

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Plaintiff Anthony E. Held, Ph.D., P.E. and Defendant Tradex International, Inc.,
having agreed through their respective counsel that Judgment be entered pursuant to the
terms of their settlement agreement in the form of a consent judgment, and following this
Court's issuance of an order approving their Proposition 65 settlement and Consent
Judgment on December 15, 2015, and for good cause being shown,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to
Health and Safety Code section 25249.7(f)(4) and Code of Civil Procedure section 664.6,
judgment is hereby entered in accordance with the terms of the Consent Judgment attached
hereto as Exhibit 1. By stipulation of the parties, the Court will retain jurisdiction to
enforce the terms of the settlement under Code of Civil Procedure section 664.6.

IT IS SO ORDERED.

Dated: 12/15/15



JUDGE OF THE SUPERIOR COURT

Patricia M. Lucas

1 Josh Voorhees, State Bar No. 241436
Troy C. Bailey, State Bar No. 277424
2 Warren M. Klein, State Bar No. 303958
THE CHANLER GROUP
3 2560 Ninth Street
Parker Plaza, Suite 214
4 Berkeley, CA 94710-2565
Telephone: (510) 848-8880
5 Facsimile: (510) 848-8118

6 Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.
7
8
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SANTA CLARA
12 UNLIMITED CIVIL JURISDICTION
13

14
15 ANTHONY E. HELD, PH.D., P.E.,
16 Plaintiff,
17 v.
18 TRADEX INTERNATIONAL, INC.; *et al.*,
19 Defendants.

Case No. 115CV279642

[PROPOSED] CONSENT JUDGMENT

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

1 **1. INTRODUCTION**

2 **1.1 Parties**

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

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Tradex 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
13 Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that Tradex manufactures, imports, sells, or distributes 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
18 known to the State of California to cause cancer.

19 **1.5 Product Description**

20 Tradex’s products that are covered by this Consent Judgment are defined as vinyl/PVC
21 gloves containing DINP including, without limitation, the *Ambitex Powder Free Vinyl Exam*
22 *Gloves, VMD200, UPC #6 99320 20203 6*, which are manufactured, imported, distributed, sold
23 and/or offered for sale by Tradex in the State of California, hereinafter the “Products.”

24 **1.6 Notice of Violation**

25 On January 30, 2015, Held served Tradex International, Inc. and certain requisite public
26 enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Tradex
27 violated Proposition 65 when they failed to warn their customers and consumers in California that
28 vinyl/PVC gloves expose users to DINP.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1.7 Complaint

On April 20, 2015, Held filed the instant action (“Complaint”), naming Tradex as defendant for its alleged violations of Health and Safety Code section 25249.6 that are the subject of the Notice.

1.8 No Admission

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

1.9 Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Tradex as to the allegations in the Complaint, that venue is proper in the County of Santa Clara, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

1.10 Effective Date

For purposes of this Consent Judgment, the term “Effective Date” means the date which the Court approves this Consent Judgment, including any unopposed tentative rulings.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulated Products

Commencing on December 31, 2015, and continuing thereafter, Tradex shall only purchase for sale, manufacture for sale, import, directly sell or distribute for sale in California “Reformulated Products,” or Products that are sold with a clear and reasonable warning pursuant to Section 2.2 below. For purposes of this Consent Judgment, “Reformulated Products” are products that contain DINP in concentrations of less than 0.1 percent (1,000 parts per million)

1 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
2 and 8270C or any other methodology utilized by federal or state agencies for the purpose of
3 determining the DINP content in a solid substance.

4 **2.2 Product Warnings**

5 Commencing on December 31, 2015, Tradex shall provide clear and reasonable warnings
6 for all Products as set forth in subsections 2.2(a) and (b) for all products that do not currently have
7 warnings and that do not qualify as Reformulated Products. Each warning shall be prominently
8 placed with such conspicuousness as compared with other words, statements, designs, or devices
9 as to render it likely to be read and understood by an ordinary individual under customary
10 conditions before purchase or use. Each warning shall be provided in a manner such that the
11 consumer or user understands to which *specific* Product the warning applies, so as to minimize
12 the risk of consumer confusion.

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

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

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

19 **(ii) Point-of-Sale Warnings.** Alternatively, Tradex may provide warning
20 signs in the form below to its customers in California with instructions to post the warnings in
21 close proximity to the point of display of the Products. Such instruction sent to Tradex customers
22 shall be sent by certified mail, return receipt requested.

23
24 **WARNING:** This product contains DINP, a chemical known
25 to the State of California to cause cancer.

26 Where more than one Product is sold in proximity to other like items or to those that do
27 not require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following
28

1 statement shall be used:¹

2 **WARNING:** The following products contain DINP, a chemical known
3 to the State of California to cause cancer:
4 [*list products for which warning is required*]

5 **(b) Mail Order Catalog and Internet Sales.** In the event that Tradex sells Products
6 via mail order catalog and/or the internet, to customers located in California, after October 30,
7 2015, that are not Reformulated Products, Tradex shall provide warnings for such Products sold
8 via mail order catalog or the internet to California residents. Warnings given in the mail order
9 catalog or on the internet shall identify the *specific* Product to which the warning applies as
10 further specified in Sections 2.2(b)(i) and (ii).

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

15
16 **WARNING:** This product contains DINP, a chemical known
17 to the State of California to cause cancer.

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

23 **WARNING:** Certain products identified with this symbol ▼
24 and offered for sale in this catalog contain DINP,
25 a chemical known to the State of California to
26 cause cancer.

26 _____
27 ¹For purposes of the Consent Judgment, “sold in proximity” shall mean that the Product and another similar product
28 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 The designated symbol must appear on the same page and in close proximity to the
2 display and/or description of the Product. On each page where the designated symbol appears,
3 Tradex must provide a header or footer directing the consumer to the warning language and
4 definition of the designated symbol.

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

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

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

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

20 **3. MONETARY SETTLEMENT TERMS**

21 **3.1 Civil Penalty Payments**

22 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims
23 referred to in this Consent Judgment, Tradex shall pay \$8,800 in civil penalties. Each civil
24 penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1)
25 and (d) with seventy-five percent (75%) of the funds paid to the California Office of
26 Environmental Health Hazard Assessment (“OEHHHA”) and twenty-five percent (25%) of the
27 funds allocated to Held.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3.1.1 Initial Civil Penalty

On or before the date the October 30, 2015, Tradex shall issue a check for its initial civil penalty payment in the amount of \$2,800 to “Benesch, Friedlander, Coplan & Aronoff, LLP, c/o Eric Zalud, Esq.” Benesch, Friedlander, Coplan & Aronoff, LLP shall provide The Chanler Group with written confirmation within five days of receipt that the funds have been deposited in a trust account. Within five (5) days of the Effective Date, Benesch, Friedlander, Coplan & Aronoff, LLP shall issue a check for the initial civil penalty payment to “Anthony E. Held, Ph.D., P.E., Client Trust Account.” Held subsequently will direct 75% of the initial civil penalty to OEHHA.

3.1.2 Final Civil Penalty

On or before April 30, 2016, Tradex shall make a final civil penalty payment of \$6,000. Pursuant to title 11 California Code of Regulations, section 3203(c), Held agrees that the final civil penalty payment shall be waived in its entirety if, no later than January 15, 2016, an officer of Tradex provides Held with written certification that all of the Products purchased for sale or manufactured for sale in California as of the date of such certification are Reformulated Products as defined by Section 2.1, and that Tradex will continue to offer only Reformulated Products in California in the future. The option to certify reformulation in lieu of making the final civil penalty payment required by this Section is a material term and time is of the essence.

3.2 Reimbursement of Fees and Costs

The parties acknowledge that Held and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of this Consent Judgment had been settled. Shortly after the other settlement terms had been finalized, Tradex expressed a desire to resolve Held’s fees and costs. The Parties then attempted to (and did) reach an accord on the compensation due to Held and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed through the mutual execution of this Consent Judgment. Tradex shall, on or before October 30, 2015, issue a check payable to “Benesch, Friedlander, Coplan & Aronoff, LLP, c/o Eric Zalud, Esq.” in the

1 amount of fees and costs of \$25,000 to be held in trust by Benesch, Friedlander, Coplan &
2 Aronoff, LLP for The Chanler Group. Benesch, Friedlander, Coplan & Aronoff, LLP shall
3 provide The Chanler Group with written confirmation within five days of receipt that the funds
4 have been deposited in a trust account. Within five (5) days of the Effective Date, Benesch,
5 Friedlander, Coplan & Aronoff, LLP shall issue a check payable to "The Chanler Group" to the
6 address found in Section 3.3.1 below.

7 **3.3 Payment Procedures**

8 Except for the final civil penalty payment required by Section 3.1.2, all payments due
9 under this Consent Judgment are to be delivered on or before October 30, 2015 to Benesch,
10 Friedlander, Coplan & Aronoff, LLP, and released to The Chanler Group and Held within five
11 (5) days of the Effective Date according to the following subsections.

12 **3.3.1 Payment Address**

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

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

20 **4. CLAIMS COVERED AND RELEASED**

21 **4.1 Held's Public Release of Proposition 65 Claims**

22 Held, acting on his own behalf and in the public interest, releases Tradex and its parents,
23 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
24 attorneys ("Releasees") and each entity to whom it directly or indirectly distributes or sells the
25 Products, including but not limited to its downstream distributors, wholesalers, customers,
26 retailers, franchisers, cooperative members, licensors, and licensees ("Downstream Releasees")
27 for violations arising under Proposition 65 for unwarned exposures to DINP from the Products
28 sold by Tradex prior to the Effective Date, as set forth in the Notice.

1 **4.2 Held’s Individual Release of Claims**

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

8 **4.3 Tradex’s Release of Held**

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

15 **5. COURT APPROVAL**

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

19 **6. SEVERABILITY**

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

23 **7. GOVERNING LAW**

24 The terms of this Consent Judgment shall be governed by the laws of the state of
25 California and apply within the state of California. In the event that Proposition 65 is repealed,
26 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products,
27 then Tradex may provide written notice to Held of any asserted change in the law, and shall have
28 no further obligations pursuant to this Consent Judgment with respect to, and to the extent that,

1 the Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve
2 Tradex from any obligation to comply with any pertinent state or federal toxics control laws.

3 **8. NOTICE**

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

7 For Tradex:

8 Eric Zalud, Esq.
9 Benesch, Friedlander, Coplan & Aronoff, LLP
10 200 Public Square
11 Suite 2300
12 Cleveland, Ohio 43215-6164

13 For Held:

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

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

21 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

25 **10. POST EXECUTION ACTIVITIES**

26 Held agrees to comply with the reporting form requirements referenced in Health and
27 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and
28 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 Tradex agree to mutually employ

1 their best efforts, and that of their counsel, to support the entry of this agreement as judgment, and
 2 to obtain judicial approval of their settlement in a timely manner. For purposes of this Section,
 3 "best efforts" shall include, at a minimum, cooperating with the drafting and filing of the
 4 necessary moving papers, and supporting the motion for judicial approval.

5 **11. MODIFICATION**

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

9 **12. AUTHORIZATION**

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

12 **AGREED TO:**

AGREED TO:

13 Date: 10/15/15

Date: 10/15/15

14 By: Anthony E. Held

By: Saji Daniel, Pres

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

16 Saji Daniel, President
 17 Tradex International, Inc.