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Attorneys for Plaintiffs
ANTHONY E. HELD, PhD., P.E. and
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED CIVIL JURISDICTION

ANTHONY E. HELD, PhD., P.E., PAUL WOZNIAK,)	Case No. RG14740016
Plaintiffs,)	[PROPOSED] CONSENT JUDGMENT AS
)	TO DEFENDANT TEAM BEANS, LLC.
v.)	
CREEDENCE HOLDINGS, LLC.; et al,)	Date:
Defendants.)	Time:
)	Dept: 16
)	Judge: Hon. Lawrence Appel

[PROPOSED] CONSENT JUDGMENT AS TO DEFENDANT TEAM BEANS, LLC

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1. INTRODUCTION

1.1 Anthony E. Held, Paul Wozniak and Team Beans, LLC.

This Consent Judgment is entered into by and between plaintiffs Anthony E. Held, PhD., P.E. (“Held”), Paul Wozniak (“Wozniak”; collectively as “Plaintiffs”) and defendant Team Beans, LLC (“TEAM BEANS” or “Defendant”), with Plaintiffs and TEAM BEANS collectively referred to as the “Parties.”

1.2 Anthony E. Held, PhD., P.E., and Paul Wozniak.

Plaintiffs are individuals residing in the State of California who seek to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer and commercial products.

1.3 Team Beans, LLC.

Plaintiffs allege that TEAM BEANS employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §25249.5 et seq. (“Proposition 65”).

1.4 General Allegations.

Plaintiffs allege that TEAM BEANS has manufactured, imported, distributed and/or sold vinyl/PVC straps with DBP and vinyl/PVC tote bags with DEHP for use in the State of California without the requisite Proposition 65 warnings. DBP and DEHP are listed pursuant to Proposition 65 as chemicals known to the State of California to cause birth defects and reproductive harm.

1.5 Notices of Violation.

On March 26, 2014, Plaintiff Wozniak served Creedence Holdings, LLC, and Wal-Mart Stores, Inc. and various public enforcement agencies with a document entitled “60-Day Notice of Violation” alleging that Creedence and Wal-Mart violated Proposition 65 by failing to warn consumers that vinyl/PVC straps attached to flip flop sandals including, but not limited to, the *Forever Collectibles Flip Flops, Oakland Raiders, UPC# 7-37224 86164 2*, exposed users in

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2 California to DBP (“Notice”). TEAM BEANS has agreed to indemnify Creedence and Wal-
3 Mart for the violations alleged in the Notice and the Complaint.

4 On April 30, 2014, Plaintiff Held served TEAM BEANS and various public enforcement
5 agencies with a document entitled “60-Day Notice of Violation” alleging that TEAM BEANS
6 violated Proposition 65 by failing to warn consumers that vinyl/PVC tote bags including, but not
7 limited to, the *NFL San Francisco 49ers Tote Bag, CHA0713-10080, UPC# 8 87849 30861 6*,
8 exposed users in California to DEHP (“Second Notice”).

9 **1.6 Complaint.**

10 On September 9, 2014, Plaintiffs filed a complaint in the Superior Court in and for the
11 County of Alameda against Creedence, Wal-Mart, and TEAM BEANS and Does 1 through 150,
12 *Plaintiffs v. Creedence Holdings, LLC, et al.*, Case No. RG14740016 (“Action”), alleging
13 violations of California Health & Safety Code § 25249.6, based on the alleged exposures to DBP
14 and DEHP contained in certain flip flop sandal straps and tote bags manufactured, distributed
15 and/or sold by TEAM BEANS in the State of California.

16 **1.7 No Admission.**

17 The Parties enter into this Consent Judgment as a full and final settlement of all claims
18 that were raised in the Notice and Complaint, or that could have been raised in the Complaint,
19 arising out of the facts or conduct alleged therein. TEAM BEANS denies the material, factual
20 and legal allegations contained in the Notices and the Complaint, and maintains that it is not a
21 person subject to Proposition 65 and that all of the products it has manufactured, imported,
22 distributed and/or sold in the State of California, including the Covered Products, have been, and
23 are, in compliance with all laws. By execution of this Consent Judgment and agreeing to comply
24 with its terms, TEAM BEANS does not admit any facts or conclusions of law including, but not
25 limited to, any facts or conclusions of law suggesting or demonstrating any violations of
26 Proposition 65 or any other statutory, common law or equitable requirements relating to DBP
27 and DEHP in Covered Products, such being specifically denied by TEAM BEANS. Nothing in
28 this Consent Judgment shall be construed as an admission by TEAM BEANS of any fact,

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2 conclusion of law, issue of law or violation of law, nor shall compliance with this Consent
3 Judgment constitute or be construed as an admission by TEAM BEANS of any fact, conclusion
4 of law, issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice,
5 waive or impair any right, remedy, argument or defense TEAM BEANS may have in this or any
6 other future legal proceedings. This Consent Judgment is the product of negotiation and
7 compromise and is accepted by TEAM BEANS for purposes of settling, compromising, and
8 resolving issues disputed in this action. However, this Section shall not diminish or otherwise
9 affect the obligations, responsibilities and duties of TEAM BEANS under this Consent
10 Judgment.

11 **1.8 Consent to Jurisdiction.**

12 For purposes of this Consent Judgment only, TEAM BEANS stipulates that this Court
13 has jurisdiction over TEAM BEANS as to the allegations contained in the Complaint, that venue
14 is proper in the County of Alameda and that this Court has jurisdiction to enter and enforce the
15 provisions of this Consent Judgment.

16 **2. DEFINITIONS**

17 **2.1** “Covered Product[s]” means the category of products which includes, but is not
18 limited to, *Forever Collectibles Flip Flops, Oakland Raiders, UPC# 7-37224 86164 2, and NFL*
19 *San Francisco 49ers Tote Bag, CHA0713-10080, UPC# 8 87849 30861 6*, which are distributed
20 and/or sold in the State of California by TEAM BEANS.

21 **2.2** “Effective Date” means November 15, 2014.

22 **3. INJUNCTIVE RELIEF: PRODUCT REFORMULATION**

23 **3.1 Reformulation Commitment and Standards.**

24 As of the Effective Date, TEAM BEANS shall only manufacture for sale in California
25 Covered Products which contain less than or equal to 1,000 parts per million (“ppm”) of DBP
26 and DEHP when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or
27 equivalent methodologies utilized by federal or state agencies for the purpose of determining
28 DBP and DEHP content in a solid substance (“Reformulated Covered Products”). By entering

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2 into this Consent Judgment, the Parties do not intend to expand or restrict any obligations or
3 responsibilities that may be imposed upon TEAM BEANS by laws other than Proposition 65,
4 nor do the Parties intend this Consent Judgment to affect any defenses available to TEAM
5 BEANS under such other laws. If TEAM BEANS is not able to reformulate, it must comply
6 with Proposition 65 by labeling non-reformulated products as specified in Section 3.2 by the
7 Effective Date and must pay the Final Civil Penalty as specified in Section 4.2. TEAM BEANS
8 may label reformulated Covered Products if it chooses to do so and shall not be subject to the
9 provisions of Section 4.2 provided the Covered Products are reformulated as set forth in this
10 Section 3.1.

11 **3.2 Sales of Existing Products with Warnings**

12 Nothing in this consent judgment shall preclude TEAM BEANS from shipping and
13 selling in California its existing inventory of Products. Commencing on November 15, 2014,
14 TEAM BEANS agrees that any Products that TEAM BEANS manufactured prior to November
15 15, 2014, and which TEAM BEANS directly distributes to, imports to, ships to, sells in, or offers
16 for sale in California that are not Reformulated Products as defined in Section 3.1 will include a
17 warning affixed to the packaging, labeling, or directly on each Product that states:

18 **WARNING:** This product contains a chemical known to the State of California
19 to cause cancer and birth defects and other reproductive harm.

20 **4. MONETARY PAYMENTS**

21 In settlement of all the claims referred to in this Consent Judgment, TEAM BEANS shall
22 pay a total of \$27,500.00 in civil penalties in accordance with this Section. Each penalty
23 payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1)
24 & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard
25 Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Plaintiffs, as follows:

26 **4.1 Initial Civil Penalty Payment Pursuant to Health & Safety Code §** 27 **25249.7(b).**

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2 TEAM BEANS shall pay an initial civil penalty in the amount of \$5,000.00 on or before
3 the Effective Date. Defendant shall issue a check payable to "Foley & Lardner Client Trust
4 Account" in the amount of \$5,000.00 to be held in trust by Foley & Lardner. Foley & Lardner
5 shall provide The Chanler Group with written confirmation within fifteen (15) days of receipt
6 that the funds have been deposited in a trust account. Within five (5) days of the date this
7 Consent Judgment is approved by the Court and The Chanler Group provides Foley & Lardner
8 with its EIN information, Foley & Lardner shall issue three separate checks to: (a) OEHHA, in
9 the amount of \$3,750.00; (b) "The Chanler Group in Trust for Anthony E. Held." in the amount
10 of \$625.00, and (c) "The Chanler Group in Trust for Paul Wozniak" in the amount of \$625.00.
11 All penalty payments shall be delivered to the addresses listed in Section 4.4.1 below.

12 **4.2 Final Civil Penalty Pursuant to Health & Safety Code §25249.7(b).**

13 TEAM BEANS shall pay a final civil penalty in the amount \$22,500.00 on or before
14 March 15, 2015. The final civil penalty shall be waived in its entirety, if, on or before March 1,
15 2015, an Officer of TEAM BEANS certifies in writing that it, as of the Effective Date, has
16 manufactured for sale in California only Reformulated Covered Products and that it will
17 continue to manufacture, distribute, sell and offer for sale in California only Reformulated
18 Covered Products, or that it has discontinued selling the Covered Products in California. Such
19 certification must be received by The Chanler Group on or before March 1, 2015. The
20 certification in lieu of paying the final civil penalty provided by this Section is a material term,
21 and time is of the essence. Unless waived, TEAM BEANS shall issue two separate checks for
22 its final civil penalty payment to: (a) OEHHA, in the amount of \$16,875.00; (b) "The Chanler
23 Group in Trust for Anthony E. Held" in the amount of \$2,812.50, and (c) "The Chanler Group in
24 Trust for Paul Wozniak" in the amount of \$2,812.50.

25 **4.3 Reimbursement of Plaintiff's Fees and Costs.**

26 The Parties acknowledge that Plaintiffs and their counsel offered to resolve this dispute
27 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
28 leaving the fee issue to be resolved after the material terms of the agreement had been settled.

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TEAM BEANS then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Plaintiffs and their counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all work performed (and to be performed) in this matter. Under these legal principles, TEAM BEANS shall pay the amount of \$51,000.00 to reimburse Plaintiff's fees and costs incurred investigating, litigating and enforcing this matter, including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court's approval of this Consent Judgment in the public interest. On or before the Effective Date, TEAM BEANS shall issue a check payable to "Foley & Lardner Client Trust Account" in the amount of \$51,000.00 to be held in trust by the Foley & Lardner for The Chanler Group. Foley & Lardner shall provide The Chanler Group with written confirmation within five days of receipt that the funds have been deposited in a trust account. Within five (5) business days of the date this Consent Judgment is approved by the Court and The Chanler Group provides its EIN information to Foley & Lardner, Foley & Lardner shall issue a check for \$51,000 payable to "The Chanler Group" and shall be delivered to the address in Section 4.4.1(a) below.

4.4 Payment Procedures.

4.4.1 Funds Plaintiffs In Trust

(a) All payments owed to Plaintiffs, pursuant to Sections 4.1 through 4.2, shall be delivered to the following payment address:

The Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

(b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections 4.1 and 4.2, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

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2 Mike Gyurics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
5 P.O. Box 4010
6 Sacramento, CA 95812-4010

7 For Non-United States Postal Service Delivery:

8 Mike Gyurics
9 Fiscal Operations Branch Chief
10 Office of Environmental Health Hazard Assessment
11 1001 I Street
12 Sacramento, CA 95814

13 With a copy of the checks payable to OEHHA mailed to The Chanler
14 Group at the address set forth above in 4.4.1(a), as proof of payment to
15 OEHHA.

16 If for any reason this Consent Judgment is not entered by the Court within nine (9)
17 months of the Effective Date, Plaintiffs shall meet and confer with TEAM BEANS about
18 mutually agreeable steps the parties can take to ensure entry of the Consent Judgment. If such
19 steps cannot be agreed between the Parties, Plaintiffs shall return promptly any and all monies
20 paid to Plaintiffs in trust herein under Sections 4.1, 4.2 (if not waived) and 4.3 upon TEAM
21 BEANS' written request.

22 **5. CLAIMS COVERED AND RELEASED**

23 **5.1** Plaintiffs, acting on behalf of themselves and in the public interest, hereby
24 release TEAM BEANS, its parents, subsidiaries, affiliated entities that are under common
25 ownership, directors, officers, employees, attorneys, shareholders ("Defendant Releasees"), and
26 any of its vendors and downstream distributors, wholesalers, customers, retailers, including but
27 not limited to Creedence Holdings, LLC dba West Coast Novelty, and Wal-Mart Stores, Inc.
28 and its affiliates and subsidiaries, and franchisees, cooperative members, licensors, licensees,
and any other person or entity to whom they directly or indirectly distribute or sell Covered
Products ("Downstream Defendant Releasees"), from any alleged or actual violation of
Proposition 65 that has been asserted by Plaintiffs in the public interest in their Notices and
Complaint regarding the alleged failure to warn about exposure to DBP and DEHP in Covered

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Products sold or distributed by TEAM BEANS prior to the Effective Date. TEAM BEANS' compliance with this Consent Judgment shall constitute compliance with Proposition 65 with respect to DBP and DEHP in Covered Products.

5.2 Plaintiffs on behalf of themselves, their past and current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general public, hereby waive all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, fixed or contingent (collectively "Claims"), against TEAM BEANS, Defendant Releasees, and Downstream Defendant Releasees arising from any violation of Proposition 65 regarding the failure to warn about exposure to DBP and DEHP in Covered Products sold or distributed prior to the Effective Date.

5.3 Plaintiffs also, in their individual capacity only and *not* in their representative capacity, provide a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Plaintiffs of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of alleged exposure to any chemical listed under Proposition 65 from use of the Covered Products manufactured prior to the Effective Date. Plaintiffs acknowledge that they are familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Plaintiffs, in their individual capacity only and *not* in their representative capacity, expressly waive and relinquish any and all rights and benefits which they may have under, or which may be conferred on them by the provisions of Section 1542 of the California Civil Code as well as

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under any other state or federal statute or common law principle of similar effect, to the fullest extent that they may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

The Parties further understand and agree that this release shall not extend upstream to any entities, other than to TEAM BEANS, Defendant Releasees, and Downstream Defendant Releasees, that manufactured the Covered Products or any component parts thereof, or any distributors or suppliers who sold the Covered Products or any component parts thereof to TEAM BEANS, Defendant Releasees and Downstream Defendant Releasees.

5.4 TEAM BEANS waives any and all Claims against Plaintiffs, their attorneys, and other representatives for any and all actions taken or statements made (or those that could have been taken or made) by Plaintiffs and their attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with respect to the Covered Products.

5.5 TEAM BEANS also provides a general release of Plaintiffs herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of TEAM BEANS of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the Action. TEAM BEANS acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

TEAM BEANS expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by, the provisions of Section 1542 of the California Civil Code, as well as under any other state or federal statute or common law principle of similar

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effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

6. COURT APPROVAL

6.1 By this Consent Judgment and upon its approval, the Parties waive their right to a trial on the merits, and waive their rights to initiate appellate review of this Consent Judgment, and of any and all interim rulings, including all pleading, procedural, and discovery orders.

6.2 The parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which Plaintiffs shall file and which TEAM BEANS shall support as reasonably necessary.

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

7. GOVERNING LAW

7.1 The terms of this Consent Judgment shall be governed by the laws of the State of California, and shall apply only to Covered Products offered for sale in the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then TEAM BEANS may provide written notice to Plaintiffs of any asserted change in the law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered Products are so affected.

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

8. NOTICES

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

To TEAM BEANS:

Mike Lewis
Team Beans & Forever Collectibles
2301 Cottontail Lane
Somerset, NJ 08873

Copy to:

Michael E. Delehunt
Foley & Lardner LLP
555 California Street, Suite 1700
San Francisco, CA 94104

To Plaintiffs:

1
2 Proposition 65 Coordinator
3 The Chanler Group
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565

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8 **8.2** Any Party, from time to time, may specify in writing to the other Party a change
9 of address to which all notices and other communications shall be sent.

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11 **9. MODIFICATION**

12 **9.1 Modification.** This Consent Judgment may be modified by written agreement of
13 the Parties and upon entry of a modified Consent Judgment by the court, or by motion of any
14 Party and entry of a modified Consent Judgment by the court.

15 **9.2 Subsequent Legislation.** If, subsequent to the Effective Date, legislation or
16 regulation is adopted that addresses the DBP and DEHP content of Covered Products sold in
17 California hereunder, any Party shall be entitled to request that the Court modify the
18 reformulation standard in Section 3.1 of this Consent Judgment for good cause shown.

19 **9.3 Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
20 or to allege a violation thereof shall first attempt in good faith to meet and confer with the other
21 Party prior to filing a motion to modify the Consent Judgment.

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23 **10. ENTIRE AGREEMENT**

24 **10.1** This Consent Judgment contains the sole and entire agreement and understanding
25 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
26 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein.
27 No supplementation, modification, waiver, or termination of this Consent Judgment shall be
28 binding unless executed in writing by the Party to be bound thereby. No waiver of any of the
provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the
other provisions hereof whether or not similar, nor shall such waiver constitute a continuing
waiver unless set forth in writing between the Parties.

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11. RETENTION OF JURISDICTION

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

12. COUNTERPARTS; FACSIMILE SIGNATURES

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

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13. AUTHORIZATION

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

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AGREED TO:

Date: October 20, 2014

By: 
Plaintiff Anthony E. Held

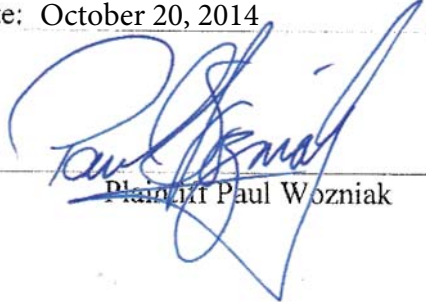
AGREED TO:

Date: 10/16/2014

By: 
Defendant Team Beans, LLC

AGREED TO:

Date: October 20, 2014

By: 
Plaintiff Paul Wozniak