

1 Clifford A. Chanler, State Bar No. 135534
2 Laurence D. Haveson, State Bar No. 152631
3 HIRST & CHANLER LLP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 ANTHONY E. HELD, Ph.D., P.E.

11 Baret C. Fink, State Bar No. 39613
12 PERELMAN AND FINK
13 1880 Century Park East, Suite 315
14 Los Angeles, CA 90067
15 Telephone: (310) 553-8787
16 Facsimile: (310) 286-9706

17 Attorneys for Defendant
18 FOUR SEASONS GENERAL
19 MERCHANDISE, INC.

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA
21 FOR THE COUNTY OF ALAMEDA
22 UNLIMITED CIVIL JURISDICTION

23 ANTHONY E. HELD, Ph.D., P.E.,

24 Plaintiff,

25 vs.

26 BENTEX GROUP, INC.; FOUR SEASONS
27 GENERAL MERCHANDISE, INC.; et al.,

28 Defendants.

Case No. RG07350981

[Original Case No. RG08370699]

**STIPULATION AND [PROPOSED]
ORDER RE: CONSENT JUDGMENT**

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E. and Four Seasons General Merchandise, Inc.**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D.,
4 P.E. (“Dr. Held” or “Plaintiff”) and defendant Four Seasons General Merchandise, Inc. (“Four
5 Seasons” or “Defendant”). Plaintiff and Defendant are collectively referred to as the “parties,”
6 and individually as a “party,” to this Consent Judgment.

7 **1.2 Plaintiff**

8 Plaintiff is an individual residing in the State of California who seeks to promote
9 awareness of exposure to toxic chemicals and improve human health by reducing or eliminating
10 hazardous substances contained in consumer products.

11 **1.3 Defendant**

12 Defendant acknowledges that it is a corporation with ten or more employees, and that it is
13 a “person in the course of doing business” within the meaning of the Safe Drinking Water and
14 Toxic Enforcement Act of 1986, California Health & Safety Code §25249.6 *et seq.* (Proposition
15 65).

16 **1.4 General Allegations**

17 Dr. Held alleges that Defendant has manufactured, distributed and/or sold Covered
18 Products, as defined below, containing di(2-ethylhexyl)phthalate (hereinafter “DEHP”) in the
19 State of California without the requisite health hazard warnings. DEHP is listed pursuant to
20 Proposition 65 as known to the State of California to cause birth defects and other reproductive
21 harm. DEHP shall be referred to hereinafter as the “Listed Chemical.”

22 **1.5 Product Description**

23 The products that are covered by this Consent Judgment are defined as follows: vinyl
24 baby bibs containing DEHP, including the *Spider-Man & Friends Vinyl Bib, #00682RS (#0*
25 *79522 29133 3)*, referred to hereinafter as the “Covered Products.”

26 **1.6 Notice of Violation**

27 On November 20, 2007, Dr. Held served Four Seasons and various public enforcement
28 agencies with a document entitled “60-Day Notice of Violation” (“Notice”) alleging violations of

1 California Health & Safety Code §25249.6 for failing to warn consumers that Covered Products
2 distributed by Four Seasons exposed users in California to the Listed Chemical.

3 **1.7 Complaints**

4 On February 11, 2008, Dr. Held, who was and is acting in the interest of the general
5 public in California, filed a complaint (“Original Complaint” or “Action”) in the Superior Court
6 in and for the County of Alameda against Bentex Group, Inc., Four Seasons, and Does 1 through
7 150, alleging violations of California Health & Safety Code §25249.6 based on the alleged
8 exposures to the Listed Chemical contained in the Covered Products manufactured, distributed, or
9 sold by Four Seasons. The case number for the action is RG08370699.

10 On March 21, 2008, Dr. Held filed an amended complaint (“Amended Complaint”) in the
11 Superior Court in and for the County of Alameda against Defendants Bentex Group, Inc., Four
12 Seasons, Dex Products, Inc., Smith News Company, Inc., Smith Novelty Company, and Does 4
13 through 150, repeating the allegations of the Original Complaint as against Four Seasons, and
14 adding new allegations against defendants Dex Products, Inc., Smith News Company, Inc., and
15 Smith Novelty Company. Subsequently, Dr. Held dismissed defendants Dex Products, Inc.,
16 Smith News Company, Inc., and Smith Novelty Company from the Action, and the allegations
17 against them are not a part of, and are not relevant to this Consent Judgment.

18 On July 15, 2008, the Alameda County Superior Court ordered this Action consolidated
19 with several other Proposition 65 actions involving DEHP under the lead case of *Held v. Toys*
20 *“R” Us, Inc., et al.*, Case No. RG07350891. On August 18, 2008, pursuant to the Court’s July
21 15, 2008 consolidation order, Dr. Held filed a first amended complaint in Case No. RG07350891,
22 incorporating the allegations of the March 21, 2008 Amended Complaint into Case No.
23 RG07350891. On or about October 22, 2008 and January 16, 2009, Dr. Held filed a second and
24 third amended complaint, respectively, in Case No. RG07350981.

25 **1.8 No Admission**

26 Defendant denies the material, factual and legal allegations contained in Dr. Held’s
27 Notice, Original Complaint, and Amended Complaint, and maintain that all Covered Products
28 that it has sold and distributed in California have been and are in compliance with all laws,

1 including without limitation Proposition 65. Nothing in this Consent Judgment shall be construed
2 as an admission by Defendant of any fact, finding, issue of law, or violation of law, nor shall
3 compliance with this consent judgment constitute or be construed as an admission by Defendant
4 of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied
5 by Defendant. However, this section shall not diminish or otherwise affect Defendant's
6 obligations, responsibilities, and duties under this Consent Judgment.

7 **1.9 Consent to Jurisdiction**

8 For purposes of this Consent Judgment only, the parties stipulate that this Court has
9 jurisdiction over Defendant as to the allegations contained in the Amended Complaint, that venue
10 is proper in the County of Alameda and that this Court has jurisdiction to enter and enforce the
11 provisions of this Consent Judgment.

12 **1.10 Effective Date**

13 For purposes of this Consent Judgment, the term "Effective Date" shall mean September
14 30, 2008.

15 **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

16 **2.1 Product Warnings**

17 After the Effective Date, Defendant shall not sell, distribute, ship, or offer to be shipped
18 for sale in California Covered Products containing the Listed Chemical unless such Covered
19 Products are sold or shipped with one of the clear and reasonable warnings set forth in
20 subsections 2.1(a) and (b), are otherwise exempt pursuant to Section 2.2, or comply with the
21 reformulation standards set forth in Section 2.3.

22 Each warning shall be prominently placed with such conspicuousness as compared with
23 other words, statements, designs, or devices as to render it likely to be read and understood by an
24 ordinary individual under customary conditions before purchase or use. Each warning shall be
25 provided in a manner such that the consumer or user understands to which *specific* Product the
26 warning applies, so as to minimize if not eliminate the chance that an overwarning situation will
27 arise.

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(a) Retail Store Sales.

(i) Product Labeling.

Defendant shall perform its warning obligation by ensuring that a warning is affixed to the packaging, labeling, or directly on each Covered Product sold by Defendant or its agents, that states:

WARNING: This product contains DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

(b) Mail Order Catalog and Internet Sales.

Defendant shall satisfy its warning obligations for Covered Products sold via mail order catalog or the Internet to California residents by providing a warning: (i) in the mail order catalog; and (ii) on the website. Warnings given in the mail order catalog or on the website, whichever is applicable, shall identify the *specific* Covered Product to which the warning applies as further specified in Sections 2.1(b)(i) and (ii).

(i) Mail Order Catalog Warning.

Any warning provided in a mail order catalog must be in the same type size or larger than the Covered Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Covered Product:

WARNING: This product contains DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Covered Product, Defendant may utilize a designated symbol to cross reference the applicable warning and shall define the term “designated symbol” with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Covered Product(s):

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WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Covered Product. On each page where the designated symbol appears, Defendant must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

If Defendant elects to provide warnings in the mail order catalog, then the warnings must be included in all catalogs offering to sell the Covered Products printed after August 31, 2008.

(ii) Internet Website Warning.

A warning shall be given in conjunction with the sale of the Covered Product via the Internet, provided it appears either: (a) on the same web page on which the Covered Product is displayed; (b) on the same web page as the order form for the Covered Product; (c) on the same page as the price for any Covered Product; or (d) on one or more web pages automatically displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Covered Product for which it is given in the same type size or larger than the Covered Product description text:

WARNING: This product contains DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Covered Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page, as follows:

WARNING: Products identified on this page with the following symbol ▼ contain DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm:

1 **2.2 Exceptions To Warning Requirements**

2 The warning requirements set forth in Section 2.1 shall not apply to any Reformulated
3 Products (as defined in Section 2.3 below).

4 **2.3 Reformulation Commitments and Schedule**

5 As of the Effective Date, Defendant shall only manufacture, cause to be manufactured,
6 distribute, and/or sell, Covered Products for sale in California that are Phthalate Free. For
7 purposes of this section “Phthalate Free” Covered Products shall mean Covered Products
8 containing less than or equal to 1,000 parts per million (“ppm”) of DEHP when analyzed pursuant
9 to any method used to measure DEHP content, that is accepted by any federal or state agency.

10 Products that are Phthalate Free shall be referred to herein as “Reformulated Products.”

11 **2.4 Recall of Past Products**

12 Four Seasons agrees to recall all units of the *Spider-Man & Friends Vinyl Bib, #00682RS*
13 (*#0 79522 29133 3*) that contained more than 1,000 ppm DEHP and were shipped to retailers in
14 California within the last 14 months. If, after the date this agreement is mutually executed, Four
15 Seasons learns that the Spider-Man & Friends Vinyl Bib is still available for sale in California, it
16 agrees to contact each such customer to recall the products via certified mail. Each recall notice
17 shall be made available to Dr. Held upon written request. Four Seasons does not, however, have
18 an affirmative duty to contact its retail customers to discern whether any such products are still
19 available for sale in California.

20 **3. MONETARY PAYMENTS**

21 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

22 In settlement of all the claims referred to in this Consent Judgment, Defendant shall pay
23 \$2,000 in civil penalties to be apportioned in accordance with California Health & Safety Code
24 §25192, with 75% of these funds remitted to the State of California’s Office of Environmental
25 Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to
26 Anthony Held as provided by California Health & Safety Code §25249.12(d). Defendant shall
27 issue two separate checks for the penalty payment: (a) one check made payable to “Hirst &
28 Chanler LLP in Trust For OEHHA” in the amount of \$1,500, representing 75% of the total

1 penalty; and (b) one check to “Hirst & Chanler LLP in Trust for Anthony Held” in the amount of
2 \$500, representing 25% of the total penalty. Two separate 1099s shall be issued for the above
3 payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b)
4 Anthony Held, whose information shall be provided five calendar days before the payment is due.

5 Payment shall be delivered to Dr. Held’s counsel on or before February 20, 2009, at the
6 following address:

7 HIRST & CHANLER LLP
8 Attn: Proposition 65 Controller
9 Capitol Mall Complex
455 Capitol Mall, Suite 605
Sacramento, CA 95814

10 The sums paid pursuant to this section shall be held by Hirst & Chanler in its established
11 client trust account until entry of this Consent Judgment by the Court.

12 **4. REIMBURSEMENT OF FEES AND COSTS**

13 **4.1 Attorney Fees and Costs.**

14 The parties acknowledge that Dr. Held and his counsel offered to resolve this dispute
15 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
16 this fee issue to be resolved after the material terms of the agreement had been settled. Defendant
17 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms
18 had been finalized. The parties then attempted to (and did) reach an accord on the compensation
19 due to Dr. Held and his counsel under general contract principles and the private attorney general
20 doctrine codified at California Code of Civil Procedure (CCP) §1021.5, for all work performed
21 through the mutual execution of this agreement. Defendant shall reimburse Dr. Held and his
22 counsel for fees and costs incurred as a result of investigating, bringing this matter to Defendant’s
23 attention, and litigating and negotiating a settlement in the public interest. Defendant shall pay
24 Dr. Held and his counsel \$25,500 for all attorneys’ fees and costs. Defendant shall issue a
25 separate 1099 for fees and costs (EIN: 20-3929984) and shall make the check payable to “Hirst &
26 Chanler LLP” and shall be delivered on or before February 20, 2009, to the following address:

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1 HIRST & CHANLER LLP
2 Attn: Proposition 65 Controller
3 Capitol Mall Complex
4 455 Capitol Mall, Suite 605
5 Sacramento, CA 95814

6 **4.2 Additional Attorney Fees and Costs in Seeking Judicial Approval.**

7 Pursuant to CCP §§1021 and 1021.5, the parties agree that Defendant will reimburse Dr.
8 Held and his counsel for their reasonable fees and costs incurred in seeking judicial approval of
9 this settlement agreement in the trial court and engaging in other necessary tasks after the
10 execution of this agreement, in an amount not to exceed \$2,500. Such additional fees and costs,
11 exclusive of fees and costs that may be incurred in the event of an appeal, include, but are not
12 limited to, drafting and filing of the motion to approve papers, fulfilling the reporting
13 requirements referenced in Health & Safety Code §25249.7(f), corresponding with opposing
14 counsel, responding to any third party objections, filing notice of entry of the Court’s approval
15 and appearing before the Court related to the approval process.

16 Reimbursement of such additional fees and costs shall be due within ten days after receipt
17 of a billing statement from Dr. Held (“Additional Fee Claim”). Payment of the Additional Fee
18 Claim shall be made to “Hirst & Chanler LLP,” and the payment shall be delivered, at the
19 following address:

20 HIRST & CHANLER LLP
21 Attn: Proposition 65 Controller
22 Capitol Mall Complex
23 455 Capitol Mall, Suite 605
24 Sacramento, CA 95814

25 Defendant has the right to object to such reimbursement and may submit the resolution of
26 this issue to the American Arbitration Association (AAA) in Northern California to determine the
27 reasonableness of the additional fees and costs sought, provided that notice of such objection or
28 decision to arbitrate is received by Dr. Held by the end of the fifteen calendar days after receipt of
29 a billing statement. If an arbitration notice is not filed with AAA in a timely manner, Dr. Held
30 may file a motion with the Court pursuant to both CCP §1021.5 and this settlement agreement to
31 recover additional attorney fees and costs incurred as set forth in this paragraph. In the event
32 Defendant submits the matter to arbitration, Dr. Held may seek, pursuant to CCP §1021.5,

1 reasonable attorney fees and costs incurred for the arbitration.

2 **4.3 Control of Amounts Paid**

3 Should this Consent Judgment for any reason not be entered by the Court or be overturned
4 on appeal, all sums paid hereunder shall be returned to Defendant, upon written request, within:
5 (a) 30 days of the trial court's denial of the motion to approve unless the parties jointly agree to
6 modify the terms and resubmit the Consent Judgment to the Court for approval; or (b) 30 days
7 following an appellate court's reversal of the Court's approval of the Consent Judgment.

8 **5. RELEASE OF ALL CLAIMS**

9 **5.1 Dr. Held's Release of Defendant**

10 In further consideration of the promises and agreements herein contained, the injunctive
11 relief commitments set forth in Section 2, and for the payments to be made pursuant to Sections 3
12 and 4, Dr. Held on behalf of himself, his past and current agents, representatives, attorneys,
13 successors, and/or assignees, and in the interest of the general public, hereby waives all rights to
14 institute or participate in, directly or indirectly, any form of legal action and releases all claims,
15 including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,
16 demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not
17 limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether
18 known or unknown, fixed or contingent (collectively "claims"), against Defendant Four Seasons,
19 and each of its wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers,
20 distributors, suppliers (including Bentex Group, Inc., and provided that Bentex agrees to the
21 mutual release in § 5.2 as indicated by its signature below in § 14 below) customers, owners,
22 purchasers, users, parent companies, corporate affiliates subsidiaries, and their respective officers,
23 directors, attorneys, representatives, shareholders, agents, employees, and sister and parent
24 entities (collectively "Releasees"). This release is limited to those claims that arise under
25 Proposition 65, as such claims relate to the alleged failure to warn about exposures to the Listed
26 Chemical contained in the Covered Products. In his release of Bentex, Dr. Held also waives his
27 right to further challenge or file an appeal of the Consent Judgment approved by the Court in the
28 *People of the State of California v. Bentex Group, Inc.* matter. The action shall be dismissed with

1 prejudice as to Bentex within five days after the Court enters this Consent Judgment.

2 **5.2 Defendant's Release of Dr. Held**

3 Defendant waives any and all claims against Dr. Held, his attorneys, and other
4 representatives for any and all actions taken or statements made (or those that could have been
5 taken or made) by Dr. Held and his attorneys and other representatives, whether in the course of
6 investigating claims or otherwise seeking enforcement of Proposition 65 against them in this
7 matter, and/or with respect to the Covered Products.

8 **6. COURT APPROVAL**

9 This Consent Judgment is not effective until it is approved and entered by the Court and
10 shall be null and void if, for any reason, it is not approved and entered by the Court within one
11 year after it has been fully executed by all parties, in which event any monies that have been
12 provided to Dr. Held or his counsel pursuant to Section 3 and/or Section 4 above, shall be
13 refunded within fifteen (15) days after receiving written notice from Defendant that the one-year
14 period has expired.

15 **7. SEVERABILITY**

16 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
17 Consent Judgment are held by a Court to be unenforceable, the validity of the enforceable
18 provisions remaining shall not be adversely affected.

19 **8. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the State of
21 California and apply within the State of California.

22 **9. NOTICES**

23 Unless specified herein, all correspondence and notices required to be provided pursuant
24 to this consent judgment shall be in writing and personally delivered or sent by: (i) first-class,
25 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the
26 other party at the following addresses:
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To Four Seasons:

Baret C. Fink
PERELMAN AND FINK
1880 Century Park East, Suite 315
Los Angeles, CA 90067

To: Bentex:

Malcolm C. Weiss, Esq.
HUNTON & WILLIAMS LLP
550 South Hope Street, Suite 2000
Los Angeles, CA 90071

To Dr. Held:

Proposition 65 Coordinator
HIRST & CHANLER LLP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

10. COUNTERPARTS; FACSIMILE SIGNATURES

This Consent Judgment may be executed in counterparts and by facsimile, or PDF format each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

11. COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(f)

Dr. Held agrees to comply with the reporting form requirements referenced in California Health & Safety Code §25249.7(f).

12. ADDITIONAL POST EXECUTION ACTIVITIES

The parties acknowledge that pursuant to Health & Safety Code §25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such approval, Dr. Held, Four Seasons, and their respective counsel agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment, obtain approval of the Consent Judgment by the Court in a timely manner and defend it upon appeal by a third party. For purposes of this paragraph, best efforts shall include, at a minimum, cooperating

1 on the drafting and filing any papers, asserting any oral argument in support of the required
2 motion for judicial approval, and defending any appellate review of the Court's approval.

3 **13. MODIFICATION**

4 This Consent Judgment may be modified only: (1) by written agreement of the parties
5 and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful
6 motion of any party and entry of a modified Consent Judgment by the Court. Dr. Held shall be
7 entitled to his reasonable fees and costs incurred in the modification process under CCP §1021.5
8 if either Defendant, the Attorney General and/or any third party seeks to modify the terms of this
9 Consent Judgment.

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1 **14. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective parties and have read, understood, and agree to all of the terms and conditions of this
4 Consent Judgment.

5 AGREED TO:

7 Dated: February _____, 2009

ANTHONY E. HELD, Ph.D., P.E.

8 **APPROVED**
9 *By Anthony E Held at 7:27 pm, 2/4/09*

By: Anthony E Held
10 Anthony E. Held, Ph.D., P.E.
11 Plaintiff

12 Dated: February _____, 2009

FOUR SEASONS GENERAL
MERCHANDISE, INC.

By: _____
14 John Pourmoradi
15 President

16 AGREED AS TO THE MUTUAL RELEASE IN §§ 5.1 and 5.2 ABOVE

18 Dated: February _____, 2009

BENTEX GROUP, INC.

By: _____
20 Morris Dweck
21 President

24 IT IS SO ORDERED.

26 Date:

27 JUDGE OF THE SUPERIOR COURT

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1 **14. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective parties and have read, understood, and agree to all of the terms and conditions of this
4 Consent Judgment.

5
6 **AGREED TO:**

7 Dated: February _____, 2009

ANTHONY E. HELD, Ph.D., P.E.

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By: _____
Anthony E. Held, Ph.D., P.E.
Plaintiff

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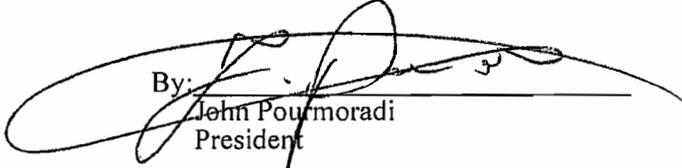
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12 Dated: February 6, 2009

FOUR SEASONS GENERAL
MERCHANDISE, INC.

13

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By:  _____
John Pourmoradi
President

15

16

17 **AGREED AS TO THE MUTUAL RELEASE IN §§ 5.1 and 5.2 ABOVE**

18 Dated: February _____, 2009

BENTEX GROUP, INC.

19

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By: _____
Morris Dweck
President

21

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23

24 **IT IS SO ORDERED.**

25

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27

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Date: _____
JUDGE OF THE SUPERIOR COURT

1 **14. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective parties and have read, understood, and agree to all of the terms and conditions of this
4 Consent Judgment.

5
6 **AGREED TO:**

7 Dated: February _____, 2009

ANTHONY E. HELD, Ph.D., P.E.

8
9 By: _____
10 Anthony E. Held, Ph.D., P.E.
11 Plaintiff

12 Dated: February _____, 2009

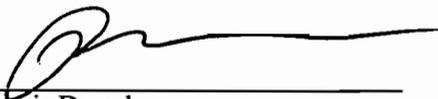
FOUR SEASONS GENERAL
MERCHANDISE, INC.

13
14 By: _____
15 John Pourmoradi
16 President

17 **AGREED AS TO THE MUTUAL RELEASE IN §§ 5.1 and 5.2 ABOVE**

18 Dated: February _____, 2009

BENTEX GROUP, INC.

19
20 By: 
21 Morris Dweck
22 President

23
24 **IT IS SO ORDERED.**

25
26 Date: _____
27 **JUDGE OF THE SUPERIOR COURT**

28