

1 Clifford A. Chanler, State Bar No. 135534
Gregory M. Sheffer, State Bar No. 173124
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118

5 Attorneys for Plaintiff
6 ANTHONY HELD, PH.D.

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 IN AND FOR THE COUNTY OF SAN FRANCISCO

9 UNLIMITED CIVIL JURISDICTION

11 ANTHONY HELD, PH.D.,

12 Plaintiff,

13 v.

14 UNIVERSITY ART CENTER, INC. and DOES
15 1-150,

16 Defendants.

Case No. CGC-12-523956

**CONSENT TO JUDGMENT AS TO
DEFENDANT UNIVERSITY ART CENTER,
INC.**

Action Filed: September 5, 2012
Trial Date: May 31, 2013

1 **1. INTRODUCTION**

2 1.1 **The Parties**

3 This Consent To Judgment is entered into by and between Plaintiff Anthony Held,
4 (“Held” or “Plaintiff”) and Defendant University Art Center, Inc. (hereafter “University Art” or
5 “Defendant”) with Held and University Art collectively referred to as the “Parties.”

6 1.2 **Plaintiff**

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

10 1.3 **Defendant**

11 University Art employs 10 or more persons and is a person in the course of doing
12 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California
13 Health & Safety Code §§ 25249.6 *et seq.* (“Proposition 65”).

14 1.4 **General Allegations**

15 Held alleges that University Art manufactured, distributed and/or sold, in the State of
16 California, certain types of vinyl pen and pencil cases made with materials containing DEHP,
17 including, but not limited to, Manhattan KMM-31 Pen Case, that exposed users to DEHP
18 without first providing any “clear and reasonable warning” under Proposition 65. DEHP is
19 listed as a reproductive and developmental toxicant pursuant to Proposition 65 and are
20 collectively referred to hereinafter as the “Listed Chemical.”

21 1.5 **Notice of Violation**

22 On September 21, 2011, Held served Defendant and various public enforcement agencies
23 with a document entitled “60-Day Notice of Violation” (“Notice”) that provided public
24 enforcers and these entities with notice of alleged violations of Health & Safety Code § 25249.6
25 for failing to warn consumers of the presence of DEHP, a toxic chemical found in and on their
26 vinyl pen and pencil cases sold in California. Defendant received such 60-Day Notices of
27 Violation. Held represents that, as of the date of the execution of this Consent To Judgment, he
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1 is not aware of any public enforcer who is diligently prosecuting a Proposition 65 enforcement
2 action related to the Proposition 65 listed phthalate chemicals in its products, as identified in the
3 Notice.

4 **1.6 Complaint**

5 On September 5, 2012, Held, acting, in the interest of the general public in California,
6 filed a Complaint in the Superior Court of the State of California for the County of San Francisco,
7 Case Number CGC-12-523956, alleging violations by Defendant of Health & Safety Code §
8 25249.6 based, *inter alia*, on the alleged exposures to DEHP contained in the referenced pen and
9 pencil cases (the “Action”).

10 **1.7 No Admission**

11 This Consent To Judgment resolves claims that are denied and disputed by University
12 Art. The Parties enter into this Consent To Judgment pursuant to a full and final settlement of
13 any and all claims between the Parties for the purpose of avoiding prolonged litigation.
14 Defendant denies the material factual and legal allegations contained in the Notice and Action,
15 maintains that it provided a clear and reasonable warning, did not knowingly or intentionally
16 expose California consumers to DEHP through the reasonably foreseeable use of the Covered
17 Product, and otherwise contends that all of the Covered Products that it has distributed and/or
18 sold in California have been and are in compliance with all applicable laws. Nothing in this
19 Consent To Judgment shall be construed as an admission by Defendant of any fact, finding, issue
20 of law, or violation of law; nor shall compliance with this Consent To Judgment constitute or be
21 construed as an admission by the Defendant of any fact, finding, conclusion, issue of law, or
22 violation of law, such being specifically denied by Defendant. However, notwithstanding the
23 foregoing, this section shall not diminish or otherwise affect University Art’s obligations,
24 responsibilities, and duties under this Consent To Judgment.

25 **1.8 Consent to Jurisdiction**

26 For the limited and express purposes of this Consent To Judgment only, the Parties
27 stipulate that this Court has jurisdiction over University Art as to the allegations contained in
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1 the Complaint, that venue is proper in County of San Francisco, and that this Court has
2 jurisdiction to enter and enforce the provisions of this Consent Judgment. As an express part of
3 this Agreement, pursuant to C.C.P. §664.6 the Court in which this action was filed shall retain
4 jurisdiction over the parties to enforce the settlement until performance in full of the terms of the
5 settlement.

6 **2. DEFINITIONS**

7 2.1 The term “Complaint” shall mean the September 5, 2012, Complaint.

8 2.2 The term “Covered Product” shall mean the Manhattan KMM-31 Pen Case.

9 2.3 The term “Effective Date” shall mean April 1, 2013.

10 2.4 “Manufactured” and “Manufactures” have the meaning defined in Section
11 3(a)(10) of the Consumer Product Safety Act (“CPSA”) [15 U.S.C. § 2052(a)(10)], as amended
12 from time to time.

13 **3. INJUNCTIVE RELIEF**

14 3.1 No later than the Effective Date, University Art shall no longer sell the Covered
15 Product.

16 **4. MONETARY PAYMENTS**

17 **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

18 University Art shall make a payment of \$5,000.00 to be apportioned in accordance with
19 Health & Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds
20 earmarked for the State of California’s Office of Environmental Health Hazard Assessment
21 (“OEHHA”) and the remaining 25% of these penalty monies earmarked for Held. Defendant
22 and submit such payment to plaintiff in accordance with the method of payment of penalties
23 and fees identified in Section 4.4.

24 **4.2 Augmentation of Penalty Payments**

25 For purposes of the penalty assessment under this Consent To Judgment, plaintiff is
26 relying entirely upon defendant and its counsel for accurate, good faith reporting to plaintiff of
27 the nature and amounts of relevant sales activity. If within nine (9) months of the Effective Date,
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1 plaintiff discovers and presents to Defendant evidence that the Covered Product has been
2 distributed by University Art in sales volumes materially different than those identified by
3 Defendant prior to execution of this Agreement, then Defendant shall be liable for an additional
4 penalty amount of \$150 per quantity of Covered Product sold prior to execution of this
5 Agreement but not identified by Defendant to plaintiff. Defendant shall also be liable for any
6 reasonable, additional attorney fees expended by plaintiff in discovering such additional
7 retailers or sales. Plaintiff agrees to provide Defendant with a written demand for all such
8 additional penalties and attorney fees under this Section. After service of such demand,
9 defendant shall have thirty (30) days to agree to the amount of fees and penalties owing by
10 Defendant and submit such payment to plaintiff in accordance with the method of payment of
11 penalties and fees identified in Section 4.4. Should this thirty (30) day period pass without any
12 such resolution between the parties and payment of such additional penalties and fees, plaintiff
13 shall be entitled to file a formal legal claim for damages for breach of this contract and shall be
14 entitled to all reasonable attorney fees and costs relating to such claim.

15 **4.3 Reimbursement of Plaintiff's Fees and Costs**

16 The parties acknowledge that Held and his counsel offered to resolve this dispute
17 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
18 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
19 Held then expressed a desire to resolve the fee and cost issue shortly after the other settlement
20 terms had been finalized. The parties then attempted to (and did) reach an accord on the
21 compensation due to Held and his counsel under general contract principles and the private
22 attorney general doctrine codified at California Code of Civil Procedure (CCP) § 1021.5, for all
23 work performed through the mutual execution of this agreement and the entry of this Consent
24 Judgment. University Art shall pay \$15,000.00 for fees and costs incurred as a result of
25 investigating, bringing this matter to University Art 's attention, and negotiating a settlement in
26 the public interest. Defendant shall submit such payment to plaintiff in accordance with the
27 method of payment of penalties and fees identified in Section 4.4.

1 **4.4 Payment Procedures**

2 **4.4.1 Funds Held In Trust:** All payments required by Sections 4.1 and 4.3 shall
3 delivered on or before April 30, 2013, to either The Chanler Group or the attorney of record for
4 University Art , and shall be held in trust pending the Court’s approval of this Consent
5 Judgment.

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

- 7 (a) One check made payable to “The Chanler Group in Trust for OEHHA” in
8 the amount of \$3,750.00; and
- 9 (b) One check made payable to “The Chanler Group in Trust for Anthony
10 Held” in the amount of \$1,250.00.
- 11 (c) One check made payable to “The Chanler Group” in the amount of
12 \$15,000.00.

13 Payments delivered to Burke, William & Sorensen, LLP shall be made payable, as
14 follows:

- 15 (a) One check made payable to “Burke, William & Sorensen, LLP in Trust for
16 OEHHA” in the amount of \$3,750.00;
- 17 (b) One check made payable to “Burke, William & Sorensen, LLP in Trust for
18 Anthony Held” in the amount of \$1,250.00; and
- 19 (c) One check made payable to “Burke, William & Sorensen, LLP in Trust for
20 The Chanler Group” in the amount of \$15,000.00.

21 If University Art elects to deliver payments to its attorney of record, such
22 attorney of record shall: (a) confirm in writing within five days of receipt that the funds have
23 been deposited in a trust account; and (b) within two days of the date of the hearing on which
24 the Court approves the Consent Judgment, deliver the payment to The Chanler Group in three
25 separate checks, as follows:

- 26 (a) One check made payable to “The Chanler Group in Trust for OEHHA” in
27 the amount of \$3,750.00;

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1 (b) One check to "The Chanler Group in Trust for Held" in the amount of
2 \$1,250.00; and

3 (c) One check to "The Chanler Group" in the amount of \$15,000.00.

4 Any failure by defendant to deliver the above-referenced payments to The
5 Chanler Group within two days of the date of the hearing on which the Court approves the
6 Consent To Judgment shall result in imposition of a 10% simple interest assessment on the
7 undelivered payment(s) until delivery.

8 **4.4.2 Issuance of 1099 Forms.** After the Consent Judgment has been approved
9 and the settlement funds have been transmitted to plaintiff's counsel, University Art shall issue
10 three separate 1099 forms, as follows:

11 (a) The first 1099 shall be issued to the Office of Environmental Health
12 Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in
13 the amount of \$3,750.00;

14 (b) The second 1099 shall be issued to Held in the amount of \$1,250.00,
15 whose address and tax identification number shall be furnished upon request;
16 and

17 (c) The third 1099 shall be issued to The Chanler Group, EIN: 94-3171522, in
18 the amount of \$15,000.00.

19 **4.4.3 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
Berkeley, CA 94710

25 **5. CLAIMS COVERED AND RELEASE**

26 **5.1 Held's Releases of Proposition 65 Claims Against University Art**

27 5.1.1 This Consent To Judgment is a full, final, and binding resolution between
28 Held, on behalf of himself, his past and current agents, representatives, attorneys, successors,

1 and/or assignees, and in the interest of the general public, and University Art and its attorneys,
2 successors, licensors and assigns (“Defendant Releasees”) of any violation of Proposition 65 that
3 has been or could have been asserted against Defendant Releasees regarding the failure to warn
4 about exposure to the Listed Chemical arising in connection with Covered Products
5 manufactured, sourced, distributed, or sold by Defendant Releasees prior to the Effective Date.
6 University Art’s compliance with this Consent To Judgment shall constitute compliance with
7 Proposition 65 with respect to the Listed Chemical in the Covered Products after the Effective
8 Date.

9 5.1.2 Held on behalf of himself, his past and current agents, representatives,
10 attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives
11 with respect to Covered Products all rights to institute or participate in, directly or indirectly,
12 any form of legal action and releases all claims, including, without limitation, all actions, and
13 causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
14 penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and
15 attorneys’ fees) of any nature whatsoever, whether known or unknown, fixed or contingent
16 (collectively “claims”), against Defendant Releasees that arise under Proposition 65 or any other
17 statutory or common law claims that were or could have been asserted in the public interest, as
18 such claims relate to Defendant Releasees’ alleged failure to warn about exposures to the Listed
19 Chemical contained in the Covered Products.

20 5.1.3 Held also, in his individual capacity only and *not* in his representative
21 capacity, provides a general release herein which shall be effective as a full and final accord and
22 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees,
23 damages, losses, claims, liabilities and demands of Held of any nature, character or kind, known
24 or unknown, suspected or unsuspected, arising out of the subject matter of the Complaint as to
25 Covered Products manufactured, distributed or sold by Defendant Releasees. Held
26 acknowledges that he is familiar with Section 1542 of the California Civil Code, which provides
27 as follows:
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A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Held, in his individual capacity only and *not* in his representative capacity, expressly waives and relinquishes any and all rights and benefits which he may have under, or which may be conferred on him by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

This Section 5.1 release is expressly limited to those claims that arise under Proposition 65, as such claims relate to Defendant’s alleged failure to warn about exposures to or identification of the Listed Chemical contained in the Covered Products and as such claims are identified in the Proposition 65 60-Day Notice to Defendant.

The Parties further understand and agree that this Section 5.1 release shall not extend upstream to any entities, other than Defendant, that manufactured the Covered Products or any component parts thereof, or any distributors or suppliers who sold the Covered Products or any component parts thereof to Defendant.

Upon court approval of the consent to judgment, the parties waive their respective rights to a hearing or trial on the allegations of the complaint.

5.2 University Art’s Release of Held

5.2.1 University Art waives any and all claims against Held, his attorneys, and other representatives for any and all actions taken or statements made (or those that could have been taken or made) by Held and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Covered Products.

1 5.2.2 University Art also provides a general release herein which shall be
2 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
3 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of
4 University Art of any nature, character or kind, known or unknown, suspected or unsuspected,
5 arising out of the subject matter of the Action. University Art acknowledges that it is familiar
6 with Section 1542 of the California Civil Code, which provides as follows:

7 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
8 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR
9 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
 OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
 WITH THE DEBTOR.

10 University Art expressly waives and relinquishes any and all rights and benefits that it
11 may have under, or which may be conferred on it by the provisions of Section 1542 of the
12 California Civil Code as well as under any other state or federal statute or common law
13 principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits
14 pertaining to the released matters. In furtherance of such intention, the release hereby given
15 shall be and remain in effect as a full and complete release notwithstanding the discovery or
16 existence of any such additional or different claims or facts arising out of the released matters.
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18 **6. SEVERABILITY**

19 If, subsequent to court approval of this Consent To Judgment, any of the provisions of
20 this Consent To Judgment are deemed by a court to be unenforceable, the validity of the
21 enforceable provisions remaining shall not be adversely affected, unless the Court finds that any
22 unenforceable provision is not severable from the remainder of the Consent To Judgment.

23 **7. COURT APPROVAL**

24 This Consent To Judgment is effective upon execution but must also be approved by the
25 Court to be enforceable. If this Consent Judgment is not approved by the Court in its entirety,
26 the Parties shall meet and confer to determine whether to modify the terms of the Consent
27 Judgment and to resubmit it for approval. In meeting and conferring, the Parties agree to
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1 undertake any actions reasonably necessary to amend and/or modify this Consent Judgment in
2 order to further the mutual intention of the Parties in entering into this Consent Judgment.

3 The Consent to Judgment shall become null and void if, for any reason, it is not approved
4 and entered by the Court within one year after it has been fully executed by all Parties. If the
5 Consent to Judgment becomes null and void after any payment of monies under this agreement
6 to The Chanler Group in trust, such monies shall be returned to defendant by payment of such
7 monies to its counsel, in trust for University Art.

8 If this Consent Judgment is not entered by the Court, and the Parties have exhausted
9 their meet and confer efforts pursuant to this Section, upon 15 days written notice, the law firm
10 holding Defendant's funds in trust shall refund any and all payments made into its trust
11 account by Defendant as requested.

12 **8. GOVERNING LAW**

13 The terms of this Consent To Judgment shall be governed by the laws of the State of
14 California.

15 **9. NOTICES**

16 When any Party is entitled to receive any notice under this Consent To Judgment, the
17 notice shall be sent by: (i) first class registered or certified mail, return receipt requested; or (ii)
18 overnight courier, signature required, on any party by the other party to the following address:

19 For University Art Center, Inc. to:

20 Albert Tong, Esq.
21 Burke, Williams & Sorensen, LLP
22 1901 Harrison Street, Suite 900
Oakland, CA 94612

23 For Held to:

24 Proposition 65 Coordinator
25 The Chanler Group
26 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

1 Any Party may modify the person and address to whom the notice is to be sent by sending each
2 other Party notice by certified mail and/or other verifiable form of written communication.

3 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

4 Held agrees to comply with the reporting form requirements referenced, in California
5 Health & Safety Code §25249.7(f) and to file a motion for approval of this Consent Judgment.

6 **11. MODIFICATION**

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

10 **12. ADDITIONAL POST-EXECUTION ACTIVITIES**

11 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed
12 motion is required to obtain judicial approval of this Consent To Judgment. In furtherance of
13 obtaining such approval, Held and his counsel agree to employ their best efforts to support the
14 entry of this agreement as a Consent To Judgment and obtain approval of the Consent To
15 Judgment - sufficient to render a formal judgment approving this agreement - by the Court in a
16 timely manner. Any effort by Plaintiff or University Art to impede judicial approval of this
17 Consent To Judgment shall subject such impeding party to liability for attorney fees and costs
18 incurred by such party in their efforts to meet or oppose the impeding party's impeding conduct.
19 The parties further acknowledge that Held and his attorneys will apply for recovery of their fees
20 and costs incurred in connection with enforcement of this action after entry of any Judgment
21 pursuant to this Agreement.

22 **13. ENTIRE AGREEMENT**

23 This Consent To Judgment contains the sole and entire agreement and understanding of
24 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
25 negotiations, commitments, and understandings related hereto. No representations, oral or
26 otherwise, express or implied, other than those contained herein have been made by any Party
27 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
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1 deemed to exist or to bind any of the Parties. No supplementation, modification, waiver, or
2 termination of this Consent Judgment shall be binding unless executed in writing by the Party to
3 be bound. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall
4 constitute a waiver of any of the other provisions whether or not similar, nor shall such waiver
5 constitute a continuing waiver.

6 **14. ATTORNEY'S FEES**

7 Should Held prevail on any other motion, application for order to show cause or other
8 proceeding to enforce a violation of this Agreement, Held shall be entitled to his reasonable
9 attorney fees and costs incurred as a result of such motion, order or application, consistent with
10 C.C.P. §1021.5. Should Defendant prevail on any motion, application for order to show cause or
11 other proceeding to enforce a violation of this Consent Judgment, Defendant shall be entitled to
12 its reasonable attorney fees and costs incurred as a result of such motion, order or application
13 upon a finding that Held's prosecution of the motion or application lacked substantial
14 justification. For purposes of this Agreement, the term substantial justification shall carry the
15 same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, et seq.

16 Nothing in this Section shall preclude a Party from seeking an award of sanctions
17 pursuant to law.

18 **15. NEUTRAL CONSTRUCTION**

19 Both Parties and their counsel have participated in the preparation of this Consent
20 Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
21 Consent Judgment was subject to revision and modification by the Parties and has been
22 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
23 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
24 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
25 Consent Judgment agrees that any statute or rule of construction providing that ambiguities
26 are to be resolved against the drafting Party should not be employed in the interpretation of
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1 this Consent Judgment and, in this regard, the Parties hereby waive California Civil Code
2 Section 1654.

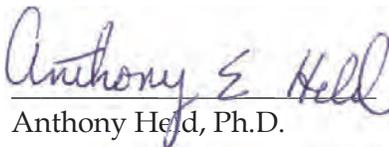
3 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

4 This Consent To Judgment may be executed in counterparts and by facsimile or portable
5 document format (PDF), each of which shall be deemed an original, and all of which, when taken
6 together, shall constitute one and the same document.

7 **17. AUTHORIZATION**

8 The undersigned parties and their counsel are authorized to execute this Consent To
9 Judgment on behalf of their respective Parties and have read, understood, and agree to all of the
10 terms and conditions of this Consent To Judgment.

11 **IT IS SO AGREED**

12 Dated: April <u>10</u> , 2013 13  14 Anthony Held, Ph.D. 15 16	Dated: April __, 2013 _____ 17 Todd Ayers, 18 University Art Center, Inc. 19 20 21 22 23 24 25 26 27 28
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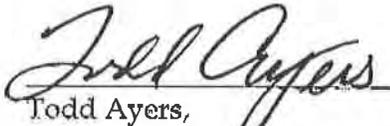
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6 together, shall constitute one and the same document.

7 **17. AUTHORIZATION**

8 The undersigned parties and their counsel are authorized to execute this Consent To
9 Judgment on behalf of their respective Parties and have read, understood, and agree to all of the
10 terms and conditions of this Consent To Judgment.

11 **IT IS SO AGREED**

<p>12 Dated: April __, 2013</p> <p>13</p> <p>14 _____</p> <p>15 Anthony Held, Ph.D.</p> <p>16</p>	<p>12 Dated: April <u>9</u>, 2013</p> <p>13</p> <p>14 </p> <p>15 Todd Ayers,</p> <p>16 University Art Center, Inc.</p>
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