$25,000 in attorney's fees, jointly and severally, against any Defendants who file or join an ultimately unsuccessful appeal to the court of appeals.
23. \$5,000 in attorney's fees, jointly and severally, against any Defendants participating in an unsuccessful appeal in which a petition for review is filed presenting this issue to the Supreme Court of Texas.
24. \$20,000 in attorney's fees, jointly and severally, against any Defendants participating in an unsuccessful appeal in which briefing on the merits is requested from the Supreme Court of Texas.
25. \$20,000 in attorney's fees, jointly and severally, against any Defendants participating in an unsuccessful appeal in which oral argument is presented to the Supreme Court of Texas.
26. Post-judgment interest at the rate of 5% per annum compounded annually on item 21 from the date of judgment and on items 22-25 from the date each filing or oral argument occurs.

Furthermore, it is ORDERED, ADJUDGED, and DECREED that Henry He have judgment, jointly and severally, against Defendants Xiang Yong Gao, Ky Fu and Best Fresh, Inc. for the following:

27. \$175, 000 in attorney's fees incurred to date.
28. \$25,000 in attorney's fees, jointly and severally, against any of Defendants who file or join an ultimately unsuccessful appeal to the court of appeals.

29. \$5,000 in attorney's fees, jointly and severally, against any Defendants participating in an unsuccessful appeal in which a petition for review is filed presenting this issue to the Supreme Court of Texas.
30. \$20,000 in attorney's fees, jointly and severally, against any Defendants participating in an unsuccessful appeal in which briefing on the merits is requested from the Supreme Court of Texas.
31. \$20,000 in attorney's fees, jointly and severally, against any Defendants participating in an unsuccessful appeal in which oral argument is presented to the Supreme Court of Texas.
32. Post-judgment interest at the rate of 5% per annum compounded annually on item 27 from the date of judgment and on items 28-31 from the date each filing or oral argument occurs.

It is further ORDERED, ADJUDGED and DECREED that Defendants Xiang Yong Gao, Ky Fu, and Best Fresh, Inc. are liable to indemnify Defendants Augusto Ham and Henry He for any and all money Augusto Ham and Henry He pay to Plaintiffs Jyh Shyi Wang, Zhi Chun Liu, and Tao Zhang resulting from this lawsuit, subject to the collection limitations found in the terms of the Settlement Agreement between Ham, He, Best Fresh International, LLC and the Plaintiffs.

By separate order, the Court has severed the claims brought by Third Party Plaintiffs Augusto Ham and Henry He against Xiang Hu Gao, Xiang Jiang Gao, Qi Meng, Landmart Trading, Inc., Legend Supermarket, Inc., from this cause and transferred those claims into Cause 2010-80370-B.

All relief not explicitly granted in this judgment is DENIED, making this a final judgment for all purposes.

FOR WHICH LET EXECUTION ISSUE.

SIGNED this date: December 16, 2014.



KYLE CARTER, JUDGE
125TH JUDICIAL DISTRICT COURT

AGREED AND ENTRY REQUESTED AS TO SECTION II ABOVE AND OTHERWISE

AS TO FORM:

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I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this February 16, 2015

Certified Document Number: 63534302 Total Pages: 10

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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