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6

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

11 RUSSELL BRIMER,

12 Plaintiff,

13 v.

14 DELUXE CORPORATION; DIRECT
15 CHECKS UNLIMITED, LLC; and DOES 1-
150, inclusive,

16 Defendants.

Case No. CIV 1301293

[PROPOSED] CONSENT JUDGMENT

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1. INTRODUCTION

1.1 Russell Brimer and Deluxe Corporation

This Consent Judgment is entered into by and between plaintiff Russell Brimer (“Brimer” or “Plaintiff”) and defendant Deluxe Corporation (“Deluxe” or “Defendant”), with Plaintiff and Defendant collectively referred to as the “Parties” and each individually referred to as a “Party.”

1.2 Plaintiff

Brimer is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances in consumer products.

1.3 Defendant

Deluxe 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 § 25249.6 *et seq.* (“Proposition 65”).

1.4 General Allegations

Brimer alleges that Deluxe manufactured, imported, distributed, sold and/or offered for sale checkbook covers with vinyl/PVC components containing di(2-ethylhexyl)phthalate (“DEHP”) in the State of California without the requisite Proposition 65 health hazard warnings. DEHP is listed pursuant to Proposition 65 as known to the State of California to cause birth defects and other reproductive harm.

1.5 Product Description

The products that are covered by this Consent Judgment are defined as checkbook covers with vinyl/PVC components containing DEHP including, but not limited to, the *Burgundy Leather Tri-fold*, #228275, which Deluxe manufactured, imported, distributed, sold or offered for sale in the State of California, hereinafter referred to as the “Covered Products.”

1 **1.6 Notice of Violation**

2 On August 31, 2012, Brimer served Deluxe and various public enforcement agencies
3 with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients
4 with notice of alleged violations of Proposition 65 for failing to warn consumers that the
5 Covered Products exposed users in California to DEHP. To the best of the Parties’ knowledge,
6 no public enforcer has commenced and is diligently prosecuting the allegations set forth in the
7 Notice.

8 **1.7 Complaint**

9 On or about March 27, 2013, Brimer, who was and is acting in the interest of the general
10 public in California, filed a complaint (“Complaint” or “Action”) in the Superior Court in and
11 for the County of Marin against Deluxe and Does 1 through 150, alleging, *inter alia*, for
12 violations of Proposition 65 based on the alleged exposures to DEHP contained in the Covered
13 Products.

14 **1.8 No Admission**

15 Deluxe denies the material, factual and legal allegations contained in Brimer's Notice
16 and Complaint and maintains that all Covered Products sold and distributed in California have
17 been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed
18 as an admission by Deluxe of any fact, finding, issue of law, or violation of law; nor shall
19 compliance with this Consent Judgment constitute or be construed as an admission by Deluxe of
20 any fact, finding, issue of law, or violation of law, such being specifically denied by Deluxe.
21 However, this Section shall not diminish or otherwise affect Deluxe’s obligations,
22 responsibilities, and duties under this Consent Judgment.

23 **1.9 Consent to Jurisdiction**

24 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
25 jurisdiction over Deluxe as to the allegations contained in the Complaint, that venue is proper in
26 the County of Marin, and that this Court has jurisdiction to enter and enforce the provisions of
27 this Consent Judgment.

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1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date
3 that this Consent Judgment is approved by the Court.

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

5 **2.1 Reformulation Standard**

6 “Reformulated Products” shall mean Covered Products containing less than 1,000 parts
7 per million (0.1%) of DEHP in each Accessible Component when analyzed pursuant to U.S.
8 Environmental Protection Agency testing methodologies 3580A and 8270C or any other
9 methodology utilized by federal or state agencies for the purpose of determining the DEHP
10 content in a solid substance. For purposes of this Consent Judgment “Accessible Component”
11 shall mean a component of a Covered Product that can be touched by a person during normal,
12 intended and foreseeable use of the Covered Product.

13 **2.2 Reformulation Commitment**

14 Commencing on January 1, 2014, Deluxe shall not distribute, import, sell and/or offer
15 for sale any Covered Product in the State of California unless such Covered Product is a
16 Reformulated Product, or, alternatively, unless such Covered Product contains clear and
17 reasonable warnings as set forth below.

18 **2.3 Warnings Commitment**

19 The Parties acknowledge that Deluxe has already implemented a warning program for
20 non-Reformulated Products manufactured, imported, distributed, sold and/or offered for sale by
21 Deluxe in California. Deluxe shall continue to use said warnings on non-Reformulated Products
22 sold in California through and until August 31, 2014. However, commencing on or before
23 September 1, 2014, Deluxe shall provide clear and reasonable warnings as set forth in
24 subsections 2.3(a) and (b) for all non-Reformulated Products sold in California. Each warning
25 shall be prominently placed with such conspicuousness as compared with other words,
26 statements, designs, or devices as to render it likely to be read and understood by an ordinary
27 individual under customary conditions before purchase or use. Each warning shall be provided
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1 in a manner such that the consumer or user understands which *specific* Covered Product the
2 warning applies, so as to minimize the risk of consumer confusion.

3 (a) **Non-Internet or Catalog Sales.**

4 (i) **Product Labeling.** Deluxe shall affix a warning directly on each
5 Covered Product, or include a paper insert within the package that contains a Covered Product,
6 sold to consumers in California by Deluxe or any person selling the Covered Products, that
7 states:

8 **WARNING:** This product contains chemicals, including
9 DEHP, known to the State of California to cause
10 cancer, birth defects and other reproductive
11 harm.

12 (b) **Mail Order Catalog and Internet Sales.**

13 In the event that Deluxe sells Covered Products via mail order catalog and/or the internet,
14 to customers located in California, after January 1, 2014, that are not Reformulated Products,
15 Deluxe shall provide warnings for such Covered Products. Warnings given in the mail order
16 catalog or on the internet shall identify the *specific* Covered Product to which the warning
17 applies as further specified in Sections 2.3(b)(i) and (ii).

18 (i) **Mail Order Catalog Warning.**

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

23 **WARNING:** This product contains chemicals, including
24 DEHP, known to the State of California to cause
25 cancer, birth defects and other reproductive
26 harm.

27 (ii) **Internet Website Warning.**

28 In addition to the warnings required in Section 2.3(a)(i), a warning may be given in
conjunction with the sale of the Covered Products via the internet, which warning shall appear
either: (a) on the same web page on which a Covered Product is displayed; (b) on the same web

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

6 **WARNING:** This product contains chemicals, including
7 DEHP, known to the State of California to cause
8 cancer, birth defects and other reproductive
9 harm.

10 For Covered Products purchased through a catalog, via the internet, by telephone or any
11 other method by which the Covered Product is shipped to the purchaser, and for which
12 Defendant provides a warning via the method outlined in Section 2.3(a)(i), Deluxe shall include
13 language on the warning which informs the purchaser that he or she may return the Covered
14 Product for a full refund (including shipping costs for both the receipt and return of the
15 product), within 30 days of purchase.

16 **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

17 In settlement of all the claims referred to in this Consent Judgment, Deluxe shall pay a
18 total of \$135,000 in civil penalties in accordance with this Section. Each penalty payment will
19 be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) & (d), with
20 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment
21 (“OEHHA”) and the remaining 25% of the penalty remitted to Brimer, as follows:

22 **3.1 Initial Civil Penalty**

23 Deluxe shall pay an initial civil penalty in the amount of \$20,000 on or before January 29,
24 2014. Deluxe shall issue two separate checks to: (a) “OEHHA” in the amount of \$15,000; and
25 (b) “The Chanler Group in Trust for Russell Brimer” in the amount of \$5,000. All penalty
26 payments shall be delivered to the addresses listed in Section 3.6 below.
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1 **3.2 Payment in Lieu of Civil Penalty**

2 Deluxe shall pay the sum of \$10,000 to Silent Spring Institute (“Silent Spring”), a not-for-
3 profit institution, in lieu of further additional initial civil penalties pursuant to Health & Safety
4 Code § 25249.7(b), and California Code of Regulations, Title 11, § 3202(b), on or before the
5 Effective Date. Silent Spring will use such funds to continue its work identifying the links
6 between exposure to environmental chemicals, including DEHP, and reproductive and
7 developmental harm, as well as educating the public about such potential exposures. Silent
8 Spring will conduct exposure- and risk-based prioritization of chemicals listed under Proposition
9 65, or chemicals OEHHA has identified as candidates for listing, in order to identify exposures
10 of potential public health significance. Silent Spring may also use a portion of such funds to
11 monitor compliance with the reformulation and warnings requirements of this and other similar
12 consent judgments addressing Proposition 65-listed chemical exposures, as well as to conduct
13 additional exposure measurements that evaluate the levels of chemical exposures to users of
14 products that contain phthalate chemicals and lead.

15 **3.3 Second Civil Penalty**

16 Deluxe shall pay a second civil penalty of \$50,000 on or before June 15, 2014. The
17 second civil penalty shall be waived in its entirety, however, if, no later than June 1, 2014, an
18 officer of Deluxe provides Brimer with written certification that, as of the date of such
19 certification and continuing into the future, Deluxe has met the reformulation standard specified
20 in Section 2.1 above, such that no less than fifty percent (50%) of the Covered Products
21 manufactured, imported, distributed, sold and/or offered for sale in California by Deluxe are
22 Reformulated Products. The certification in lieu of a second civil penalty payment provided by
23 this Section is a material term, and time is of the essence. The certification shall also state that
24 Deluxe has administered its own independent testing of the Covered Products verifying that the
25 Covered Products are Reformulated Products. Deluxe’s independent testing shall consist of
26 sampling of multiple units of Covered Products from each manufacturer and/or distributor at
27 intervals reasonably necessary to ensure that the Covered Products comply with the
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1 reformulation standard. The independent test results obtained by Deluxe verifying that the
2 Covered Products are Reformulated Products shall be made available to Brimer at his request
3 and any such test results shall not be disclosed by Brimer or his counsel to any person, nor shall
4 any such test results be used for any purpose other than to enforce the provisions of this Section.
5 Deluxe shall issue two separate checks for its second civil penalty payment to: (a) "OEHHA" in
6 the amount of \$37,500; and (b) "The Chanler Group in Trust for Russell Brimer" in the amount
7 of \$12,500.

8 **3.4 Third Civil Penalty**

9 Deluxe shall pay a third civil penalty of \$35,000 on or before January 15, 2015. The third
10 civil penalty shall be waived in its entirety, however, if, no later than January 1, 2015, an officer
11 of Deluxe provides Brimer with written certification that, as of the date of such certification and
12 continuing on into the future, Deluxe has met the reformulation standard specified in Section 2.1
13 above, such that no less than seventy percent (70%) of the Covered Products manufactured,
14 imported, distributed, sold and/or offered for sale in California by Deluxe are Reformulated
15 Products. The certification in lieu of a third civil penalty payment provided by this Section is a
16 material term, and time is of the essence. The certification shall comply with the additional
17 requirements regarding independent testing of the Covered Products described in Section 3.3
18 above. Deluxe shall issue two separate checks for its third civil penalty payment to: (a)
19 "OEHHA" in the amount of \$26,250; and (b) "The Chanler Group in Trust for Russell Brimer"
20 in the amount of \$8,750.

21 **3.5 Final Civil Penalty**

22 Deluxe shall pay a final civil penalty of \$20,000 on or before June 15, 2015. The final
23 civil penalty shall be waived in its entirety, however, if, no later than June 1, 2015, an officer of
24 Deluxe provides Brimer with written certification that, as of the date of such certification and
25 continuing on into the future, Deluxe has met the reformulation standard specified in Section 2.1
26 above, such that no less than ninety percent (90%) of the Covered Products manufactured,
27 imported, distributed, sold and/or offered for sale in California by Deluxe are Reformulated
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1 Products. The certification in lieu of a final civil penalty payment provided by this Section is a
2 material term, and time is of the essence. The certification shall comply with the additional
3 requirements regarding independent testing of the Covered Products described in Section 3.3
4 above. The independent testing requirements provided in Section 3.3 above shall continue until
5 January 15, 2016 and Brimer shall retain the right to request and receive any test results until
6 June 15, 2016. Following June 15, 2016, Deluxe will have no obligation to provide test results
7 to Brimer, except as otherwise required by law. Deluxe shall issue two separate checks for its
8 final civil penalty payment to: (a) “OEHHA” in the amount of \$15,000; and (b) “The Chanler
9 Group in Trust for Russell Brimer” in the amount of \$5,000.

10 **3.6 Payment Procedures**

11 **3.6.1 Issuance of Payments.** Payments shall be delivered as follows:

12 (a) All payments owed to Brimer, pursuant to Sections 3.1, 3.3, 3.4
13 and 3.5 and the payment owed to Silent Spring shall be delivered to the following payment
14 address:

15 The Chanler Group
16 Attn: Proposition 65 Controller
17 2560 Ninth Street
18 Parker Plaza, Suite 214
19 Berkeley, CA 94710

20 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to
21 Sections 3.1, 3.3, 3.4 and 3.5 shall be delivered directly to OEHHA (Memo line “Prop 65
22 Penalties”) at the following addresses:

23 For U.S. Postal Service Delivery:

24 For Non-U.S. Postal Service Delivery:

25 Mike Gyurics
26 Fiscal Operations Branch Chief
27 Office of Env’tl Health Hazard Assessment
28 P.O. Box 4010
Sacramento, CA 95812-4010

25 Mike Gyurics
26 Fiscal Operations Branch Chief
27 Office of Env’tl Health Hazard Assessment
28 1001 I Street
Sacramento, CA 95814

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth above in 3.6.1(a), as proof of payment to OEHHA.

1 **3.6.2 Issuance of 1099 Forms.** After each penalty payment, Deluxe shall issue
2 separate 1099 forms for each payment to Brimer, whose address and tax identification number
3 shall be furnished upon request after this Consent Judgment has been fully executed by the
4 Parties, and OEHHA at the addresses listed in Section 3.6.1 above.

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

6 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute
7 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
8 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
9 Brimer then expressed a desire to resolve the fee and cost issue shortly after the other settlement
10 terms had been finalized. The Parties then attempted to (and did) reach an accord on the
11 compensation due to Brimer and his counsel under general contract principles and the private
12 attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work
13 performed through the mutual execution of this agreement. Deluxe shall pay \$94,500 for fees
14 and costs incurred as a result of investigating, bringing this matter to Deluxe’s attention, and
15 negotiating a settlement in the public interest. Deluxe shall issue a separate 1099 for fees and
16 costs (EIN: 94-3171522), shall make the check payable to “The Chanler Group” and shall deliver
17 payment on or before January 29, 2014, to the address listed in Section 3.6.1 above.

18 **5. CLAIMS COVERED AND RELEASED**

19 **5.1 Brimer’s Public Release of Proposition 65 Claims**

20 In consideration of the promises and commitments herein contained, Brimer on behalf of
21 himself and his past and current agents, representatives, attorneys, successors, and/or assignees,
22 and in the public interest, hereby waive and release Deluxe, all of its parents, subsidiaries,
23 affiliated entities that are under common ownership or control, and their directors, officers,
24 employees, and attorneys (“Releasees”) and each entity to whom they directly or indirectly
25 distribute or sell Covered Products, including, but not limited to, all distributors, wholesalers,
26 customers, retailers, franchisees, cooperative members, licensors, and licensees (“Downstream
27 Releasees”), from all claims for violations of Proposition 65 based on exposure to DEHP from
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1 Covered Products arising up through the Effective Date. This waiver and release is limited to
2 those claims that arise under Proposition 65 with respect to DEHP in the Covered Products
3 associated with Deluxe, as such claims relate to the alleged failure to warn under Health &
4 Safety Code § 25249.6 and apply only as to Covered Products. Compliance with the terms of
5 this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to
6 DEHP from the Covered Products as set forth in the Notice.

7 **5.2 Brimer's Individual Release of Claims**

8 Brimer also, in his individual capacity only and *not* in his representative capacity,
9 provides a release herein which shall be effective as a full and final accord and satisfaction, as a
10 bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,
11 claims, liabilities and demands of plaintiff of any nature, character or kind, whether known or
12 unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to
13 DEHP in the Covered Products manufactured, imported, distributed, sold and/or offered for sale
14 by Deluxe.

15 **5.3 Deluxe's Release of Brimer**

16 Deluxe on behalf of itself, its past and current agents, representatives, attorneys,
17 successors, and/or assignees, hereby waives any and all claims against Brimer, his attorneys and
18 other representatives, for any and all actions taken or statements made (or those that could have
19 been taken or made) by Brimer and his attorneys and other representatives, whether in the
20 course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this
21 matter with respect to the Covered Products.

22 **6. COURT APPROVAL**

23 This Consent Judgment is not effective until it is approved and entered by the court and
24 shall be null and void if, for any reason, it is not approved and entered by the Court within one
25 year after it has been fully executed by all Parties, in which event any monies that have been
26 provided to Brimer or his counsel pursuant to Sections 3 and 4 above, shall be refunded within
27 fifteen (15) days after receiving written notice from Deluxe that the one-year period has expired.
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1 **7. SEVERABILITY**

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

5 **8. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the State of
7 California and apply within the State of California. In the event that Proposition 65 is repealed
8 or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products,
9 then Deluxe shall provide written notice to Brimer of any asserted change in the law, and shall
10 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
11 that, the Covered Products are so affected.

12 **9. 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 Deluxe:

To Brimer:

18 Peter J. Godich
19 Senior VP, Fulfillment
20 Deluxe Corporation
3680 Victoria Street North
Shoreview, MN 55126

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

21 Notices to Deluxe should be copied to:

22 Sharon Rowe
23 General Counsel
24 Deluxe Corporation
3680 Victoria Street North
25 Shoreview, MN 55126

William F. Tarantino
Morrison & Foerster LLP
425 Market Street, Suite 3300
San Francisco, CA 94105

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

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1 **10. 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 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

9 **12. 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 Brimer shall file, and which Deluxe shall not oppose.
15 If any third party objection to the noticed motion is filed, Brimer and Deluxe shall work
16 together to file a joint reply and appear at any hearing before the Court. If the Court does not
17 approve the motion to approve this Consent Judgment, and the Parties choose not to pursue a
18 modified Consent Judgment within 30 days of said denial, or in the event that the Court approve
19 this Consent Judgment and any person successfully appeals that approval, all payments made
20 pursuant to this Consent Judgment will be returned to Deluxe with interest at the prevailing
21 Federal Funds rate.

22 **13. MODIFICATION**

23 This Consent Judgment may be modified only: (1) by written agreement of the Parties
24 and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful
25 motion of any Party and entry of a modified Consent Judgment by the court.
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14. ENTIRE AGREEMENT

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

15. AUTHORIZATION

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.

AGREED TO:

AGREED TO:

Date: January 2, 2014

Date: _____

By:  _____
Russell Brimer

By: _____
Deluxe Corporation

1 **14. ENTIRE AGREEMENT**

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

8 **15. AUTHORIZATION**

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

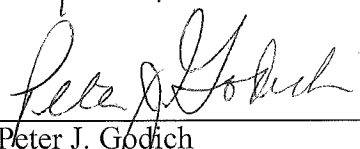
12 **AGREED TO:**

AGREED TO:

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15 Date: _____

Date: 1/27/2014

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17 By: _____
18 Russell Brimer

By: 
Peter J. Godich
Deluxe Corporation