

1 Jonathan A. Bornstein, State Bar No. 196345  
THE CHANLER GROUP  
2 2560 Ninth Street, Suite 214  
Berkeley, CA 94710  
3 Telephone: (510) 848-8880  
Facsimile: (510) 848-8118

4 Attorneys for Plaintiff  
5 DR. WHITNEY R. LEEMAN

6  
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 COUNTY OF ALAMEDA  
9 UNLIMITED CIVIL JURISDICTION  
10

11 DR. WHITNEY R. LEEMAN,  
12 Plaintiff,

13 v.

14 HBC HOLDINGS, LLC; HOWARD BERGER  
CO. LLC; and DOES 1-150, inclusive,  
15 Defendants.  
16

Case No. RG14713050

**[PROPOSED] CONSENT JUDGMENT AS  
TO DEFENDANT HOWARD BERGER CO.  
LLC**

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **1. INTRODUCTION**

2 **1.1 Dr. Whitney R. Leeman and Howard Berger Co. LLC.**

3 This Consent Judgment is entered into by and between plaintiff Dr. Whitney R. Leeman  
4 (“Leeman” or “Plaintiff”) and defendant Howard Berger Co. LLC (“Howard Berger”), with  
5 Leeman and Howard Berger collectively referred to as the “Parties” and each individually  
6 referred to as a “Party.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

12 Howard Berger employs ten or more persons and is a person in the course of doing  
13 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,  
14 California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Leeman alleges that Howard Berger manufactured, imported, distributed, sold and/or  
17 offered for sale hearing protection with vinyl/PVC ear cushions containing di(2-  
18 ethylhexyl)phthalate (“DEHP”) in the State of California without the health hazard warnings  
19 required by Proposition 65. DEHP is listed pursuant to Proposition 65 as known to the State of  
20 California to cause birth defects and other reproductive harm.

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are defined as hearing  
23 protection products with vinyl/PVC ear cushions containing DEHP including, but not limited to,  
24 the *KC Professional Personal Safety Set (Ear Protection), PPK4-34010*, which Leeman alleges  
25 Howard Berger manufactured, imported, distributed, sold and/or offered for sale in the State of  
26 California, hereinafter referred to as the “Products.”

27 ///

28

1           **1.6    Notice of Violation**

2           On November 15, 2013, Leeman served Howard Berger and various public enforcement  
3 agencies with a document entitled “60-Day Notice of Violation” (“Notice”) alleging that  
4 Howard Berger violated Proposition 65 by failing to warn consumers that the Products exposed  
5 users in California to DEHP. To the best of the Parties’ knowledge, no public enforcer has  
6 commenced and is diligently prosecuting the allegations set forth in the Notice.

7           **1.7    Complaint**

8           On or about February 6, 2014, Leeman filed a complaint (“Complaint” or “Action”) in  
9 the Superior Court in and for the County of Alameda against Howard Berger, HBC Holdings  
10 LLC, and Does 1 through 150, Alameda County Case No. RG14713050, alleging violations of  
11 California Health & Safety Code § 25249.6, based on the alleged exposures to DEHP contained  
12 in the Products sold by Howard Berger in the State of California.

13           **1.8    No Admission**

14           The Parties enter into this Consent Judgment as a full and final settlement of all claims  
15 that were raised in the Notice and Complaint, or that could have been raised in the Complaint,  
16 arising out of the facts or conduct alleged therein. Howard Berger denies the material, factual  
17 and legal allegations contained in the Notice and the Complaint, and maintains that all of the  
18 products it has manufactured, imported, distributed and/or sold in the State of California,  
19 including the Products, have been, and are, in compliance with all laws. By execution of this  
20 Consent Judgment and agreeing to comply with its terms, Howard Berger does not admit any  
21 facts or conclusions of law, including, but not limited to, any facts or conclusions of law  
22 suggesting or demonstrating any violations of Proposition 65 or any other statutory, common  
23 law or equitable requirements relating to DEHP in the Products, such being specifically denied  
24 by Howard Berger. Nothing in this Consent Judgment shall be construed as an admission by  
25 Howard Berger of any fact, conclusion of law, issue of law or violation of law, nor shall  
26 compliance with this Consent Judgment constitute or be construed as an admission by Howard  
27 Berger of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Consent  
28



1 Judgment shall prejudice, waive or impair any right, remedy, argument or defense Howard  
2 Berger may have in this or any other future legal proceedings. This Consent Judgment is the  
3 product of negotiation and compromise and is accepted by the Parties for purposes of settling,  
4 compromising, and resolving issues disputed in this action. However, this Section shall not  
5 diminish or otherwise affect the obligations, responsibilities and duties of each Party under this  
6 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 Howard Berger as to the allegations contained in the Complaint, that venue is  
10 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 the date  
14 this Consent Judgment is approved and entered by the Court.

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

16 **2.1 Reformulation Commitment and Standards**

17 As of the Effective Date, Howard Berger shall only manufacture, import, distribute, sell  
18 and/or offer for sale in California Products which contain less than or equal to 1,000 parts per  
19 million (“ppm”) of DEHP when analyzed pursuant to EPA testing methodologies 3580A and  
20 8270C, or equivalent methodologies utilized by federal or state agencies for the purpose of  
21 determining DEHP content in a solid substance (“Reformulated Products”). By entering into this  
22 Consent Judgment, the Parties do not intend to expand or restrict any obligations or  
23 responsibilities that may be imposed upon Howard Berger by laws other than Proposition 65, nor  
24 do the Parties intend this Consent Judgment to affect any defenses available to Howard Berger  
25 under such other laws.

26 ///

27 ///

28

1           **2.2    Product Warnings**

2           Commencing on the Effective Date, Howard Berger shall, for all Products other than  
3 Reformulated Products, provide clear and reasonable warnings as set forth in subsections 2.2(a)  
4 and (b). Each warning shall be prominently placed with such conspicuousness as compared with  
5 other words, statements, designs, or devices as to render it likely to be read and understood by an  
6 ordinary individual under customary conditions before purchase or use. Each warning shall be  
7 provided in a manner such that the consumer or user understands to which Product the warning  
8 applies, so as to minimize the risk of consumer confusion.

9                   **(a)    Retail Store Sales.**

10                   **(i)    Product Labeling.** Howard Berger shall affix a warning to the  
11 packaging, labeling, or directly on each Product sold in retail outlets in California by Howard  
12 Berger or any person selling the Products, that states:

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

16                   **(ii)   Point-of-Sale Warnings.** Alternatively, Howard Berger may  
17 provide warning signs in the form below to its customers in California with instructions to post  
18 the warnings in close proximity to the point of display of the Products. Such instruction sent to  
19 Howard Berger’s customers shall be sent by certified mail, return receipt requested.

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

23           Where more than one Product is sold in proximity to other like items or to those that do  
24 not require a warning (*e.g.*, Reformulated Products as defined in Section 2.2), the following  
25 statement shall be used:<sup>1</sup>

26                           **WARNING:** The following products contain DEHP, a  
27   chemical known to the State of California to  
28   cause birth defects and other reproductive harm:

<sup>1</sup> For purposes of the Consent Judgment, “sold in proximity” shall mean that the Product and another similar product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.



1  
2           **(b) Mail Order Catalog and Internet Sales.** In the event that Howard Berger  
3 sells Products via mail order catalog and/or the internet, to customers located in California, after  
4 the Effective Date, that are not Reformulated Products, Howard Berger shall provide warnings for  
5 such Products sold via mail order catalog or the internet to California residents. Warnings given  
6 in the mail order catalog or on the internet shall identify the Product to which the warning applies  
7 as further specified in Sections 2.2(b)(i) and (ii).

8           **(i) Mail Order Catalog Warning.** Any warning provided in a mail  
9 order catalog shall be in the same type size or larger than the Product description text within the  
10 catalog. The following warning shall be provided on the same page and in the same location as  
11 the display and/or description of the Product:

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

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

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

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

**(ii) Internet Website Warning.** A warning shall be given in  
conjunction with the sale of the Products via the internet, which warning shall appear either: (a)  
on the same web page on which a Product is displayed; (b) on the same web page as the order

1 form for a Product; (c) on the same page as the price for any Product; or (d) on one or more web  
2 pages displayed to a purchaser during the checkout process. The following warning statement  
3 shall be used and shall appear in any of the above instances adjacent to or immediately following  
4 the display, description, or price of the Product for which it is given in the same type size or larger  
5 than the Product description text:

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

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

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

14 **3.    MONETARY PAYMENTS**

15                   In settlement of all claims referred to in this Settlement Agreement, Howard Berger shall,  
16 subject to Section 3.2 below, pay a total of \$10,500 in civil penalties in accordance with this  
17 Section. Each penalty payment will be allocated in accordance with California Health & Safety  
18 Code §§ 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of  
19 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty  
20 remitted to Leeman, as follows:

21                   **3.1   Initial Civil Penalty**

22                   Howard Berger shall pay an initial civil penalty in the amount of \$3,000 within fifteen  
23 (15) days after the Effective Date. Howard Berger shall issue two separate checks to: (a)  
24 “OEHHA” in the amount of \$2,250; and (b) “The Chanler Group in Trust for Whitney R.  
25 Leeman” in the amount of \$750. All penalty payments shall be delivered to the addresses listed  
26 in Section 3.3 below.



1           **3.2    Final Civil Penalty**

2           Howard Berger shall pay a final civil penalty of \$7,500 within ninety (90) days after the  
3 Effective Date. The final civil penalty shall be waived if, no later than seventy-five (75) days  
4 after the Effective Date, an officer of Howard Berger provides Leeman with written certification  
5 that, as of the date of such certification and continuing into the future, Howard Berger has met  
6 the reformulation standard specified in Section 2.1 above for DEHP, such that all Products  
7 manufactured, imported, distributed, sold and/or offered for sale in California by Defendants are  
8 Reformulated Products. The certification in lieu of a final civil penalty payment provided by  
9 this Section is a material term, and time is of the essence. In the event the final penalty is not  
10 waived, Howard Berger shall issue two separate checks for its final civil penalty payments to:  
11 (a) "OEHHA" in an amount of \$5,625; and (b) "The Chanler Group in Trust for Whitney R.  
12 Leeman" in an amount of \$1,875.

13           **3.3    Reimbursement of Plaintiff's Fees and Costs**

14           The Parties acknowledge that Leeman and her counsel offered to resolve the non-  
15 monetary terms of this dispute before reaching terms on the amount of fees and costs to be  
16 reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the  
17 agreement had been agreed to in principle. The Parties then agreed to resolve the fee and cost  
18 issue shortly after the other settlement terms had been tentatively finalized, subject to agreement  
19 on fees and costs. The Parties then attempted to (and did) reach an accord on the compensation  
20 due to Leeman and her counsel under general contract principles and the private attorney  
21 general doctrine codified at California Code of Civil Procedure section 1021.5, for all work  
22 performed in this matter, except fees that may be incurred on appeal. Under these legal  
23 principles, Howard Berger shall pay the amount of \$33,000 for fees and costs incurred  
24 investigating, litigating and enforcing this matter, including the fees and costs incurred (and yet  
25 to be incurred) negotiating, drafting, and obtaining the Court's approval of this Consent  
26 Judgment in the public interest. Howard Berger shall issue a separate 1099 for fees and costs,  
27 shall make the check payable to "The Chanler Group" and shall deliver payment within ten (10)  
28



1 days after the Effective Date, to the address listed in Section 3.4.1(a) below.

2 **3.4 Payment Procedures**

3 **3.4.1 Issuance of Payments.** Payments shall be delivered as follows:

4 (a) All payments owed to Leeman, pursuant to Sections 3.1 and 3.2, shall be  
5 delivered to the following payment address:

6 The Chanler Group  
7 Attn: Proposition 65 Controller  
8 2560 Ninth Street  
9 Parker Plaza, Suite 214  
10 Berkeley, CA 94710

11 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections  
12 3.1 and 3.2, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the  
13 following addresses:

14 For United States Postal Service Delivery:

15 Mike Gyurics  
16 Fiscal Operations Branch Chief  
17 Office of Environmental Health Hazard Assessment  
18 P.O. Box 4010  
19 Sacramento, CA 95812

20 For Non-United States Postal Service Delivery:

21 Mike Gyurics  
22 Fiscal Operations Branch Chief  
23 Office of Environmental Health Hazard Assessment  
24 1011 I Street  
25 Sacramento, CA 95814

26 With a copy of the checks payable to OEHHA mailed to The Chanler Group at the  
27 address set forth above in 3.4.1(a), as proof of payment to OEHHA.

28 **3.4.2 Issuance of 1099 Forms.** After each penalty payment, Howard Berger  
shall issue separate 1099 forms for each payment to Leeman, whose address and tax  
identification number shall be furnished within thirty (30) days after this Consent Judgment has  
been fully executed by the Parties, and OEHHA at the addresses listed in Section 3.4.1(b)  
above.

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Leeman’s Public Release of Proposition 65 Claims**

3 Leeman acting on her own behalf and in the public interest releases Howard Berger, its  
4 parents, subsidiaries, affiliated entities that are under common ownership, directors, officers,  
5 employees, attorneys, representatives and each entity to whom Howard Berger directly or  
6 indirectly distributes or sells Products, including but not limited to downstream distributors,  
7 wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees, and  
8 their respective parents, subsidiaries, affiliated entities that are under common ownership,  
9 directors, officers, employees, attorneys, representatives (collectively the “Releasees”) from all  
10 claims for violations of Proposition 65 up through the Effective Date based on exposure to  
11 DEHP lead from the Products as set forth in the Notice. Compliance with the terms of this  
12 Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to  
13 DEHP from the Products as set forth in the Notice.

14 **4.2 Leeman’s Individual Release of Claims**

15 Leeman also, in her individual capacity only and *not* in her representative capacity,  
16 provides a release herein which shall be effective as a full and final accord and satisfaction, as a  
17 bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses,  
18 claims, liabilities and demands of Leeman of any nature, character or kind, whether known or  
19 unknown, suspected or unsuspected, limited to and arising out of any violation of Proposition 65  
20 up through the Effective Date regarding the failure to warn about exposure to DEHP in the  
21 Products manufactured, imported, distributed, sold and/or offered for sale by Releasees.

22 **4.3 Howard Berger’s Release of Leeman**

23 Howard Berger on behalf of itself, its past and current agents, representatives, attorneys,  
24 successors, and/or assignees, hereby waives any and all claims against Leeman, her attorneys  
25 and other representatives, for any and all actions taken or statements made (or those that could  
26 have been taken or made) by Leeman and her attorneys and other representatives, whether in the  
27  
28

1 course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this  
2 matter with respect to the Products.

3 **5. COURT APPROVAL**

4 By this Consent Judgment and upon its approval, the Parties waive their rights to initiate  
5 appellate review of this Consent Judgment.

6 The parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a  
7 noticed motion is required to obtain judicial approval of this Consent Judgment, which Leeman  
8 shall file and which Howard Berger shall support as reasonably necessary.

9 If this Consent Judgment is not approved by the Court within one year of the last date of  
10 execution: (a) this Consent Judgment and any and all prior agreements between the Parties  
11 merged herein shall terminate and become null and void, and the action shall revert to the status  
12 that existed prior to the execution date of this Consent Judgment; (b) no term of this Consent  
13 Judgment or any draft thereof, or of the negotiation, documentation, or other part or aspect of the  
14 Parties' settlement discussions, shall have any effect, nor shall any such matter be admissible in  
15 evidence for any purpose in this action, or in any other proceeding; and (c) the Parties agree to  
16 meet and confer to determine whether to modify the terms of the Consent Judgment and to  
17 resubmit it for approval.

18 **6. SEVERABILITY**

19 If, subsequent to the execution of this Consent Judgment, any of the provisions of this  
20 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable  
21 provisions remaining shall not be adversely affected.

22 **7. GOVERNING LAW**

23 The terms of this Consent Judgment shall be governed by the laws of the State of  
24 California, and shall apply only to Products offered for sale in the State of California. In the  
25 event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law  
26 generally, or as to the Products, then Howard Berger may provide written notice to Leeman of  
27  
28



1 any asserted change in the law, and shall have no further obligations pursuant to this Consent  
2 Judgment with respect to, and to the extent that, the Products are so affected.

3 The Parties, including their counsel, have participated in the preparation of this Consent  
4 Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This Consent  
5 Judgment was subject to revision and modification by the Parties and has been accepted and  
6 approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or  
7 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result  
8 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment  
9 agrees that any statute or rule of construction providing that ambiguities are to be resolved against  
10 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in  
11 this regard, the Parties hereby waive California Civil Code § 1654.

12 **8. NOTICES**

13 Unless specified herein, all correspondence and notices required to be provided pursuant  
14 to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,  
15 (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party by  
16 the other Party at the following addresses:

17 To Howard Berger:

18 Samir J. Abdelnour  
19 Barg Coffin Lewis & Trapp, LLP  
20 350 California Street  
21 22<sup>nd</sup> Floor  
22 San Francisco, CA 94104

To Leeman:

Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

23 With a copy to:

24 Donald C. Devine  
25 Howard Berger Co. LLC  
26 2407 140<sup>th</sup> Place  
27 Posen, IL 60469

28 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.

///

1    **9. COUNTERPARTS; FACSIMILE SIGNATURES**

2           This Consent Judgment may be executed in counterparts and by facsimile or portable  
3 document format (“pdf”), each of which shall be deemed an original, and all of which, when  
4 taken together, shall constitute one and the same document. A facsimile or pdf signature shall  
5 be as valid as the original.

6    **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

9    **11. ADDITIONAL POST EXECUTION ACTIVITIES**

10           The Parties agree to mutually employ their, and their counsel’s, reasonable best efforts to  
11 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent  
12 Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to  
13 California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial  
14 approval of this Consent Judgment, which Leeman shall file, and which Howard Berger shall  
15 not oppose. If any third party objection to the noticed motion is filed, Leeman and Howard  
16 Berger shall work together to file a joint reply and appear at any hearing before the Court.  
17 Notwithstanding the foregoing, Howard Berger shall not take any position in support or  
18 opposition of the fee and cost reimbursement element of Leeman’s motion. In the event that  
19 the Court approves this Consent Judgment and any person successfully appeals that approval,  
20 all payments made pursuant to this Consent Judgment will be returned to Howard Berger within  
21 fifteen (15) days of an order reversing or vacating the approval.

22    **12. MODIFICATION**

23           This Consent Judgment may be modified by written agreement of the Parties and upon  
24 entry of a modified Consent Judgment by the court, or by motion of any Party and entry of a  
25 modified Consent Judgment by the court.  
26  
27  
28



1 Any Party seeking to modify this Consent Judgment or to allege a violation thereof shall  
2 first attempt in good faith to meet and confer with the other Party prior to filing a motion to  
3 modify the Consent Judgment.

4 **13. RETENTION OF JURISDICTION**

5 This Court shall retain jurisdiction of this matter to implement or modify the Consent  
6 Judgment and shall retain jurisdiction to enforce this Consent Judgment, or any provision thereof,  
7 under C.C.P. §664.6.

8 **14. ENTIRE AGREEMENT**

9 This Consent Judgment contains the sole and entire agreement and understanding of the  
10 Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
11 negotiations, commitments, and understandings related hereto. No representations, oral or  
12 otherwise, express or implied, other than those contained herein have been made by any party  
13 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be  
14 deemed to exist or to bind any of the Parties.

15 **15. AUTHORIZATION**

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

19  
20 **AGREED TO:** **AGREED TO:**  
21 Date: 2/26/14 Date: \_\_\_\_\_  
22 By: Whitney R. Leeman By: \_\_\_\_\_  
23 Whitney R. Leeman Donald C. Devine  
24 Howard Berger Co. LLC  
25  
26  
27  
28



1 Any Party seeking to modify this Consent Judgment or to allege a violation thereof shall  
2 first attempt in good faith to meet and confer with the other Party prior to filing a motion to  
3 modify the Consent Judgment.

4 **13. RETENTION OF JURISDICTION**

5 This Court shall retain jurisdiction of this matter to implement or modify the Consent  
6 Judgment and shall retain jurisdiction to enforce this Consent Judgment, or any provision thereof,  
7 under C.C.P. §664.6.

8 **14. ENTIRE AGREEMENT**

9 This Consent Judgment contains the sole and entire agreement and understanding of the  
10 Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
11 negotiations, commitments, and understandings related hereto. No representations, oral or  
12 otherwise, express or implied, other than those contained herein have been made by any party  
13 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be  
14 deemed to exist or to bind any of the Parties.

15 **15. AUTHORIZATION**

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

19 **AGREED TO:**

20 Date: \_\_\_\_\_

21 By: \_\_\_\_\_  
22 Whitney R. Leeman

**AGREED TO:**

20 Date: 3/7/2014

21 By: Donald C. Devine  
22 Donald C. Devine  
23 Howard Berger Co. LLC