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5 Attorneys for Plaintiff
AS YOU SOW
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN FRANCISCO**
10

11 AS YOU SOW,

12 Plaintiff,

13 v.

14 KAUFMAN, LEVINE AND PARTNERS
INC., et al.,

15 Defendants.
16

CASE NO. CGC-08-473206

[PROPOSED] CONSENT JUDGMENT

(Health and Safety Code § 25249 *et seq.*)

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19 **1. INTRODUCTION**

20 1.1 **Plaintiff.** Plaintiff As You Sow (“AYS” or “Plaintiff”), is a non-profit foundation
21 organized under California’s Non-Profit Public Benefit Corporation Law. AYS is dedicated to,
22 among other causes, the protection of the environment, the promotion of human health, the
23 improvement of worker and consumer safety, environmental education and corporate
24 accountability.

25 1.2 **Defendants.** Defendants Kaufman, Levine and Partners, Inc. (“KL&P”) and
26 Products of Creative American Enterprises, Inc. (“PACE”) import, manufacture, package,
27 distribute, and/or sell book bags (the “Covered Products”). PACE and KL&P collectively are
28 referred to herein as “Defendants.” Plaintiff and Defendants are, for purposes of this Proposed

1 Consent Judgment (“Consent Judgment”), collectively referred to as the “Parties” and each of
2 them as a “Party.”

3 **1.3 The Action.** On March 11, 2008, Plaintiff filed a complaint in the Superior Court
4 for the City and County of San Francisco (hereafter referred to as the “Action”) alleging that
5 KL&P has violated the Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition
6 65”), Health and Safety Code § 25249.5 *et seq.*, by exposing individuals to Di(2-ethylhexyl)
7 phthalate (“DEHP”) and lead and lead compounds (“lead”), chemicals known to the State of
8 California to cause cancer and reproductive harm, without providing clear and reasonable
9 warnings to such individuals. On or about August 8, 2008, Plaintiff filed a First Amended
10 Complaint (“FAC”) naming PACE as a defendant in the Action. The FAC alleged, *inter alia*,
11 that PACE had violated Proposition 65 by exposing individuals to DEHP and lead without clear
12 and reasonable warnings of such exposures. The alleged violations in the Action arise from
13 alleged exposures to DEHP and lead in the Covered Products.

14 **1.4 The Notices.** The alleged violations addressed in the Action were described in
15 Plaintiff’s December 19, 2007 Notice of Intent To Sue KL&P (“KL&P Notice”) and in its March
16 24, 2008 Notice of Intent To Sue PACE (“PACE Notice”) (collectively referred to as the
17 “Notices”), which Plaintiff had sent to the respective Defendants and to public enforcers as
18 required by Health & Safety Code § 25249.7.

19 **1.5 DEHP and Lead.** On February 27, 1987, the State of California officially listed
20 lead as a chemical known to cause reproductive toxicity. On October 1, 1992, the State of
21 California officially listed lead and lead compounds as chemicals known to cause cancer. On
22 October 24, 2003, the State of California officially listed DEHP as a chemical known to cause
23 reproductive toxicity. On January 1, 1988, the State of California officially listed DEHP as a
24 chemical known to cause cancer. DEHP and lead are collectively referred to herein as the “Listed
25 Chemicals.”

26 **1.6 Jurisdiction.** For purposes of this Consent Judgment, the Parties stipulate that the
27 San Francisco Superior Court has jurisdiction over the allegations in the Action and personal
28 jurisdiction over Defendants as to the acts alleged in the Action; that venue is proper in the City

1 and County of San Francisco; that this Court has jurisdiction to enter this Consent Judgment as a
2 resolution of all claims which were alleged in the Action; and that the Court shall retain
3 jurisdiction to implement the Consent Judgment.

4 **1.7 No Admissions.** The Parties enter into this Consent Judgment as a compromise of
5 disputed claims for the purpose of avoiding prolonged litigation. Neither the Consent Judgment
6 nor any of its provisions shall be construed as an admission by any Party of any fact, finding,
7 issue of law, or violation of law, including Proposition 65 or any other statute, regulation, or
8 common law requirement related to exposure to DEHP, lead, or other chemicals listed under
9 Proposition 65 from the Covered Products. By executing this Consent Judgment and agreeing to
10 provide the relief and remedies specified herein, Defendants do not admit any violations of
11 Proposition 65, or any other law or legal duty, and specifically deny that they have committed any
12 such violations. Defendants maintain that all Covered Products have at all times been in
13 compliance with all applicable laws. Nothing in this Consent Judgment shall prejudice, waive, or
14 impair any right, remedy, or defense that Plaintiff and Defendants may have in any other or in
15 future legal proceedings unrelated to these proceedings. Defendants reserve all of their rights and
16 defenses with regard to any claim by any person under Proposition 65 or otherwise.
17 Nevertheless, this paragraph shall not diminish or otherwise affect the obligations,
18 responsibilities, waivers, releases, and/or duties provided for under this Consent Judgment.

19 **1.8 Replacement Program.** KL&P has indicated that after receiving the KL&P
20 Notice, it did not distribute or sell any book bags in California until the Parties agreed upon the
21 reformulation standards set out in Paragraph 2.2 in mid-2008. After receiving the KL&P Notice,
22 KL&P and PACE also maintain that they began a voluntary effort to identify and replace certain
23 book bags previously distributed to the San Francisco Unified School District and to other school
24 districts with book bags meeting the reformulation standards in Paragraph 2.2. KL&P and PACE
25 further maintain that, in November 2008, they completed this replacement program.

26 **1.9 Effective Date.** The "Effective Date" of this Consent Decree shall be the date on
27 which it is entered by the Court
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1 **2. INJUNCTIVE RELIEF**

2 **2.1 Warnings.** Except for Products that meet the reformulation standards set out in
3 Paragraph 2.2, as of the Effective Date, Defendants shall not sell, import, manufacture, package,
4 distribute or ship, for sale or distribution in California, any Covered Products without the
5 following warning statement:

6
7 **WARNING:** This book bag contains Di (2ethyexyl) phthalate (DEHP) and lead,
8 chemicals known to the state of California to cause cancer and birth defects or other
9 reproductive harm

10 Such warning shall be deemed to be “clear and reasonable” within the meaning of Proposition 65
11 and the implementing regulations that appear at Cal. Code Regs, tit. 22, § 12601, provided that
12 the statement that appears above is printed on the label or labeling, for such Covered Products, or
13 is affixed to such labels or labeling by means of adhesive stickers on such Covered Products that
14 identify the Covered Products to which the warnings pertain, provided that such warnings,
15 whether they appear on labels or labeling, shall be printed and/or affixed with such
16 conspicuousness, as compared to other words or statements on the label or labeling so as to render
17 the warnings reasonably likely to be read by an ordinary individual under customary conditions of
18 purchase or use:

19 **2.2 Reformulation Standards.** Except for Covered Products meeting the
20 requirements of Paragraph 2.1, as of the Effective Date, Defendants shall not sell, import,
21 manufacture, package, distribute or ship, for sale or distribution in California, any Covered
22 Products containing (1) DEHP in concentrations exceeding 1/10 of 1% by weight or (2) lead in
23 concentrations exceeding 600 parts per million.

24 **2.3** The requirements of Section 2 shall not apply to any Covered Products that
25 Defendants sold, imported, manufactured, packaged, distributed or shipped, for sale or
26 distribution in California, before the Effective Date.

27 **3. WAIVER AND RELEASE OF ALL CLAIMS**

28 **3.1 Defendants.** For purposes of Section 3, the term “Defendants” shall include
KL&P and PACE and each of their respective past, present and future officers, directors, owners,

1 shareholders, partners, joint venturers, parent companies, subsidiaries, affiliates, employees,
2 agents, attorneys, representatives, licensors, licensees, heirs, predecessors, successors, and
3 assigns.

4 **3.2 Waiver and Release of Claims Against Defendants.** As to those matters alleged
5 in this Action and in the Notices, Plaintiff, on behalf of itself and its past, present and future
6 officers, directors, employees, agents, representatives, attorneys, successors and assigns, and on
7 behalf of the general public, hereby waives, discharges, and releases Defendants, Defendants'
8 "Downstream Customers" (as defined in Paragraph 3.6, below), and Defendants' suppliers
9 (hereinafter, collectively, "Releasees") from and against any and all claims, causes of action,
10 suits, demands, obligations, liabilities, damages, costs, fines, penalties, injunctive relief,
11 mitigation, losses, costs, expenses (including, without limitation, any and all fees of attorneys,
12 experts, investigators and others) and any other sum incurred or claimed, of any nature
13 whatsoever, in law and equity, whether known or unknown, fixed or contingent, foreseen or
14 unforeseen, arising under Proposition 65 or any other statute or common law, that was or could
15 have been asserted in the FAC , including, without limitation, all matters in any way connected
16 with the claims and assertions contained in the FAC, based on (1) the allegations in the Notices or
17 the Action, and (2) and any exposure to the Listed Chemicals that was or could have been alleged
18 by Plaintiff against any of the Releasees based on the facts alleged in the Notices or the Action.

19 **3.3 Defendants' Waiver and Release of Plaintiff.** Defendants hereby release
20 Plaintiff from and waive any claims against Plaintiff for injunctive relief or damages, penalties,
21 fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs,
22 expenses, or any other sum incurred or claimed or which could have been claimed for matters
23 related to the Notices or the Action.

24 **3.4 Defendants' Mutual Waiver and Release.** Defendants hereby release and waive any
25 and all claims against each other, Defendants' respective Downstream Customers, and Defendants'
26 respective suppliers, for injunctive relief, damages, penalties, fines, sanctions mitigation, fees (including
27 fees of attorneys, experts, and others), costs, expenses, or any other sum incurred or claimed or which
28 could have been claimed, that result or arise from the allegations of violations of Proposition 65 in this

1 Action concerning alleged exposures to any and all of the Listed Chemicals in the Covered Products;
2 provided however, that such release and waiver shall not apply to claims regarding any Covered Products
3 that are sold, imported, manufactured, packaged, distributed or shipped, for sale or distribution in
4 California, on or after the Effective Date.

5 **3.5 Matters Covered By This Consent Judgment/Release of Future Claims.** As to
6 the Covered Products, this Consent Judgment is a full, final, and binding resolution between, on
7 the one hand, Plaintiff, acting on behalf of itself and its officers, directors, employees, agents,
8 representatives, attorneys, successors and assigns and, as to those matters raised in Plaintiff's
9 Notices, on behalf of the public pursuant to Health and Safety Code § 25249.7(d), and, on the
10 other hand, Defendants (including its Downstream Customers and suppliers) for Defendants'
11 alleged failure to provide clear, reasonable, and lawful warnings of alleged exposure to DEHP
12 and/or lead alleged to be contained in the Covered Products. As to the Covered Products,
13 compliance with the terms of this Consent Judgment resolves any issue, now and in the future,
14 concerning compliance by Defendants with the requirements of Proposition 65 with respect to
15 any alleged exposures to lead and/or DEHP from the Covered Products.

16 **3.6 Definition of "Downstream Customers."** For purposes of this Consent
17 Judgment, "Downstream Customers" shall mean and include all distributors, wholesalers,
18 customers, and retailers of the Covered Products.

19 **4. MONETARY PAYMENTS**

20 **4.1** In full and final settlement of all of Plaintiff's claims referred to in this Consent
21 Judgment, KL&P shall pay a total of \$22,500 and PACE shall pay a total of \$62,500. These
22 amounts shall be paid as follows:

23 (a) **Civil Penalties.** As civil penalties pursuant to Health & Safety Code §
24 25249.7(b), within thirty (30) days following the Effective Date, KL&P shall pay \$1,060 and
25 PACE shall pay \$2,940. These payments shall each be paid by check or wire transfer made
26 payable to "Shute, Mihaly & Weinberger, Attorney Client Trust Account." Plaintiff shall
27 distribute these payments to the Plaintiff and to the State of California as required under
28 Proposition 65. If the payments are made by check, they shall be delivered to Ellison Folk, Shute,

1 Mihaly & Weinberger LLP, 396 Hayes Street, San Francisco, CA 94102. In the event this
2 Consent Judgment becomes null and void under Paragraph 13 *infra*, Plaintiff shall, within fifteen
3 days, return the payment made under this paragraph to Defendants.

4 (b) **Supplemental Settlement Payments.** Within thirty (30) days following
5 the Effective Date, KL&P shall pay \$10,231 and PACE shall pay \$28,377, as supplemental
6 settlement payments. These payments shall each be paid by check or wire transfer made payable
7 to "Shute, Mihaly & Weinberger, Attorney Client Trust Account" with this amount to be used by
8 As You Sow for grants to California non-profit organizations and by AYS Foundation
9 Environmental Enforcement Fund. These funds shall be used to reduce exposures to toxic
10 chemicals, to fund environmental education programs, and to increase consumer, worker and
11 community awareness of the health hazards posed by toxic chemicals in California. In deciding
12 among the grantee proposals, the As You Sow Board of Directors ("Board") takes into
13 consideration a number of important factors, including: (1) the nexus between the harm done in
14 the underlying case(s), and the grant program work; (2) the potential for toxics reduction,
15 prevention, remediation or education benefits to California citizens from the proposal; (3) the
16 budget requirements of the proposed grantee and the alternate funding sources available to it for
17 its project; and (4) the Board's assessment of the grantee's chances for success in its program
18 work. AYS shall ensure that all funds will be disbursed and used in accordance with AYS'
19 mission statement, articles of incorporation, and bylaws and applicable state and federal laws and
20 regulations. If the payments are made by check, they shall be delivered to Ellison Folk, Shute,
21 Mihaly & Weinberger LLP, 396 Hayes Street, San Francisco, CA 94102. In the event this
22 Consent Judgment becomes null and void under Paragraph 13 *infra*, Plaintiff shall, within fifteen
23 days, return the payment made under this paragraph to Defendants.

24 (c) **Reimbursement of Fees and Costs.** Within thirty (30) days following the
25 Effective Date, KL&P shall pay \$11,209 and PACE shall pay \$31,183. These payments shall be
26 reimbursement for Plaintiff's investigation fees and costs, testing costs, expert witness fees,
27 attorneys' fees, and other litigation costs and expenses. These payments shall be made by check
28 made payable to "Shute, Mihaly & Weinberger." The checks shall be delivered by overnight or

1 personal delivery to Ellison Folk, Shute, Mihaly & Weinberger LLP, 396 Hayes Street, San
2 Francisco, CA 94102. In the event this Consent Judgment becomes null and void under
3 Paragraph 13 *infra*, Plaintiff shall, within fifteen days, return the payment made under this
4 paragraph to Defendants.

5 **5. SEVERABILITY**

6 In the event that any of the provisions of this Consent Judgment are held by a court to be
7 unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected
8 thereby.

9 **6. MODIFICATION OF CONSENT JUDGMENT**

10 6.1 This Consent Judgment may be modified only upon the written agreement of the
11 Parties, or pursuant to court order issued upon motion of a Party, and upon entry of a modified
12 Consent Judgment by this Court.

13 **7. ENFORCEMENT OF CONSENT JUDGMENT**

14 7.1 The Parties may, by motion or order to show cause before this Court, and upon
15 notice having been given to all Parties in accordance with Paragraphs 7.2 and 12, unless waived,
16 enforce the terms and conditions of this Consent Judgment and seek whatever fines, costs,
17 penalties, or remedies (including reasonable attorneys' fees and costs) are provided by law.

18 7.2 The Parties may enforce the terms and conditions of this Consent Judgment
19 pursuant to paragraph 7.1 only after the complaining party has first given thirty (30) days' notice
20 to the Party allegedly failing to comply with the terms and conditions of the Consent Judgment
21 and has attempted, in an open and good faith manner, to resolve such Party's alleged failure to
22 comply.

23 **8. GOVERNING LAW**

24 8.1 The terms of this Consent Judgment shall be governed by, and construed in
25 accordance with, the laws of the State of California.

26 8.2 The Parties have participated in the preparation of this Consent Judgment and this
27 Consent Judgment is the result of the joint efforts of the Parties. This Consent Judgment was
28 subject to revision and modification by the Parties and has been accepted and approved as to its

1 final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in
2 this Consent Judgment shall not be interpreted against any Party as a result of the manner of the
3 preparation of this Consent Judgment. Each Party to this Consent Judgment agrees that any
4 statute or rule of construction providing that ambiguities are to be resolved against the drafting
5 party should not be employed in the interpretation of this Consent Judgment and, in this regard,
6 the Parties hereby waive California Civil Code § 1654.

7 **9. ENTIRE AGREEMENT**

8 This Consent Judgment constitutes the sole and entire agreement and understanding
9 between the Parties with respect to the subject matter hereof, and any prior discussions,
10 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
11 and therein. There are no warranties, representations, or other agreements between the Parties,
12 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
13 other than those specifically referred to herein, shall be deemed to exist or bind any of the Parties
14 hereto. No supplementation, modification, waiver, or termination of this Consent Judgment shall
15 be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the
16 provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the
17 other provisions hereof, whether or not similar, nor shall such waiver constitute a continuing
18 waiver.

19 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

20 Plaintiff agrees to comply with the reporting requirements referenced in Health & Safety
21 Code § 25249.7(f). Pursuant to regulations promulgated under that section, Plaintiff shall present
22 this Consent Judgment to the California Attorney General's Office within five (5) days after
23 receiving all of the necessary signatures. A noticed motion to enter the Consent Judgment shall
24 then be served on the Attorney General's Office at least forty-five (45) days prior to the date a
25 hearing is scheduled on such motion in this Court.

26 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

27 The Parties shall mutually employ their best efforts to support the entry of this [Proposed]
28 Consent Judgment and obtain approval of the [Proposed] Consent Judgment by the Court in a

1 timely manner. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a
2 noticed motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the
3 Parties agree that Plaintiff will file a Motion to Approve the Agreement (“Motion”). Prior to
4 filing the Motion, Plaintiff shall provide Defendants a copy of the proposed Motion and Plaintiff
5 shall consider in good faith any comments on the proposed Motion that Defendants provide
6 within five days of receiving the proposed Motion. Plaintiff’s counsel shall also prepare a
7 declaration in support of the Motion which shall, *inter alia*, set forth support for the fees and costs
8 to be reimbursed pursuant to Section 3. Defendants shall have no additional responsibility to
9 Plaintiff’s counsel pursuant to C.C.P. § 1021.5 or otherwise with regard to reimbursement of any
10 fees and costs incurred with respect to the preparation and filing of the Joint Motion and its
11 supporting declaration or with regard to Plaintiff’s counsel appearing for a hearing or related
12 proceedings thereon.

13 **12. NOTICES**

14 All notices or correspondence to be given pursuant to this Consent Judgment shall be in
15 writing and shall be personally delivered or sent by first-class, registered, certified mail, overnight
16 courier, and/or via facsimile transmission (with presentation of facsimile transmission
17 confirmation) addressed to the Parties as follows:

18 For Plaintiffs: AS YOU SOW FOUNDATION
19 Attn: Larry Fahn / Kara Buchner
20 311 California Street, Suite 510
San Francisco, CA 94104
415 391 3245 (Fax)

21 With a copy to: Ellison Folk
22 Shute, Mihaly & Weinberger LLP
23 396 Hayes Street
San Francisco, CA 94102
(415) 552-5816 (Fax)

24 For Defendant KL&P: Jennifer Katz
25 President
26 Kaufman, Levine & Partners Inc.
27 969A Industrial Road
San Carlos, CA 94070
(650) 508-4077 (Fax)

1 With a copy to:

Trenton H. Norris
ARNOLD & PORTER LLP
275 Battery Street, Suite 2700
San Francisco, CA 94111
(415) 356-3099 (Fax)

4 For Defendant PACE:

Products of American Creative Enterprises, Inc.
Attn: Dale Siler, Esq.
c/o Hillyard, Anderson & Olsen
595 South Riverwoods Parkway, Suite 100
Logan, Utah 84321
(435) 753-8895 (Fax)

8 With a copy to:

Chris M. Amantea, Esq.
Hunton & Williams
550 S. Hope St., Suite 2000
Los Angeles, CA 90071
(213) 532-2020 (Fax)

11 The contacts and/or addresses stated immediately above may be amended by giving notice to all
12 Parties to this Consent Judgment.

13 **13. COURT APPROVAL**

14 The Court shall either approve or disapprove of this Consent Judgment in its entirety,
15 without alteration, deletion or amendment, unless otherwise so stipulated by the Parties and their
16 counsel. If the Court approves of this Consent Judgment in its entirety, then the terms of this
17 Consent Judgment are incorporated into the terms of the Court's Order Approving the Consent
18 Judgment. This Consent Judgment shall not take effect until it is approved and entered by the
19 Court. In the event that the Court fails to approve and order entry of the Consent Judgment
20 without any change whatsoever (unless otherwise so stipulated by the Parties), this Consent
21 Judgment shall be null and void.

22 **14. AUTHORIZATION**

23 The undersigned are authorized to execute this Consent Judgment on behalf of their
24 respective Parties and have read, understood, and agree to all of the terms and conditions of this
25 Consent Judgment.

26 **15. COUNTERPARTS/FACSIMILE SIGNING**

27 This Consent Judgment may be executed in one or more counterparts, each of which shall
28 be deemed an original, and all of which, when taken together, shall constitute one and the same

1 document. All signatures need not appear on the same page of the document and signatures of
2 the Parties transmitted by facsimile shall be deemed binding.

3 **IT IS SO STIPULATED:**

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AGREED TO:

Dated: 12/24/08

AS YOU SOW

By: 
Larry Fahm
Executive Director

Dated: _____

KAUFMAN, LEVINE AND PARTNERS,
INC.

By: _____
Jennifer Katz
President

Dated: _____

PRODUCTS OF AMERICAN CREATIVE
ENTERPRISES, INC.

By: _____
Kim Anderson
President

1 document. All signatures need not appear on the same page of the document and signatures of
2 the Parties transmitted by facsimile shall be deemed binding.

3 **IT IS SO STIPULATED:**

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5 **AGREED TO:**


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7 Dated: _____

AS YOU SOW

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9 By: _____
Larry Fahn
Executive Director

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12 Dated: 1/5/09

KAUFMAN, LEVINE AND PARTNERS,
INC.

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14 By:  _____
Jennifer Katz
President

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17 Dated: _____

PRODUCTS OF AMERICAN CREATIVE
ENTERPRISES, INC.

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Kim Anderson
President

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1 document. All signatures need not appear on the same page of the document and signatures of
2 the Parties transmitted by facsimile shall be deemed binding.

3 **IT IS SO STIPULATED:**

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5 **AGREED TO:**

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7 Dated: _____

AS YOU SOW

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9 By: _____
10 Larry Fahn
11 Executive Director

12 Dated: _____

KAUFMAN, LEVINE AND PARTNERS,
13 INC.

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15 By: _____
16 Jennifer Katz
17 President

18 Dated: 1/2/2009

PRODUCTS OF AMERICAN CREATIVE
19 ENTERPRISES, INC.

20 By: Kim Anderson
21 Kim Anderson
22 President


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APPROVED AS TO FORM:

SHUTE, MIHALY & WEINBERGER

Dated: 1/5/09

By: 
Robert S. Perlmutter
Attorneys for Plaintiff
AS YOU SOW

Dated: _____

ARNOLD & PORTER LLP

By: _____
Trenton H. Norris
Attorneys for Defendant
KAUFMAN, LEVINE & PARTNERS,
INC.

Dated: _____

HUNTON & WILLIAMS LLP

By: _____
Chris M. Amantea
Attorneys for Defendant
PRODUCTS OF AMERICAN
CREATIVE ENTERPRISE, INC.

IT IS SO ORDERED:

Dated: _____

JUDGE OF THE SUPERIOR COURT

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APPROVED AS TO FORM:

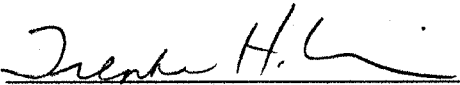
SHUTE, MIHALY & WEINBERGER

Dated: _____

By: _____
Robert S. Perlmutter
Attorneys for Plaintiff
AS YOU SOW

Dated: 1/5/09

ARNOLD & PORTER LLP

By: 
Trenton H. Norris
Attorneys for Defendant
KAUFMAN, LEVINE & PARTNERS,
INC.

Dated: _____

HUNTON & WILLIAMS LLP

By: _____
Chris M. Amantea
Attorneys for Defendant
PRODUCTS OF AMERICAN
CREATIVE ENTERPRISE, INC.

IT IS SO ORDERED:

Dated: _____

JUDGE OF THE SUPERIOR COURT

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APPROVED AS TO FORM:

SHUTE, MIHALY & WEINBERGER

Dated: _____

By: _____
Robert S. Perlmutter
Attorneys for Plaintiff
AS YOU SOW


Dated: _____

ARNOLD & PORTER LLP

By: _____
Trenton H. Norris
Attorneys for Defendant
KAUFMAN, LEVINE & PARTNERS,
INC.

Dated: 1/5/2009

HUNTON & WILLIAMS LLP

By:  _____
Chris M. Amantea
Attorneys for Defendant
PRODUCTS OF AMERICAN
CREATIVE ENTERPRISE, INC.

IT IS SO ORDERED:

Dated: _____

JUDGE OF THE SUPERIOR COURT