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18 ALLTRADE TOOLS LLC.

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 COUNTY OF ALAMEDA
21 UNLIMITED CIVIL JURISDICTION

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

23 Plaintiff,

24 v.

25 ALLTRADE TOOLS LLC; and DOES 1-150,
26 inclusive,

27 Defendants.

Case No. RG14736144

[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E. and Alltrade Tools LLC**

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

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 Alltrade 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, California Health &
13 Safety Code § 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that Alltrade manufactures, distributes, sells, and/or offers for sale in
16 California stools with vinyl/PVC upholstery containing di(2-ethylhexyl)phthalate (“DEHP”)
17 without the requisite Proposition 65 health hazard warning. DEHP is listed pursuant to
18 Proposition 65 as a chemical known to California to cause birth defects and other reproductive
19 harm if human exposure exceeds certain thresholds.

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as stools with
22 vinyl/PVC upholstery containing DEHP including, but not limited to, the *Snap-on Shop Stool*,
23 #870459 (#0 28907 34049 4), which were manufactured, distributed, sold and/or offered for sale
24 in California by Alltrade, hereinafter referred to as the “Products.”

25 **1.6 Notice of Violation**

26 On or about May 21, 2014, Held served Alltrade and various public enforcement agencies
27 with a document entitled “Supplemental 60-Day Notice of Violation” (“Notice”), alleging that
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1 Alltrade was in violation of Proposition 65 for failing to warn its customers and consumers in
2 California that the Products exposed users to DEHP. To the best of the Parties' knowledge, no
3 public enforcer has commenced and is diligently prosecuting the allegations set forth in the
4 Notice.

5 **1.7 Complaint**

6 On or about August 8, 2014, Held, who was and is acting in the interest of the general
7 public in California, filed a complaint ("Complaint" or "Action") in the Superior Court in and for
8 the County of Alameda against Alltrade and Does 1 through 150, alleging, *inter alia*, violations of
9 Proposition 65 based on the alleged exposures to DEHP contained in the Products sold by
10 Alltrade in the State of California.

11 **1.8 No Admission**

12 Alltrade denies the material, factual, and legal allegations contained in the Notice and
13 Complaint and maintains that all of the products it has manufactured, distributed, sold and/or
14 offered for sale in California, including the Products, have been, and are, in compliance with all
15 laws. Nothing in this Consent Judgment shall be construed as an admission by Alltrade of any
16 fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this
17 Consent Judgment constitute or be construed as an admission by Alltrade of any fact, finding,
18 conclusion of law, issue of law, or violation of law, such being specifically denied by Alltrade.
19 This Section shall not, however, diminish or otherwise affect Alltrade's obligations,
20 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 Alltrade as to the allegations contained in the Complaint, that venue is proper in
24 the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of
25 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 this
3 Consent Judgment is approved by the Court.

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

5 **2.1 Reformulation Standards and Commitment**

6 Commencing on the Effective Date and continuing thereafter, Alltrade shall only
7 manufacture, distribute, ship, sell, or offer to ship for sale in California Products that are
8 “Reformulated Products” or Products that are affixed with appropriate warning labels pursuant to
9 Section 2.2 below. For purposes of this Consent Judgment, “Reformulated Products” shall mean
10 Products that contain no more than 1,000 parts per million (0.1%) DEHP in each Accessible
11 Component when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or
12 equivalent methodologies utilized by state or federal agencies for the purpose of determining
13 DEHP content in a solid substance. For purposes of this Consent Judgment, “Accessible
14 Components” shall mean a component of a Product that can be touched by a person during
15 normal, intended and foreseeable use of the Product.

16 **2.2 Product Warnings**

17 **2.2.1 Product Labeling**

18 Any warning provided under Section 2.1 above shall be affixed to the packaging, labeling,
19 or directly on each Product. Each warning shall be prominently placed with such
20 conspicuousness as compared with other words, statements, designs, or devices as to render it
21 likely to be read and understood by an ordinary individual under customary conditions before
22 purchase. Each warning shall be provided in a manner such that the consumer or user
23 understands to which specific Product the warning applies, so as to minimize the risk of consumer
24 confusion. A warning provided pursuant to this Consent Judgment shall state:

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1 Alltrade must provide a header or footer directing the consumer to the warning language and
2 definition of the designated symbol.

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

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

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

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

20 **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

21 In settlement of all the claims referred to in this Consent Judgment, Alltrade shall pay a
22 total of \$14,000 in civil penalties in accordance with this Section. Each penalty payment will be
23 allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) & (d), with 75%
24 of the funds remitted to the California Office of Environmental Health Hazard Assessment
25 (“OEHHA”) and the remaining 25% of the penalty remitted to Held, as follows:

26 **3.1 Initial Civil Penalty**

27 Alltrade shall pay an initial civil penalty of \$4,500 on or before January 1, 2015. Alltrade
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1 shall issue a check in the amount of \$4,500 to “Fulwider Patton LLP” to be held in trust for
2 OEHHA and Held. Fulwider Patton LLP shall provide The Chanler Group with written
3 confirmation within five (5) days of receipt that the funds have been deposited in a trust account.
4 Within two (2) days of the Effective Date, Fulwider Patton LLP shall issue two separate checks
5 for the initial civil penalty payment to: (a) “OEHHA” in the amount of \$3,375; and (b) “Anthony
6 E. Held, Client Trust Account” in the amount of \$1,125.

7 **3.2 Final Civil Penalty**

8 Alltrade shall pay a final civil penalty of \$9,500 on or before April 15, 2015, the final civil
9 penalty shall be waived in its entirety, however, if, no later than April 1, 2015, an officer of
10 Alltrade provides Held with written certification that, as of the date of such certification and
11 continuing into the future, Alltrade has met the reformulation standard specified in Section 2.1
12 above, such that all Products manufactured, distributed, shipped, sold and/or offered to ship for
13 sale in California by Alltrade are Reformulated Products. The certification in lieu of a final civil
14 penalty payment provided by this Section is a material term, and time is of the essence. If Alltrade
15 fails to make the written certification by April 1, 2015, Alltrade shall issue two separate checks
16 for its final civil penalty payments to: (a) “OEHHA” in the amount of \$7,125; and (b) “Anthony
17 E. Held, Client Trust Account” in the amount of \$2,375.

18 **3.3 Payment Procedures**

19 **3.3.1 Issuance of Payments.** Payments shall be delivered as follows:

20 (a) All payments owed to Held, pursuant to Sections 3.1 and 3.2, shall be
21 delivered to the following payment address:

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

27 (b) All payments owed to OEHHA, pursuant to Sections 3.1 and 3.2, shall
28 be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at the following addresses:

For United States Postal Service Delivery:

1 Mike Gyurics
2 Fiscal Operations Branch Chief
3 Office of Environmental Health Hazard Assessment
4 P.O. Box 4010
5 Sacramento, CA 95812-4010

6 For Non-United States Postal Service Delivery:

7 Mike Gyurics
8 Fiscal Operations Branch Chief
9 Office of Environmental Health Hazard Assessment
10 1001 I Street
11 Sacramento, CA 95814

12 With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address
13 set forth above in 3.3.1(a), as proof of payment to OEHHA.

14 **4. REIMBURSEMENT OF FEES AND COSTS**

15 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
16 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
17 issue to be resolved after the material terms of the agreement had been settled. Held then
18 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
19 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due
20 to Held and his counsel under general contract principles and the private attorney general doctrine
21 codified at California Code of Civil Procedure § 1021.5, for all work performed through the
22 mutual execution of this agreement. Alltrade shall pay \$35,500 for fees and costs incurred as a
23 result of investigating, bringing this matter to Alltrade's attention, and negotiating a settlement in
24 the public interest. Alltrade shall issue a check payable to "Fulwider Patton LLP" in the amount
25 of \$35,500 on or before January 1, 2015. Fulwider Patton LLP shall provide The Chanler Group
26 with written confirmation within five (5) days of receipt that the funds have been deposited in a
27 trust account. Within two (2) days of the Effective Date, Fulwider Patton LLP shall issue a check
28 payable to "The Chanler Group" to the address listed in Section 3.3.1(a) above.

1 **5. CLAIMS COVERED AND RELEASED**

2 **5.1 Held's Public Release of Proposition 65 Claims**

3 Held acting on his own behalf and in the public interest releases Alltrade, its parents,
4 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
5 attorneys, and each entity to whom Alltrade directly or indirectly distributes or sells Products,
6 including but not limited to downstream distributors, wholesalers, customers, retailers,
7 franchisees, cooperative members, licensors, and licensees ("Releasees") from all claims for
8 violations of Proposition 65 up through the Effective Date based on exposure to DEHP from the
9 Products. Compliance with the terms of this Consent Judgment constitutes compliance with
10 Proposition 65 with respect to exposures to DEHP from the Products.

11 **5.2 Held's Individual Release of Claims**

12 Held also, in his individual capacity only and *not* in his representative capacity, provides a
13 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
14 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
15 liabilities and demands of Held of any nature, character or kind, whether known or unknown,
16 suspected or unsuspected, limited to and arising out of any violation of Proposition 65 regarding
17 the failure to warn about exposure to DEHP in the Products manufactured, distributed, sold and/or
18 offered for sale by Releasees.

19 **5.3 Alltrade's Release of Held**

20 Alltrade on behalf of itself, its past and current agents, representatives, attorneys,
21 successors, and/or assignees, hereby waives any and all claims against Held, his attorneys and
22 other representatives, for any and all actions taken or statements made (or those that could have
23 been taken or made) by Held and his attorneys and other representatives, whether in the course of
24 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
25 respect to the Products.
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1 **6. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved and entered by the Court and
3 shall be null and void if, for any reason, it is not approved and entered by the Court within one
4 year after it has been fully executed by all Parties, in which event any monies that have been
5 provided to Held or his counsel pursuant to Section 3 and 4 above, shall be refunded within
6 fifteen (15) days after receiving written notice from Alltrade that the one-year period has expired.

7 **7. SEVERABILITY**

8 If, subsequent to the execution of this Consent Judgment, any provision is held by a court
9 to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely
10 affected.

11 **8. GOVERNING LAW**

12 The terms of this Consent Judgment shall be governed by the laws of California and apply
13 within California. In the event that Proposition 65 is repealed or is otherwise rendered
14 inapplicable by reason of law generally, or as to the Products, then Alltrade may provide written
15 notice to Held of any asserted change in the law, and shall have no further obligations pursuant to
16 this Consent Judgment with respect to, and to the extent that, the Products are so affected.

17 **9. NOTICES**

18 Unless specified herein, all correspondence and notices required to be provided pursuant
19 to this Consent Judgment shall be sent by: (i) personal delivery; (ii) first-class, registered or
20 certified mail, return receipt requested; or (iii) overnight courier on any Party by the other Party at
21 the following addresses:

22 To Alltrade:

23 Andy Livian, CEO
24 Alltrade Tools LLC
25 1431 Via Plata Street
26 Long Beach, CA 90810

To Held:

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

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1 With a copy to:

2 David J. Pitman, Esq.
3 Fulwider Patton LLP
4 Howard Hughes Center
5 6060 Center Drive, Tenth Floor
6 Los Angeles, CA 90045

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

9 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

10 This Consent Judgment may be executed in counterparts and by facsimile or portable
11 document format (".pdf") signature, each of which shall be deemed an original, and all of which,
12 when taken together, shall constitute one and the same document. A facsimile or .pdf signature
13 shall be as valid as the original.

14 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

15 Held and his attorneys agree to comply with the reporting form requirements referenced in
16 California Health & Safety Code § 25249.7(f).

17 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

18 The Parties agree to mutually employ their, and their counsel's, reasonable best efforts to
19 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
20 Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to California
21 Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this
22 Consent Judgment, which Held shall file, and which Alltrade shall not oppose. If any third party
23 objection to the noticed motion is filed, Held and Alltrade shall work together to file a joint reply
24 and appear at any hearing before the Court. If the Court does not approve the motion to approve
25 this Consent Judgment, and the Parties choose not to pursue a modified Consent Judgment
26 within 30 days of said denial, or in the event that the Court approves this Consent Judgment and
27 any person successfully appeals that approval, all payments made pursuant to this Consent
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1 Judgment will be returned to Alltrade within fifteen (15) days of an order reversing or vacating
2 the approval.

3 **13. MODIFICATION**

4 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
5 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
6 of any Party and entry of a modified Consent Judgment by the Court.

7 **14. ENTIRE AGREEMENT**

8 This Consent Judgment contains the sole and entire agreement and understanding of the
9 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
10 negotiations, commitments, and understandings related hereto. No representations, oral or
11 otherwise, express or implied, other than those contained herein have been made by any Party
12 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
13 deemed to exist or to bind any of the Parties.

14 **15. AUTHORIZATION**

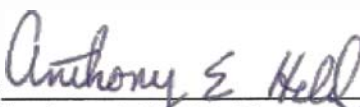
15 The undersigned are authorized to execute this Consent Judgment on behalf of their
16 respective parties and have read, understood, and agree to all of the terms and conditions of this
17 Consent Judgment.

18 **AGREED TO:**

AGREED TO:

19
20 Date: December 3, 2014

Date: 11/25/14

21
22 By: 
23 Anthony E. Held, Ph.D., P.E.

By: 
24 Andy Livian, CEO
25 Alltrade Tools LLC