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3 THE CHANLER GROUP
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9 Attorneys for Plaintiff
10 ANTHONY E. HELD, PH.D., P.E.

FILED

JAN 27 2012

CLERK OF SUPERIOR COURT
MARIN COUNTY COURTHOUSE
1000 S. GARDEN STREET
SAN RAFAEL, CA 94903

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF MARIN

13 UNLIMITED CIVIL JURISDICTION

14 ANTHONY E. HELD, PH.D., P.E.,

15 Plaintiff,

16 v.

17 PENTEL OF AMERICA, LTD., *et al.*,

18 Defendants.

) Case No.: CIV-1101574

) **[PROPOSED] JUDGMENT PURSUANT**
) **TO TERMS OF PROPOSITION 65**
) **SETTLEMENT AND [PROPOSED]**
) **CONSENT JUDGMENT**

) Date: January 27, 2012

) Time: 8:30 a.m.

) Dept.: E

) Judge: Hon. Judge Faye D'Opal

1 In the above-entitled action, Plaintiff ANTHONY E. HELD, PH.D., P.E. and Defendant
2 PENTEL OF AMERICA, LTD. having agreed through their respective counsel that a judgment be
3 entered pursuant to the terms of the [Proposed] Consent Judgment entered into by the parties in
4 resolution of this Proposition 65 action, and following the issuance of an order approving the Parties'
5 settlement agreement on or about January 27, 2012.

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Health & Safety
7 Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered in accordance
8 with the terms of the Consent Judgment attached hereto as Exhibit A. By stipulation of the parties,
9 the Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.
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11 **IT IS SO ORDERED.**

12
13 Dated: JAN 27 2012

FAYE D'OPAL

JUDGE OF THE SUPERIOR COURT

Exhibit 1

1 Clifford A. Chanler, State Bar No. 135534
2 Josh Voorhees, State Bar No. 241436
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
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9 Attorneys for Plaintiff
10 ANTHONY E. HELD, PH.D., P.E.

11 Ann G. Grimaldi, State Bar No. 160893
12 MCKENNA LONG & ALDRIDGE LLP
13 101 California Street, Floor 41
14 San Francisco, CA 94111-5886
15 Telephone: (415) 267-4104
16 Facsimile: (415) 267-4198

17 Attorneys for Defendant
18 PENTEL OF AMERICA, LTD.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

17 ANTHONY E. HELD, PH.D., P.E.,)
18)
19 Plaintiff,)
20 v.)
21 PENTEL OF AMERICA, LTD., *et al.*,)
22 Defendant.)
23 _____)

Case No. CIV 1101574
[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E. and Pentel of America, Ltd.**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D.,
4 P.E. (“Dr. Held” or “Plaintiff”) and Pentel of America, Ltd. (“PENTEL” or “Defendant”), with
5 Dr. Held and PENTEL collectively referred to as the “parties.”

6 **1.2 Anthony E. Held, Ph.D., P.E.**

7 Dr. Held is an individual residing in the State of California who seeks to promote awareness
8 of exposure to toxic chemicals and to improve human health by reducing or eliminating hazardous
9 substances contained in consumer and commercial products.

10 **1.3 Pentel of America, Ltd.**

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

14 **1.4 General Allegations**

15 Dr. Held alleges that PENTEL has manufactured, imported, distributed and/or sold vinyl
16 bags (cases) for art supplies that contain di(2-ethylhexyl)phthalate (“DEHP”) without the requisite
17 Proposition 65 warnings. DEHP is on the Proposition 65 list as known to cause cancer as well as
18 birth defects and other reproductive harm.

19 **1.5 Product Description**

20 As used in this Consent Judgment, “Products” mean vinyl bags (cases) for art supplies
21 containing DEHP, including, but not limited to, *Pentel Arts Color Pen Fine Point Color Markers,*
22 *S360-12 (#0 72512 10134 6)*, manufactured, imported, distributed and/or sold by, or on behalf of,
23 PENTEL in California.

24 **1.6 Notice of Violation**

25 On October 29, 2010, Dr. Held served PENTEL and various public enforcement agencies
26 with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided recipients with
27 notice that alleged that PENTEL was in violation of California Health & Safety Code § 25249.6 for
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1 failing to warn consumers and customers that the Products exposed users in California to DEHP.
2 No public enforcer has diligently prosecuted the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On March 25, 2011, Dr. Held filed a complaint in the Superior Court in and for the County
5 of Marin against PENTEL, *Held v Pentel, et al.*, Case No. 1101574 (the “Complaint”), alleging
6 violations of California Health & Safety Code § 25249.6, based on the alleged exposures to DEHP
7 contained in certain vinyl bags (cases) for art supplies manufactured, distributed and/or sold by
8 PENTEL.

9 **1.8 No Admission**

10 PENTEL denies the material, factual and legal allegations contained in Dr. Held’s Notice
11 and Complaint and maintains that all products that it has sold, manufactured, imported and/or
12 distributed in California, including the Products, have been and are in compliance with all laws.
13 Nothing in this Consent Judgment shall be construed as an admission by PENTEL of any fact,
14 finding, issue of law, or violation of law, nor shall compliance with this Consent Judgment
15 constitute or be construed as an admission by PENTEL of any fact, finding, conclusion, issue of
16 law, or violation of law. However, this section shall not diminish or otherwise affect PENTEL’s
17 obligations, responsibilities, and duties under this Consent Judgment.

18 **1.9 Consent to Jurisdiction**

19 For purposes of this Consent Judgment only, the parties stipulate that this Court has
20 jurisdiction over PENTEL as to the allegations contained in the Complaint, that venue is proper in
21 the County of Marin and that this Court has jurisdiction to enter and enforce the provisions of this
22 Consent Judgment.

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term “Effective Date” shall mean June 8, 2011.
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1 The Chanler Group
2 Attn: Proposition 65 Controller
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710

4 **4. REIMBURSEMENT OF ATTORNEY'S FEES AND COSTS**

5 The parties reached an accord on the compensation due to Dr. Held and his counsel under
6 general contract principles and the private attorney general doctrine codified at California Code of
7 Civil Procedure (CCP) § 1021.5. PENTEL shall reimburse Dr. Held and his counsel \$27,000 for
8 fees and costs incurred as a result of investigating, bringing this matter to its attention, and
9 negotiating a settlement in the public interest. This figure includes Dr. Held's future fees and costs
10 including attorney's fees to be incurred in seeking judicial approval of this Consent Judgment as
11 well as any other legal work performed after the execution of this Consent Judgment incurred in an
12 effort to obtain finality of the case. However, in the event a third party were to appeal entry of this
13 Consent Judgment, Plaintiff and his counsel shall be entitled to seek their reasonable attorney's fees
14 and costs associated with all appellate work defending the entry of judgment pursuant to CCP §
15 1021.5.

16 The check for reimbursement of fees and costs shall be made payable to "The Chanler
17 Group" and shall be delivered within five (5) days after the court approves this Consent Judgment,
18 to the following address:

19 The Chanler Group
20 Attn: Proposition 65 Controller
21 2560 Ninth Street
22 Parker Plaza, Suite 214
23 Berkeley, CA 94710

24 A separate 1099 shall be issued to "The Chanler Group" (EIN: 94-3171522) for the amount
25 of the reimbursement of Plaintiff's fees and costs.

24 **5. RELEASE OF ALL CLAIMS**

25 **5.1 Full, Final and Binding Resolution of Proposition 65 Allegations.**

26 This Consent Judgment is a full, final and binding resolution between Plaintiff, on behalf
27 of himself and the public, and Defendant, of any violation of Proposition 65 that was or could
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1 have been asserted by Plaintiff against Defendant, its parents, subsidiaries, affiliated entities that
2 are under common ownership, directors, officers, employees, attorneys, and each entity to whom
3 Defendant directly or indirectly distributes or sells Products, including but not limited to,
4 downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members,
5 licensors, and licensees (“Releasees”), based on their failure to warn about alleged exposures to
6 DEHP contained in the Products that were sold by Defendant.

7 **5.2 Plaintiff’s Public Release of Proposition 65 Claims.**

8 In further consideration of the promises and agreements herein contained, Plaintiff on
9 behalf of himself, his past and current agents, representatives, attorneys, successors, and/or
10 assignees, and in the interest of the general public, hereby waives all rights to institute or
11 participate in, directly or indirectly, any form of legal action and releases all claims, including,
12 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,
13 obligations, damages, costs, fines, penalties, losses, or expenses -- including, but not limited to,
14 investigation fees, expert fees, and attorneys’ fees, but exclusive of fees and costs on appeal --
15 limited to and arising under Proposition 65 with respect to DEHP in the Products sold by
16 Defendant (collectively “claims”), against Defendant and Releasees.

17 **5.3 Plaintiff’s Individual Release of Claims.**

18 Plaintiff also, in his individual capacity only and *not* in his representative capacity,
19 provides a release herein which shall be effective as a full and final accord and satisfaction, as a
20 bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses,
21 claims, liabilities and demands of plaintiff of any nature, character or kind, whether known or
22 unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to
23 DEHP in the Products manufactured, distributed or sold by Defendant.

24 **5.4 Defendant’s Release of Plaintiff.**

25 Defendant on behalf of itself, its past and current agents, representatives, attorneys,
26 successors, and/or assignees, hereby waives any and all claims against Plaintiff, his attorneys and
27 other representatives, for any and all actions taken or statements made (or those that could have
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1 been taken or made) by Plaintiff and his attorneys and other representatives, whether in the course
2 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
3 respect to the Products.

4 **6. COURT APPROVAL**

5 This Consent Judgment is not effective until it is approved and entered by the Court and
6 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
7 after it has been fully executed by all parties.

8 **7. SEVERABILITY**

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

12 **8. GOVERNING LAW**

13 The terms of this Consent Judgment shall be governed by the laws of the State of California
14 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or
15 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
16 Consent Judgment are rendered inapplicable or no longer require as a result of any such repeal or
17 preemption or rendered inapplicable by reason of law generally as to the Products, then PENTEL
18 shall have no further obligations pursuant to this Consent Judgment with respect to, and to the
19 extent that, the Products are so affected.

20 **9. NOTICES**

21 Unless specified herein, all correspondence and notices required to be provided pursuant to
22 this Consent Judgment shall be in writing and: (i) personally delivered; (ii) sent by first-class,
23 (registered or certified mail) return receipt requested; or (iii) sent by overnight courier to one party
24 from the other party at the following addresses:
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To PENTEL:

Ann G. Grimaldi, Esq.
McKenna Long & Aldridge LLP
101 California Street
Floor 41
San Francisco, CA 94111-5886

To Dr. Held:

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

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.

10. COUNTERPARTS; FACSIMILE SIGNATURES

This Consent Judgment may be executed in counterparts and by facsimile or .pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. A facsimile or .pdf signature shall be as valid as the original.

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

Dr. Held and his attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

12. ADDITIONAL POST EXECUTION ACTIVITIES

Dr. Held and PENTEL agree to mutually employ their, and their counsel’s, best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. 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 Dr. Held shall draft and file, and PENTEL shall join. If any third party objection to the noticed motion is filed, Dr. Held and PENTEL shall work together to file a joint reply or separate replies if the parties so desire and appear at any hearing before the Court. This provision is a material component of the Consent Judgment and shall be treated as such in the event of a breach. If the Court does not approve the motion to approve this Consent Judgment, and if the parties choose not to pursue a modified Consent Judgment within 30 days after the Court’s denial of the motion to approve, then, upon remittitur, all payments made pursuant to this Consent Judgment will be returned to counsel for PENTEL.

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13. MODIFICATION

This Consent Judgment may be modified only: (1) by written agreement of the parties and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of any party and entry of a modified Consent Judgment by the Court.

14. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: 10/4/2011

Date: _____

By: *Anthony E. Held*
Plaintiff, Anthony E. Held, Ph.D., P.E.

By: _____
Defendant, Pentel of America, Ltd.

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13. **MODIFICATION**

This Consent Judgment may be modified only: (1) by written agreement of the parties and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of any party and entry of a modified Consent Judgment by the Court.

14. **AUTHORIZATION**

The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: _____

Date: 5/19/11

By: _____
Plaintiff, Anthony E. Held, Ph.D., P.E.

By: *L. Nalony*
Defendant, Pentel of America, Ltd.