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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 TRONEX INTERNATIONAL, INC.; *et al.*,

18 Defendants.
19

20 Case No. CIV1503941

21 **[PROPOSED] CONSENT JUDGMENT**

22 (Health & Safety Code § 25249.6 *et seq.*)
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1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E. (“Held”) and
4 Tronex International, Inc. (“Tronex”), with Held and Tronex each individually referred to as a “Party”
5 and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Held alleges that Settling Defendants manufacture, import, sell, or distribute for sale in California,
16 vinyl/PVC gloves containing diisononyl phthalate (“DINP”), without first providing the exposure
17 warning required by Proposition 65. DINP is listed pursuant to Proposition 65 as a chemical known to
18 the State of California to cause cancer.

19 **1.5 Product Description**

20 Tronex’s products that are covered by this Consent Judgment are defined as vinyl/PVC gloves
21 containing DINP including, without limitation, the *Tronex The Choice Vinyl Disposable Gloves, #8220-*
22 *10, UPC #0 97604 82201 5*, which are manufactured, imported, distributed, sold and/or offered for sale
23 by Tronex in the State of California, hereinafter the “Products.”

24 **1.6 Notice of Violation**

25 On April 24, 2015, Held served Tronex International, Inc. and certain requisite public
26 enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Tronex violated
27 Proposition 65 when they failed to warn their customers and consumers in California that vinyl/PVC
28 gloves expose users to DINP.

1 **1.7 Complaint**

2 On October 28, 2015, Held filed the instant action (“Complaint”), naming Tronex as defendant
3 for its alleged violations of Health and Safety Code section 25249.6 that are the subject of the Notice.

4 **1.8 No Admission**

5 Tronex denies the material, factual, and legal allegations contained in the Notice and Complaint,
6 and maintain that all of the products that they have sold and distributed for sale in California, including
7 the Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be
8 construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law, nor
9 shall compliance with this Consent Judgment constitute or be construed as an admission of any fact,
10 finding, conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or
11 otherwise affect Tronex’s obligations, responsibilities, and duties under this Consent Judgment.

12 **1.9 Jurisdiction**

13 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction
14 over Defendant as to the allegations in the Complaint, that venue is proper in the County of Marin, and
15 that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

16 **1.10 Effective Date**

17 For purposes of this Consent Judgment, the term “Effective Date” means the date which the Court
18 approves this Consent Judgment.

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

20 **2.1 Reformulated Products**

21 Commencing within thirty (30) days of the Effective Date, and continuing thereafter, Tronex shall
22 only sell or distribute for sale in California “Reformulated Products,” or Products that are sold with a
23 clear and reasonable warning pursuant to Section 2.2 below. For purposes of this Consent Judgment,
24 “Reformulated Products” are products that contain DINP in concentrations of less than 0.1 percent (1,000
25 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing
26 methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the
27 purpose of determining the DINP content in a solid substance.

1 **2.2 Product Warnings**

2 Commencing within thirty (30) days of the Effective Date, Tronex shall provide clear and
3 reasonable warnings for all Products as set forth in subsections 2.2(a) and (b) for all products that do not
4 currently have warnings and that do not qualify as Reformulated Products. Each warning shall be
5 prominently placed with such conspicuousness as compared with other words, statements, designs, or
6 devices as to render it likely to be read and understood by an ordinary individual under customary
7 conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or
8 user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer
9 confusion. The Parties, during the course of their investigations, became aware that certain of Tronex's
10 Products contain additional phthalate chemicals. Therefore, Held agrees that Tronex may tailor their
11 warning language as provided by the bracketed terminology in Sections 2.2(a) and (b), as appropriate,
12 provided Tronex has a good faith basis for its belief and use of such warnings.

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

14 **(i) Product Labeling.** Tronex shall affix a warning to the packaging, labeling, or
15 directly on each vinyl/PVC glove packaging provided for sale in retail outlets in California that states:

16 **WARNING:** This product contains DINP, a chemical known
17 to the State of California to cause cancer.

18 Or

19 **WARNING:** This product contains [a] chemical[s] known
20 to the State of California to cause cancer[and birth defects, and other
21 reproductive harm].

22 **(ii) Point-of-Sale Warnings.** Alternatively, Tronex may provide warning signs to its
23 customers in California with instructions to post the warnings in close proximity to the point of display of
24 the Products. Warnings provided in this manner shall contain the same language as described in Section
25 2.2(a)(i). Such instruction sent to Tronex customers shall be sent by certified mail, return receipt
26 requested. Where more than one Product is sold in proximity to other like items or to those that do not
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1 require a warning (e.g., Reformulated Products as defined in Section 2.1), the following statement shall
2 be used:¹

3 **WARNING:** The following products contain DINP, a chemical known
4 to the State of California to cause cancer:

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

6 Or

7 **WARNING:** The following products contain [a] chemical[s] known
8 to the State of California to cause cancer [and birth defects, and other
9 reproductive harm].

10 **(b) Mail Order Catalog and Internet Sales.** In the event that Tronex sells Products via mail
11 order catalog and/or the internet, to customers located in California, after the Effective Date that are not
12 Reformulated Products, Tronex shall provide warnings for such Products sold via mail order catalog or
13 the internet to California residents. Warnings given in the mail order catalog or on the internet shall
14 identify the *specific* Product to which the warning applies as further specified in Sections 2.2(b)(i) and
15 (ii).

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

20 **WARNING:** This product contains DINP, a chemical known
21 to the State of California to cause cancer.

22 Or

23 **WARNING:** This product contains [a] chemical[s] known
24 to the State of California to cause cancer[or birth defects, or other
25 reproductive harm].

26 Where it is impracticable to provide the warning on the same page and in the same location as the
27 display and/or description of the Product, Tronex may utilize a designated symbol to cross reference the

28 ¹For 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 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Civil Penalty Payments**

3 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred to
4 in this Consent Judgment, Tronex shall pay \$12,400 in civil penalties. Each civil penalty payment shall
5 be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-five
6 percent (75%) of the funds paid to the California Office of Environmental Health Hazard Assessment
7 (“OEHHA”) and twenty-five percent (25%) of the funds allocated to Held.

8 **3.1.1 Initial Civil Penalty**

9 Within five (15) days of the mutual execution of this Consent Judgment, Tronex shall
10 issue a check in care of Greg Sperla, Esq. for its initial civil penalty payment in the amount of \$2,400 to
11 “Greenberg Traurig, LLP” Greenberg Traurig, LLP shall provide The Chanler Group with written
12 confirmation within five days of receipt that the funds have been deposited in a trust account. Within
13 five (5) days of the Effective Date, Greenberg Traurig, LLP shall issue a check for the initial civil penalty
14 payment to “Anthony E. Held, Ph.D., P.E., Client Trust Account.” Held and his counsel subsequently
15 will direct 75% of the initial civil penalty to OEHHA.

16 **3.1.2 Final Civil Penalty**

17 On or before November 30, 2016, Tronex shall make a final civil penalty payment of
18 \$10,000. Pursuant to title 11 California Code of Regulations, section 3203(c), Held agrees that the final
19 civil penalty payment shall be waived in its entirety if, no later than November 15, 2016, an officer of
20 Tronex provides Held with written certification that all of the Products purchased for sale or
21 manufactured for sale in California as of the date of such certification are Reformulated Products as
22 defined by Section 2.1, and that Tronex will continue to offer only Reformulated Products in California
23 in the future. The option to certify reformulation in lieu of making the final civil penalty payment
24 required by this Section is a material term and time is of the essence.

25 **3.2 Reimbursement of Fees and Costs**

26 The parties acknowledge that Held and his counsel offered to resolve this dispute without
27 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be
28 resolved after the material terms of this Consent Judgment had been settled. Shortly after the other

1 settlement terms had been finalized, Tronex expressed a desire to resolve Held's fees and costs. The
2 Parties then attempted to (and did) reach an accord on the compensation due to Held and his counsel
3 under general contract principles and the private attorney general doctrine codified at California Code of
4 Civil Procedure section 1021.5 for all work performed through the mutual execution of this Consent
5 Judgment. Tronex shall, within fifteen (15) days of the mutual execution of this Consent Judgment, issue
6 a check in care of Greg Sperla, Esq. and payable to "Greenberg Traurig, LLP" in the amount of fees and
7 costs of \$25,250 to be held in trust by Greenberg Traurig, LLP for The Chanler Group. Greenberg
8 Traurig, LLP shall provide The Chanler Group with written confirmation within five days of receipt that
9 the funds have been deposited in a trust account. Within five (5) days of the Effective Date, Greenberg
10 Traurig, LLP shall issue a check payable to "The Chanler Group" to the address found in Section 3.3.1
11 below.

12 **3.3 Payment Procedures**

13 Except for the final civil penalty payment required by Section 3.1.2, all payments due under this
14 Consent Judgment are to be delivered within five (15) days of the mutual execution of this Consent
15 Judgment to Greenberg Traurig, LLP, and released to The Chanler Group and Held within five (5) days
16 of the Effective Date according to the following subsections.

17 **3.3.1 Payment Address**

18 All payments and tax documentation for OEHHA, Held, and his counsel shall be
19 delivered to:

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

23 **4. CLAIMS COVERED AND RELEASED**

24 **4.1 Held's Public Release of Proposition 65 Claims**

25 Held, acting on his own behalf and in the public interest, releases Tronex and its parents,
26 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and attorneys
27 ("Releasees") and each entity to whom it directly or indirectly distributes or sells the Products,
28 including but not limited to its downstream distributors, wholesalers, customers, retailers, franchisers,

1 cooperative members, licensors, and licensees (“Downstream Releasees”) for violations arising under
2 Proposition 65 for unwarned exposures to DINP from the Products sold by Tronex prior to the Effective
3 Date, as set forth in the Notice.

4 **4.2 Held’s Individual Release of Claims**

5 Held, in his individual capacity only and *not* in his representative capacity, also provides a release
6 to Tronex, Releasees, and Downstream Releasees which shall be effective as a full and final accord and
7 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees,
8 damages, losses, claims, liabilities and demands of Held of any nature, character or kind, arising out of
9 alleged or actual exposures to DINP from the Products sold or distributed for sale in California by Tronex
10 before the Effective Date.

11 **4.3 Tronex’s Release of Held**

12 Tronex, on its own behalf, and on behalf of its past and current agents, representatives,
13 attorneys, successors, and assignees, hereby waives any and all claims against Held and his attorneys
14 and other representatives, for any and all actions taken or statements made by Held and his attorneys
15 and other representatives, whether in the course of investigating claims, otherwise seeking to enforce
16 Proposition 65 against it in this matter, or with respect to the Products.

17 **5. COURT APPROVAL**

18 This Consent Judgment is not effective until it is approved and entered by the Court and shall be
19 null and void if, for any reason, it is not approved and entered by the Court within one year after it has
20 been fully executed by the Parties.

21 **6. SEVERABILITY**

22 If, subsequent to the Court’s approval and entry of this Consent Judgment as a judgment, any
23 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be
24 adversely affected.

25 **7. GOVERNING LAW**

26 The terms of this Consent Judgment shall be governed by the laws of the state of California and
27 apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
28 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Tronex may

1 provide written notice to Held of any asserted change in the law, and shall have no further obligations
2 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.
3 Nothing in this Consent Judgment shall be interpreted to relieve Tronex from any obligation to comply
4 with any pertinent state or federal toxics control laws.

5 **8. NOTICE**

6 Unless specified herein, all correspondence and notice required by this Consent Judgment shall be
7 in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail, return receipt
8 requested; or (iii) a recognized overnight courier to the following addresses:

9 For Tronex:

10 Greg Sperla, Esq.
11 Greenberg Traurig, LLP
12 1201 K Street
13 Suite 1100
14 Sacramento, CA 95814

15 For Held:

16 The Chanler Group
17 Attn: Proposition 65 Coordinator
18 2560 Ninth Street
19 Parker Plaza, Suite 214
20 Berkeley, CA 94710

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

23 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

27 **10. POST EXECUTION ACTIVITIES**

28 Held agrees to comply with the reporting form requirements referenced in Health and Safety
Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
furtherance of obtaining such approval, Held and Tronex agree to mutually employ their best efforts, and
that of their counsel, to support the entry of this agreement as judgment, and to obtain judicial approval

1 of their settlement in a timely manner. For purposes of this Section, "best efforts" shall include, at a
2 minimum, cooperating with the drafting and filing of the necessary moving papers, and supporting the
3 motion for judicial approval.

4 **11. MODIFICATION**

5 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and entry
6 of a modified consent judgment by the Court; or (ii) a successful motion or application of any Party, and
7 the entry of a modified consent judgment by the Court.

8 **12. AUTHORIZATION**

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

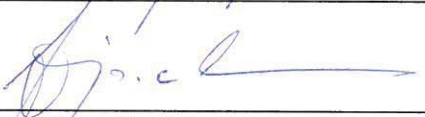
11 **AGREED TO:**

AGREED TO:

12 Date: January 14, 2016

13 Date: Jan 13, 2016

14 By: 
15 ANTHONY E. HELD, PH.D., P.E.

16 By: 
17 Donald Chu, President
18 TRONEX INTERNATIONAL, INC.