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8 Attorneys for Plaintiff, Thomas E. Perez,
 9 Secretary of Labor, United States
 Department of Labor

11 UNITED STATES DISTRICT COURT
 12 CENTRAL DISTRICT OF CALIFORNIA

14 THOMAS E. PEREZ, Secretary of
 Labor, United States Department of
 15 Labor,

Case No. 2:15-cv-00391-ODW-AGR

17 Plaintiff,

18 vs.

~~PROPOSED~~ CONSENT
 JUDGMENT & ORDER ENTERED
 INTO BY THE SECRETARY OF
 LABOR and CARL WEISS

19 G&H TECHNOLOGY INC.
 20 401(K) RETIREMENT SAVINGS
 PLAN, an employee benefit plan;
 21 LEE SCHUH, an individual; CARL
 WEISS, an individual; XAF, INC.,
 22 A Delaware Corporation;
 23 PROCYON TECHNOLOGIES,
 24 INC., A Delaware Corporation,

25 Defendants.

26
 27 Plaintiff THOMAS E. PEREZ, Secretary of Labor, UNITED STATES
 28 DEPARTMENT OF LABOR (“Secretary”) pursuant to his authority under §§

1 502(a)(2) and (5) of the Employee Retirement Income Security Act of 1974
2 (“ERISA”), 29 U.S.C. §§ 1132(a)(2) and (5), has filed a Complaint against
3 Defendant XAF, Inc. (“XAF”). The Secretary also named as parties under Rule
4 19(a) the G&H Technology Inc. 401(k) Retirement Savings Plan (“Plan”), an
5 employee benefit plan, Lee Schuh, Carl Weiss (“Weiss”), and Procyon
6 Technologies, Inc..

7 A. The Secretary and Weiss (collectively, “the parties”) admit that the
8 Court has jurisdiction over this action pursuant to ERISA § 502(e)(1), 29 U.S.C. §
9 1132(e)(1), and that venue lies in the Central District of California pursuant to
10 ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2).

11 B. The parties agree to the entry of this Consent Judgment & Order. The
12 parties further agree that this Consent Judgment & Order shall bind the Secretary
13 and Weiss as to all claims of the Secretary asserted in the Complaint filed in this
14 matter.

15 C. The Secretary and Weiss expressly waive Findings of Fact and
16 Conclusions of Law.

17 **IT IS HEREBY ORDERED, ADJUDGED, and DECREED** that:

18 1. Weiss has no objection to the Court’s granting of the Motion for
19 Default Judgment filed by the Secretary of Labor against Defendant XAF; to the
20 removal of XAF from its position as fiduciary of the Plan; and to the appointment
21 of Thomas A. Dillon, Esq., of 851 Burlway Road, Suite 216, Burlingame, CA,
22 94010, as the Independent Fiduciary who:

23 a. Will be responsible for collecting, marshalling, paying out, and
24 administering all of the assets of the Plan and take further action with respect to the
25 Plan as appropriate, including terminating the Plan when all of its assets have been
26 distributed to all Eligible Plan Participants and Beneficiaries;

27 b. Shall, pursuant to the procedures outlined in the Employee
28 Benefits Security Administration’s Field Assistance Bulletin 2014-01, exercise

1 reasonable care and diligence to identify and locate each participant and
2 beneficiary of Plan who is eligible to receive a distribution under the terms of the
3 Plan;

4 c. Shall have all the rights, duties, discretion, and responsibilities
5 of a trustee, fiduciary, and Plan Administrator under ERISA;

6 d. Is authorized to delegate or assign fiduciary duties as
7 appropriate and allowed under the law and may retain such as assistance as she
8 may require, including attorneys, accountants, actuaries, and other service
9 providers;

10 e. Shall be authorized by the Court to receive up to \$2,600.00 in
11 reasonable fees and expenses, payable from the assets of the Plan;

12 f. Shall have full access to all data, information, and calculations
13 in the possession of the Plan and under its control, including information and
14 records maintained by the custodial trustees or service providers of the Plan;

15 g. Shall provide any information regarding the Plan requested by
16 the Secretary, including any documents or records requested, regarding the
17 administration of the Plan;

18 h. Is authorized to give instructions respecting the disposition of
19 assets of the Plan; and

20 i. Shall comply with all applicable rules and laws.

21 2. Upon the appointment of the Independent Fiduciary as described in
22 paragraph 1, Defendant Weiss will be hereby removed from any position he may
23 hold as trustee or other fiduciary of the Plan.

24 3. Defendant Weiss has no objection to the removal, upon consent
25 judgment or motion by the Secretary, of Lee Schuh from any position he may now
26 hold as a trustee, fiduciary and/or administrator to the Plan.

27 4. Defendant Weiss has no objection to the removal, upon consent
28 judgment or motion by the Secretary, of Procyon Technologies, Inc. from any

1 position it may now hold as a trustee, fiduciary and/or administrator to the Plan.

2 5. The Secretary and Defendant Weiss shall each bear their own costs,
3 expenses, and attorneys' fees incurred to date in connection with any stage of this
4 proceeding, including but not limited to attorneys' fees which may be available
5 under the Equal Access to Justice Act, as amended.

6 6. Defendant Weiss expressly waives any and all claims of any nature
7 which he has or may have against the Secretary, the Department of Labor, or any
8 of its officers, agents, attorneys, employees or representatives, arising out of or in
9 connection with the allegations contained in the Complaint on file in this action,
10 any other proceedings or investigation incident thereto or based on the Equal
11 Access to Justice Act, as amended.

12 7. This Court retains jurisdiction of this action for purposes of enforcing
13 compliance with the terms of this Consent Judgment & Order.

14 8. By signing their names to this Consent Judgment & Order, the parties
15 represent that they are informed and understand the effect and purpose of this
16 Consent Judgment & Order.

17 9. This Consent Judgment & Order may be executed in counterparts, and
18 such counterparts may be transmitted via facsimile and/or e-mail, each of which
19 shall be deemed to be an original, but all of which, taken together, shall constitute
20 one and the same instrument.

21 The Court directs the entry of this Consent Judgment & Order as a final
22 order.

23 **IT IS SO ORDERED.**

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25 Dated: June 24, 2015

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UNITED STATES DISTRICT JUDGE

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Dated: 4/9/15, 2015

M. PATRICIA SMITH
Solicitor of Labor

JANET M. HEROLD
Regional Solicitor

DANIELLE L. JABERG
Counsel for ERISA


KATHERINE M. KASAMEYER
Trial Attorney

Attorneys for the Plaintiff

Defendant consents to the entry of this Consent Judgment.

Dated: 4/8/15



BRADLEY E. JEWETT, Esq.
Sanders Roberts & Jewett LLP
Attorneys for Carl Weiss

Dated: 4/3/15



CARL WEISS, an individual