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

CASE CLOSED

11 UNITED STATES DISTRICT COURT  
 12 CENTRAL DISTRICT OF CALIFORNIA

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

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

17 Plaintiff,

18 vs.

19 CONSENT JUDGMENT & ORDER  
 20 ENTERED INTO BY THE  
 SECRETARY OF LABOR and LEE  
 SCHUH

21 G&H TECHNOLOGY INC.  
 22 401(K) RETIREMENT SAVINGS  
 PLAN, an employee benefit plan;  
 23 LEE SCHUH, an individual; CARL  
 WEISS, an individual; XAF, INC.,  
 A Delaware Corporation;  
 24 PROCYON TECHNOLOGIES,  
 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 (“Schuh”), Carl Weiss, and Procyon  
6 Technologies, Inc..

7 A. The Secretary and Schuh (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 Schuh as to all claims of the Secretary asserted in the Complaint filed in this  
14 matter.

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

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

18 1. Schuh 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 Schuh will be hereby removed from any position he may  
23 hold as trustee or other fiduciary of the Plan.

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

27 4. Defendant Schuh 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 Schuh 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 Schuh 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,  
18 each of which shall be deemed to be an original, but all of which, taken together,  
19 shall constitute one and the same instrument.

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

22 **IT IS SO ORDERED.**

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24 Dated: July 25, 2015



25 UNITED STATES DISTRICT JUDGE  
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Dated: March 18, 2015

M. PATRICIA SMITH  
Solicitor of Labor

JANET M. HEROLD  
Regional Solicitor

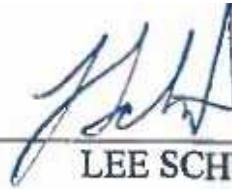
DANIELLE L. JABERG  
Counsel for ERISA

/s/ Katherine M. Kasameyer  
KATHERINE M. KASAMEYER  
Trial Attorney

Attorneys for the Plaintiff

Defendant consents to the entry of this Consent Judgment.

Dated: 3/18/15



LEE SCHUH, an individual