LEXINGTON LAW GROUP, LLP
Mark N. Todzo, State Bar No. 168389
Eric S. Somers, State Bar No. 139050
Ryan D. Cabinte, State Bar No. 230792
1627 Irving Street
San Francisco, CA 94122
Telephone: (415) 759-4111
Facsimile: (415) 759-4112

Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CENTER FOR ENVIRONMENTAL HEALTH, a non-profit corporation, Plaintiff, v. AMERICAN ART CLAY COMPANY, INC., *et al;* and DEFENDANT DOES 1 through 200, inclusive, Defendants.	Case No. CGC 07-466897 **[PROPOSED] CONSENT JUDGMENT RE: AMERICAN ART CLAY COMPANY, INC.**

1. INTRODUCTION

1.1 On September 5, 2007, plaintiff the Center for Environmental Health ("CEH"), a non-profit corporation acting in the public interest, filed a complaint titled *Center for Environmental Health v. American Art Clay Company, Inc., et al.*, San Francisco County Superior Court Case Number CGC 07-466897 (the "CEH Action"), for civil penalties and injunctive relief pursuant to the provisions of Cal. Health & Safety Code §25249.5 *et seq.* ("Proposition 65") naming American Art Clay Company, Inc. ("Defendant") as a defendant.

1.2 Defendant is a corporation that employs 10 or more persons and manufactured, distributed and/or sold modeling clay (the "Products") in the State of California.

1.3 Beginning on or about March 2, 2007, CEH served Defendant and the appropriate public enforcement agencies with the requisite 60-day notice (the "Notice") alleging that Defendant was in violation of Proposition 65. CEH's Notice and the Complaint in this Action allege that Defendant exposes people who use or otherwise handle the Products to di-n-hexyl phthalate ("DnHP"), a chemical known to the State of California to cause birth defects and other reproductive harm, without first providing clear and reasonable warning to such persons regarding the reproductive toxicity DnHP. The Notice and Complaint allege that Defendant's conduct violates Health & Safety Code §25249.6, the warning provision of Proposition 65. Defendant disputes such allegations and asserts that all of its products are safe and comply with all applicable laws.

1.4 Defendant asserts that its supplier of the Products recently stopped manufacturing and selling Products with DnHP or any other Phthalate. For purposes of this Consent Judgment, "Phthalate" means "any dialkyl or alkyl aryl esters of 1,2-benzenedicarboxylic acid." Defendant further asserts that the levels of DnHP previously contained in the Products did not cause exposures requiring Proposition 65 warnings, and that no user of the Products was exposed to unsafe levels of DnHP.

1.5 For purposes of this Consent Judgment only, the parties stipulate that this Court has jurisdiction over the subject matter of the violations alleged in CEH's Complaint and personal jurisdiction over Defendant as to the acts alleged in CEH's Complaint, that venue is

proper in the County of San Francisco, and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all claims which were or could have been raised in the Complaint based on the facts alleged therein.

1.6 The Parties enter into this Consent Judgment pursuant to a settlement of certain disputed claims between the Parties as alleged in the Complaint. By executing this Consent Judgment, the Parties do not admit any facts or conclusions of law. It is the parties' intent that nothing in this Consent Judgment shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the Consent Judgment constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or any other or future legal proceedings.

2. COMPLIANCE - REFORMULATION

2.1 Removal of DnHP. After the date this Consent Judgment is entered (the "Compliance Date"), Defendant shall not distribute, ship, or sell or cause to be distributed or sold, any Product that is comprised of or contains DnHP into the State of California.

2.2 Proof of reformulation. Within 30 days of the Compliance Date, Defendant shall provide test results for two colors (one to be chosen by each of the Parties) of the Products from an independent laboratory to CEH demonstrating that the Products no longer contain Phthalates. All testing shall be performed in accordance with both of the following test protocols: (1) EPA SW8270C; and (2) EPA SW3580A (together referred to as the "Test Protocols"). The testing obligation required by this section may be satisfied by test results supplied by the manufacturer of the Products.

2.3 Confirmatory Testing by CEH. CEH intends to conduct confirmatory testing of the Products. Any such testing shall be conducted by CEH at an independent laboratory, in accordance with both of the Test Protocols. Acknowledging that Defendant's Products have been reformulated, CEH agrees to undertake this confirmatory testing only on those Products that are reformulated, which can be identified by the letters "PF" as part of their

product code. In the event that CEH's testing demonstrates that the Products contain DnHP subsequent to the Compliance Date, CEH shall inform Defendant of the test results, including information sufficient to permit Defendant to identify the Product(s). Defendant shall, within 30 days following such notice, provide CEH, at the address listed in Section 12, with an explanation regarding the presence of DnHP in the Products. Unless Defendant provides CEH with information sufficient to demonstrate that CEH's test result was incorrect, Defendant shall be liable for stipulated payments in lieu of penalties for Products for which CEH produces tests demonstrating the presence of DnHP in the Products. The payments shall be made to CEH and used for the purposes described in Section 3.1.

2.3.1 Stipulated Payments In Lieu of Penalties. If stipulated payments in lieu of penalties are warranted under section 2.4, the stipulated payment amount shall be as follows for each unit of Product for which CEH produces a test result showing that Defendant sold a Product containing DnHP after the Compliance Date:

First Occurrence:	$500
Second Occurrence:	$750
Third Occurrence:	$1,000
Thereafter:	$2,500

2.3.2 Products in the stream of commerce. Defendant's Products that have been manufactured, shipped, sold, or that otherwise are in the stream of commerce prior to the Compliance Date shall be released from any claims that were brought or that could have been brought by CEH in its Complaint, as though they were Covered Claims within the meaning of Section 7.1, below. As a result, the stipulated payments in section 2.4.1 above do not apply to these Products.

3. SETTLEMENT PAYMENTS

3.1 Monetary Payment in Lieu of Penalty. Defendant shall pay to CEH six thousand five hundred dollars ($6,500) in lieu of any penalty pursuant to Health and Safety Code §25249.7(b). CEH shall use such funds to continue its work protecting people from exposures to toxic chemicals. As part of this work, CEH intends to conduct periodic testing of

the Products as set forth in section 2.4. The parties acknowledge that the payment in lieu of penalty provided for in this section has been greatly reduced due to Defendant's prompt agreement to eliminate phthalates from the Products. The payment required under this section shall be made payable to CEH.

3.2 Attorneys' Fees and Costs. Defendant shall pay dollars ($13,000) to reimburse CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter to Defendant' attention, litigating and negotiating a settlement in the public interest. The payment required under this section shall be made payable to Lexington Law Group, LLP.

3.3 Timing of payments. The payments required under Sections 3.1 and 3.2 shall be made payable within 10 days of entry of judgment. All of the payments made pursuant to this Section 3 shall be delivered to the Lexington Law Group, LLP at the address set forth in section 11.1.

4. MODIFICATION OF CONSENT JUDGMENT

4.1 This Consent Judgment may be modified by written agreement of CEH and Defendant, or upon motion of CEH or Defendant as provided by law.

5. ENFORCEMENT OF CONSENT JUDGMENT

5.1 CEH may, by motion or application for an order to show cause, enforce the terms and conditions contained in this Consent Judgment. Should CEH prevail on any such motion, it shall be entitled to recover its reasonable attorneys' fees and costs associated with enforcing the Consent Judgment.

6. APPLICATION OF CONSENT JUDGMENT

6.1 This Consent Judgment shall apply to and be binding upon the parties hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.

7. CLAIMS COVERED AND RELEASE OF CLAIMS

7.1 This Consent Judgment is a full, final and binding resolution between

CEH and Defendant of any violation of Proposition 65 that was or could have been asserted in the Complaint against Defendant (including any claims that could be asserted in connection with any of the Products covered by this Consent Judgment) or its parents, subsidiaries, affiliates, directors, officers, employees, agents, attorneys, distributors, or customers (collectively, "Defendant Releasees") based on failure to warn about alleged exposures to DnHP resulting from any Products manufactured, distributed or sold by Defendant ("Covered Claims") on or prior to the date of entry of this Consent Judgment. CEH, its directors, officers, employees and attorneys hereby release all Covered Claims against Defendant Releasees. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 for purposes of DnHP exposures from the Products.

8. SEVERABILITY

8.1 In the event that any of the provisions of this Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

9. GOVERNING LAW

9.1 The terms of this Consent Judgment shall be governed by the laws of the State of California.

10. RETENTION OF JURISDICTION

10.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms this Consent Judgment.

11. PROVISION OF NOTICE

11.1 All notices required pursuant to this Consent Judgment and correspondence shall be sent to the following:

For CEH:

Mark N. Todzo
Lexington Law Group, LLP
1627 Irving Street
San Francisco, CA 94122

For Defendant:

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

12. COURT APPROVAL

12.1 CEH will comply with the settlement notice provisions of Health and Safety Code § 25249.7(f) and Title 11 of the California Code of Regulations § 3003.

13. EXECUTION AND COUNTERPARTS

13.1 The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile, which taken together shall be deemed to constitute one document.

14. AUTHORIZATION

14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party he or she represents to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on behalf of the party represented and legally bind that party. The undersigned have read, understand and agree to all of the terms and conditions of this Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and costs.

AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH

_____ Dated: 9/13/07
Charlie Pizarro, Associate Director
Center for Environmental Health

AMERICAN ART CLAY COMPANY, INC.

William E Berry

Dated: 9-12-07

WILLIAM E. BERRY
[Name]

President + COO
[Title]

ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between CEH and American Art Clay Company, Inc., the settlement is approved and judgment is hereby entered according to the terms herein.

Dated: _____

_____
Judge, Superior Court of the State of California