

1 Christopher M. Martin, State Bar No. 186021
2 THE CHANLER GROUP
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710
6 Telephone: (510) 848-8880
7 Facsimile: (510) 848-8118

8 Attorneys for Plaintiff
9 ANTHONY E. HELD, Ph.D., P.E.

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

11 ANTHONY E. HELD, Ph.D., P.E.,
12
13 Plaintiff,
14
15 v.
16 THE HILSINGER COMPANY; and DOES 1
17 through 150, inclusive,
18
19 Defendants.

Case No. CIV1104851

[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and The Hilsinger Company**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D.,
4 P.E., (hereinafter “Dr. Held” or “Plaintiff”) and defendant The Hilsinger Company (hereinafter
5 “Hilsinger” or “Defendant”), with Plaintiff and Defendant collectively referred to as the
6 “Parties” and each individually referred to as a “Party.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

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

15 **1.4 General Allegations**

16 Dr. Held alleges that Hilsinger manufactured, distributed and/or sold cases and bags for
17 eyewear products and accessories containing di(2-ethylhexyl)phthalate (hereinafter “DEHP”) in
18 the State of California without the requisite health hazard warnings. DEHP is listed pursuant to
19 Proposition 65 as known to the State of California to cause birth defects and other reproductive
20 harm.

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are defined as follows: cases
23 and bags for eyewear products and accessories, including cases for lens wipes, manufactured,
24 distributed, and/or sold in the State of California by Hilsinger such as the *Shield 12 Count Lens*
25 *Wipes, Part No. 34/410 (#0 10164 45322 2)*, hereinafter the “Products.”

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1 **1.6 Notice of Violation**

2 On May 11, 2011, Dr. Held served Hilsinger and various public enforcement agencies
3 with a document entitled “60-Day Notice of Violation” (hereinafter “Notice”) that provided the
4 recipients with notice of alleged violations of California Health & Safety Code §25249.6 for
5 failing to warn consumers that the Products exposed users in California to DEHP.

6 **1.7 Complaint**

7 On or about September 30, 2011, Dr. Held, who was and is acting in the interest of the
8 general public in California, filed, or will file, a complaint (hereinafter “Complaint” or
9 “Action”) in the Superior Court in and for the County of Marin against The Hilsinger Company
10 and Does 1 through 150, alleging, *inter alia*, violations of California Health & Safety Code
11 §25249.6 based on the alleged exposures to DEHP contained in the Products.

12 **1.8 No Admission**

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

21 **1.9 Consent to Jurisdiction**

22 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over Hilsinger as to the allegations contained in the Complaint, that venue is proper
24 in the County of Marin, and that this Court has jurisdiction to enter and enforce the provisions
25 of 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 this Consent Judgment is approved by the court.

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

5 **2.1 Reformulation Standards**

6 For purposes of this Consent Judgment, “Reformulated Products” are defined as those
7 Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) in
8 each Accessible Component when analyzed pursuant to U.S. Environmental Protection Agency
9 testing methodologies 3580A and 8270C or any other methodology utilized by federal or state
10 agencies for the purpose of determining DEHP content in a solid substance. Although the
11 Parties disagree as to whether any of the Products that yield more than 1,000 parts per million of
12 DEHP in a phthalate test may result in exposure of DEHP to users of the Products in excess of
13 the applicable maximum allowable dose levels (“MADL”) pursuant to Proposition 65, the
14 Parties agree that exposure to Reformulated Products will not require a Proposition 65 warning,
15 as such exposures will not result in an exposure of more than the applicable MADL for DEHP
16 as a chemical known to cause reproductive harm. For the purposes of this Section 2.1, the term
17 “Accessible Component” means a polyvinyl chloride or other soft plastic vinyl or synthetic or
18 leather component of a Product that could be touched by a person during reasonably foreseeable
19 use.

20 As of the Effective Date, Hilsinger shall manufacture, import, distribute sell and/or offer
21 for sale in California, only Products that qualify as Reformulated Products or that include
22 warnings in accordance with Section 2.2 below.

23 Compliance with the terms of this Consent Judgment by Hilsinger constitutes
24 compliance with Proposition 65 with respect to DEHP in Hilsinger’s Products.

25 **2.2 Warning Requirement**

26 Commencing on the Effective Date Hilsinger shall, for all Products sold in California that
27 are not Reformulated Products, provide clear and reasonable warnings as set forth in subsections
28 2.2(a) and (b). Each warning shall be prominently placed with such conspicuousness, as

1 compared with other words, statements, designs, or devices as to render it likely to be read and
2 understood by an ordinary individual under customary conditions before purchase or use. Each
3 warning shall be provided in a manner such that the consumer or user understands to which
4 *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

5 **(a) Retail Store Sales.**

6 **(i) Product Labeling.** Hilsinger shall affix a warning to the
7 packaging, labeling, or directly on each Product sold in retail outlets in California by Hilsinger or
8 any person selling the Products, that states:

9 **WARNING:** This product contains DEHP, a phthalate
10 chemical known to the State of California to
11 cause birth defects and other reproductive
12 harm.

13 **(ii) Point-of Sale Warnings.** Alternatively, Hilsinger may provide
14 warning signs in the form below to its customers in California with instructions to post the
15 warnings in close proximity to the point of display of the Products. Such instruction sent to
16 Hilsinger's customers shall be sent by certified mail, return receipt requested.

17 **WARNING:** This product contains DEHP, a phthalate
18 chemical known to the State of California to
19 cause birth defects and other reproductive
20 harm.

21 Where more than one Product is sold in proximity to other like items or to those
22 that do not require a warning (e.g., Reformulated Products as defined in Section 2.1), the
23 following statement shall be used:¹

24 **WARNING:** This product contains DEHP, a phthalate
25 chemical known to the State of California to
26 cause birth defects and other reproductive
27 harm.

28 *[list products for which warning is required]*

¹ For purposes of the Consent Judgment, "sold in proximity" shall mean that the Product and another similar product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

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

2 In the event that Hilsinger sells Products via mail order catalog or internet to customers
3 located in California after the Effective Date that are not Reformulated Products, Hilsinger shall
4 provide a warning for Products sold via mail order catalog or the internet to California residents:
5 (1) in the mail order catalog; or (2) on the internet. Warnings given in the mail order catalog or
6 on the internet shall identify the specific Product to which the warning applies as further specified
7 in Sections 2.2(b)(i) and (ii).

8 **(i) Mail Order Catalog Warning.** Any warning provided in a mail
9 order catalog must be in the same type size or larger than the Product description text within the
10 catalog. The following warning shall be provided on the same page and in the same location as
11 the display and/or description of the Product:

12 **WARNING:** This product contains DEHP, a phthalate
13 chemical known to the State of California to
14 cause birth defects and other reproductive
15 harm.

16 Where it is impracticable to provide the warning on the same page and in the same
17 location as the display and/or description of the Product, Hilsinger may utilize a designated
18 symbol to cross reference the applicable warning and shall define the term “designated symbol”
19 with the following language on the inside of the front cover of the catalog or on the same page as
20 any order form for the Product(s):

21 **WARNING:** Certain products identified with this
22 symbol ▼ and offered for sale in this
23 catalog contain DEHP, a phthalate
24 chemical known to the State of California
25 to cause birth defects and other
26 reproductive harm.

27 The designated symbol must appear on the same page and in close proximity to the
28 display and/or description of the Product. On each page where the designated symbol appears,
Hilsinger must provide a header or footer directing the consumer to the warning language and
definition of the designated symbol.

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1 If Hilsinger elects to provide warnings in the mail order catalog, then the
2 warnings must be included in all catalogs offering to sell one or more Products printed after the
3 Effective Date.

4 (ii) **Internet Warning.** A warning may be given in conjunction with
5 the sale of the Products via the internet, provided it appears either: (a) on the same web page on
6 which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the
7 same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser
8 during the checkout process. The following warning statement shall be used and shall appear in
9 any of the above instances adjacent to or immediately following the display, description, or price
10 of the Product for which it is given in the same type size or larger than the Product description
11 text:

12 **WARNING:** This product contains DEHP, a phthalate
13 chemical known to the State of California to
14 cause birth defects and other reproductive
harm.

15 Alternatively, the designated symbol may appear adjacent to or immediately
16 following the display, description, or price of the Product for which a warning is being given,
17 provided that the following warning statement also appears elsewhere on the same web page, as
18 follows:

19 **WARNING:** Products identified on this page with the
20 following symbol ▼ contain DEHP, a
21 phthalate chemical known to the State of
California to cause birth defects and other
reproductive harm.

22 **3. MONETARY PAYMENTS**

23 **3.1 Initial Civil Penalty.**

24 Hilsinger shall pay an initial civil penalty of \$5,000 to be apportioned in accordance with
25 California Health & Safety Code § 25249.12(c)(1) and (d), with 75% of these funds remitted to
26 the State of California's Office of Environmental Health Hazard Assessment and the remaining
27 25% of the initial civil penalty to Dr. Held, as provided by California Health & Safety Code §
28 25249.12(d).

1 **3.2 Final Civil Penalty.**

2 Hilsinger shall pay a final civil penalty of \$8,000 on or before May 31, 2012. However,
3 the Final Civil Penalty shall be waived in its entirety if Hilsinger certifies in writing, via a signed
4 declaration from an appropriate Hilsinger employee, that all Products sold or shipped into
5 California from May 1, 2012 and after shall be Reformulated Products as defined in Section 2.1,
6 above.

7 **3.3 Reimbursement of Plaintiff's Fees and Costs**

8 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute
9 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
10 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
11 Hilsinger then expressed a desire to resolve the fee and cost issue shortly after the other
12 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on
13 the compensation due to Dr. Held and his counsel under general contract principles and the
14 private attorney general doctrine codified at California Code of Civil Procedure section 1021.5,
15 for all work performed in this matter, except fees that may be incurred on appeal. Under these
16 legal principles, Hilsinger shall pay the amount of \$32,000 for fees and costs incurred
17 investigating, litigating and enforcing this matter, including the fees and costs incurred (and
18 yet to be incurred) negotiating, drafting, and obtaining the Court's approval of this Consent
19 Judgment in the public interest.

20 **3.4 Payment Procedures**

21 **(a) Funds Held In Trust:** All payments required by Sections 3.1 and 3.3
22 shall be delivered on or before October 15, 2011, to either The Chanler Group or the attorney of
23 record for Hilsinger, and shall be held in trust pending the Court's approval of this Consent
24 Judgment.

25 Payments delivered to The Chanler Group shall be made payable, as follows:

26 **(i)** One check made payable to "The Chanler Group in Trust for
27 OEHHA" in the amount of \$3,750;

28 **(ii)** One check made payable to "The Chanler Group in Trust for Dr.

1 Held” in the amount of \$1,250; and

2 **(iii)** One check made payable to “The Chanler Group in Trust” in the
3 amount of \$32,000.

4 Payments delivered to Barg Coffin Lewis & Trapp, LLP shall be made payable,
5 as follows:

6 **(i)** One check made payable to “Barg Coffin Lewis & Trapp, LLP in
7 Trust for OEHHA” in the amount of \$3,750;

8 **(ii)** One check made payable to “Barg Coffin Lewis & Trapp, LLP in
9 Trust for Dr. Held” in the amount of \$1,250; and

10 **(iii)** One check made payable to “Barg Coffin Lewis & Trapp, LLP in
11 Trust for The Chanler Group” in the amount of \$32,000.

12 If Hilsinger elects to deliver payments to its attorney of record, the attorney of record
13 shall confirm, in writing within five days of deposit, that the funds have been deposited in a trust
14 account.

15 Within two days of the date of the hearing on which the Court approves the Consent
16 Judgment, the payments being held in trust by the attorney of record for Hilsinger shall be
17 delivered to The Chanler Group in three separate checks payable, as follows:

18 **(i)** One check made payable to “The Chanler Group in Trust for
19 OEHHA” in the amount of \$3,750;

20 **(ii)** One check to “The Chanler Group in Trust for Dr. Held” in the
21 amount of \$1,250; and

22 **(iii)** One check to “The Chanler Group” in the amount of \$32,000.

23 If the penalty payments required by Section 3.2 above are not waived, payments shall be
24 delivered to The Chanler Group made payable, as follows:

25 **(i)** One check made payable to “The Chanler Group in Trust for
26 OEHHA” in the amount of \$6,000;

27 **(ii)** One check made payable to “The Chanler Group in Trust for Dr.
28 Held” in the amount of \$2,000.

1 **(b) Issuance of 1099 Forms.** After the Consent Judgment has been approved
2 and the settlement funds have been transmitted to plaintiff's counsel, Hilsinger shall issue five
3 separate 1099 forms, as follows:

4 **(i)** The first 1099 shall be issued to the Office of Environmental
5 Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN:
6 68-0284486) in the amount of \$3,750;

7 **(ii)** The second 1099 shall be issued to Dr. Held in the amount of
8 \$1,250, whose address and tax identification number shall be furnished
9 upon request; and

10 **(iii)** The third 1099 shall be issued to The Chanler Group (EIN: 94-
11 3171522) in the amount of \$32,000.

12 **(iv)** If the final penalty in Section 3.2 above is paid, the fourth 1099
13 shall be issued to the Office of Environmental Health Hazard Assessment,
14 P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount
15 of \$6,000;

16 **(v)** If the final penalty in Section 3.2 above is paid, the fifth 1099 shall
17 be issued to Dr. Held in the amount of \$2,000, whose address and tax
18 identification number shall be furnished upon request.

19 **(c) Payment Address:** All payments to the Chanler Group shall be delivered
20 to the following payment address:

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

24 **4. CLAIMS COVERED AND RELEASED**

25 **4.1 Full, Final and Binding Resolution of Proposition 65 Allegations**

26 This Consent Judgment is a full, final and binding resolution between Dr. Held, on
27 behalf of himself and the public, and Hilsinger, of any violation of Proposition 65 that was or
28 could have been asserted by Dr. Held against Hilsinger, its parents, subsidiaries, affiliated

1 entities that are under common ownership, directors, officers, employees, attorneys,
2 representatives, shareholders, agents and each entity to whom Hilsinger directly or indirectly
3 distributes or sells Products, including but not limited to past and present downstream
4 distributors, wholesalers, customers, retailers, franchisees, auctioneers, dealers, cooperative
5 members, licensors, licensees, owners, purchasers, users, parent companies, corporate affiliates,
6 and subsidiaries, and their respective past and current officers, directors, principals, partners,
7 members, attorneys, representatives, shareholders, agents, and employees (collectively
8 “Releasees”), based on their failure to warn about alleged exposures to DEHP contained in the
9 Products, limited to and arising under the May 11, 2011 Notice, that were manufactured,
10 distributed, sold or offered for sale by Hilsinger.

11 **4.2 Dr. Held’s Public Release of Proposition 65 Claims**

12 In further consideration of the promises and agreements herein contained, including
13 without limitation the payments to be made pursuant to Sections 3.1, 3.2 and 3.3 above, Dr.
14 Held on behalf of himself, his past and current agents, representatives, attorneys, successors,
15 and/or assignees, and in the interest of the general public, hereby waives all rights to institute or
16 participate in, directly or indirectly, any form of legal action and releases all claims, including,
17 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,
18 demands, obligations, damages, costs, fines, penalties, losses, or expenses -- including, but not
19 limited to, investigation fees, expert fees, and attorneys’ fees, but exclusive of fees and costs on
20 appeal whether fixed or contingent, limited to and arising under the May 11, 2011 Notice with
21 respect to DEHP in the Products sold by Hilsinger (collectively “claims”), against Hilsinger and
22 Releasees.

23 **4.3 Dr. Held’s Individual Release of Claims**

24 Dr. Held also, in his individual capacity only and *not* in his representative capacity,
25 provides a release herein which shall be effective as a full and final accord and satisfaction, as a
26 bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses,
27 claims, liabilities and demands of Dr. Held of any nature, character or kind, whether known or
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1 unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to
2 DEHP in the Products manufactured, distributed or sold by Hilsinger.

3 **4.4 Hilsinger's Release of Dr. Held**

4 Hilsinger on behalf of itself, its past and current agents, representatives, attorneys,
5 successors, and/or assignees, hereby waives any and all claims against Dr. Held, his attorneys
6 and other representatives, for any and all actions taken or statements made (or those that could
7 have been taken or made) by Dr. Held and his attorneys and other representatives, whether in the
8 course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this
9 matter with respect to the Products.

10 **5. COURT APPROVAL**

11 This Consent Judgment is not effective until it is approved and entered by the court and
12 shall be null and void if, for any reason, it is not approved and entered by the court within one
13 year after it has been fully executed by all Parties, in which event any monies that have been
14 provided to Dr. Held or his counsel pursuant to Section 3 above, shall be refunded within fifteen
15 (15) days after the one-year period has expired.

16 **6. SEVERABILITY**

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

20 **7. GOVERNING LAW**

21 The terms of this Consent Judgment shall be governed by the laws of the State of
22 California and apply within the State of California. In the event that Proposition 65 is repealed
23 or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then
24 Hilsinger shall provide written notice to Dr. Held of any asserted change in the law, and shall
25 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
26 that, the Products are so affected.

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1 **8. NOTICES**

2 Unless specified herein, all correspondence and notices required to be provided pursuant
3 to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
4 (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party by
5 the other Party at the following addresses:

6 To Hilsinger:

7 Joshua A. Bloom
8 Barg, Coffin, Lewis & Trapp, LLP
9 350 California Street, 22nd Floor
 San Francisco, CA 94104-1435

10 With a copy to:

11 Robert Nahmias
12 The Hilsinger Company
 33 West Bacon Street
 Plainville, MA 02762

13 To Dr. Held:

14 Proposition 65 Coordinator
15 The Chanler Group
16 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710-2565

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

19 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

20 This Consent Judgment may be executed in counterparts and by facsimile, each of which
21 shall be deemed an original, and all of which, when taken together, shall constitute one and the
22 same document.

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

24 Dr. Held agrees to comply with the reporting form requirements referenced in California
25 Health & Safety Code § 25249.7(f).

26 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

27 Dr. Held shall prepare and file all documents necessary to obtain Court approval of this
28 Consent Judgment. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7,

1 a Motion to Approve the Agreement (“Noticed Motion”) is required to obtain judicial approval
2 of this Consent Judgment. Dr. Held shall make best efforts to provide to Hilsinger for review
3 no later than thirty (30) days after the Complaint is filed a draft Motion to Approve the Consent
4 Judgment and supporting papers, and shall make best efforts to file such motion and supporting
5 papers no later than forty (40) days after the Complaint is filed. In furtherance of obtaining
6 such approval, Dr. Held, Hilsinger, and their respective counsel, agree to mutually employ their
7 best efforts, including at a minimum that Hilsinger join in or file a joinder in the Noticed
8 Motion and participate in any oral argument before the Court on the hearing of the Noticed
9 Motion, to support the entry of this agreement as a Consent Judgment and obtain approval of the
10 Consent Judgment by the Court in a timely manner.

11 **12. MODIFICATION**

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

15 **13. AUTHORIZATION**

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

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1 **14. ENTIRE AGREEMENT**

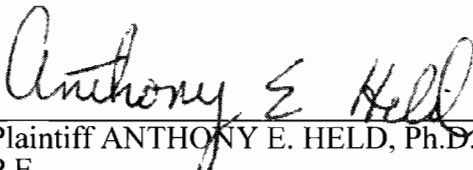
2 This Consent Judgment contains the sole and entire agreement and understanding of the
3 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
4 negotiations, commitments, and understandings related hereto. No representations, oral or
5 otherwise, express or implied, 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 **AGREED TO:**

AGREED TO:

9 Date: 10/7/11

Date: _____

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11 By: 
12 Plaintiff ANTHONY E. HELD, Ph.D.,
13 P.E.

By: _____
Defendant THE HILSINGER
COMPANY

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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.

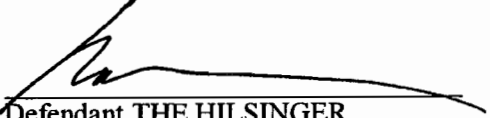
AGREED TO:

AGREED TO:

Date: _____

Date: 10/12/11

By: _____
Plaintiff ANTHONY E. HELD, Ph.D.,
P.E.

By: 
Defendant THE HILSINGER
COMPANY
ROBERT J. NAHUNAS