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

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MARIN
10 UNLIMITED CIVIL JURISDICTION

11
12 ANTHONY E. HELD, PH.D., P.E.,
13 Plaintiff,
14 v.
15 AMMEX CORPORATION; *et al.*
16 Defendants.
17

Case No. CIV1502595
[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 plaintiff Anthony E. Held, Ph.D.,
4 P.E. (“Held”) and defendant AMMEX Corporation and its affiliates (“Ammex” or “Defendant”),
5 with Held and Ammex each referred to individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Held is a resident of the State of California who seeks to promote awareness of exposures to
8 toxic chemicals, and to improve human health by reducing or eliminating harmful substances
9 contained in consumer and commercial products.

10 **1.3 Defendant**

11 Ammex 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 and
13 Safety Code section 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that Ammex manufactured, imported, sold and/or distributed for sale in
16 California vinyl/PVC gloves that contain diisononyl phthalate (“DINP”), without first providing the
17 requisite Proposition 65 warning. 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 The products covered by this Consent Judgment are vinyl/PVC gloves containing DINP,
21 manufactured exclusively by or for Ammex and/or its affiliates and sold in California, including,
22 but not limited to, the *GlovePlus by AMMEX 100 Vinyl Industrial Gloves Latex Free, #IV48100,*
23 *UPC #6 97383 40164 9* (hereinafter, the “Products”).

24 **1.6 Notice of Violation**

25 On April 24, 2015, Held served Ammex and the requisite public enforcement agencies with
26 a “60-Day Notice of Violation” (“Notice”), alleging that Ammex violated Proposition 65 when it
27 failed to warn its customers and consumers in California that the Products expose users to DINP.
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1 To the best of the Parties' knowledge, no public enforcer has commenced and is diligently
2 prosecuting an action to enforce the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On July 16, 2015, Held filed the instant action (the "Complaint") naming Ammex as
5 a defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject
6 of the Notice.

7 **1.8 No Admission**

8 The Parties enter into this Consent Judgment as a full and final settlement of all claims that
9 were raised in the Notice and Complaint, or that could have been raised in the Complaint, arising
10 out of the facts and/or conduct alleged therein. Ammex denies the material, factual, and legal
11 allegations contained in the Notice and Complaint, and maintains that all of the products that it has
12 sold or distributed for sale in California, including the Products, have been, and are, in compliance
13 with all laws, and are completely safe for their intended use. Nothing in this Consent Judgment
14 shall be construed as an admission by Ammex of any fact, finding, conclusion of law, issue of law,
15 or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as
16 an admission by Ammex of any fact, finding, conclusion of law, issue of law, or violation of law.
17 This Section shall not, however, diminish or otherwise affect Ammex's obligations, responsibilities,
18 and duties under this Consent Judgment.

19 **1.9 Jurisdiction**

20 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
21 jurisdiction over Ammex as to the allegations contained in the Complaint, that venue is proper in
22 the County of Marin, and that the Court has jurisdiction to enter and enforce the provisions of this
23 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that
26 the Court enters this Consent Judgment.

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1 **2. INJUNCTIVE SETTLEMENT TERMS**

2 Commencing on January 30, 2016 and continuing thereafter, Ammex shall only
3 manufacture for sale, or purchase for sale in California, Reformulated Products. For purposes of
4 this Consent Judgment, “Reformulated Products” are defined as Products with a maximum DINP
5 concentration 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental
6 Protection Agency testing methodologies 3580A and 8270C, or other methodologies utilized by
7 state or federal agencies for the purpose of determining DINP content in a solid substance.

8 **3. MONETARY SETTLEMENT TERMS**

9 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

10 Pursuant to Health and Safety Code section 25249.7(b), in complete settlement of all the
11 claims referred to in this Consent Judgment, Ammex shall pay a total of \$14,000 in civil penalties
12 as specified in Sections 3.1.1 and 3.1.2 below. Each civil penalty payment shall be allocated
13 according to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent
14 (75%) of the funds paid to the California Office of Environmental Health Hazard Assessment
15 (“OEHHA”), and twenty-five percent (25%) of the funds remitted to Held. Held and his counsel
16 shall have sole responsibility for transmitting to OEHHA any required portions of the civil penalty
17 payment.

18 **3.1.1 Initial Civil Penalty.**

19 Ammex shall make an initial civil penalty payment of \$4,000. Defendant shall issue a
20 check payable to “Rogers Joseph O’Donnell Client Trust Account” in the amount of \$4,000 to be
21 held in trust by Rogers Joseph O’Donnell within ten days of the full execution of this Consent
22 Judgment. Rogers Joseph O’Donnell shall provide The Chanler Group with written confirmation
23 within five days of receipt that the funds have been deposited in a trust account. Within five
24 business days of the date this Consent Judgment is approved by the Court, Rogers Joseph
25 O’Donnell shall issue two separate checks to: (a) OEHHA, in the amount of \$3,000; and (b) “The
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1 Chanler Group in Trust for Anthony Held.” in the amount of \$1,000. All penalty payments shall be
2 delivered to the address listed in Section 3.3 below.

3 **3.1.2 Final Civil Penalty**

4 On September 30, 2015, Ammex shall make a final civil penalty payment of \$10,000 sent to
5 the address in Section 3.3 below. Pursuant to title 11 California Code of Regulations, section
6 3203(c), Held agrees that the final civil penalty payment shall be waived in its entirety if, no later
7 than September 30, 2015, an officer of Ammex provides Held with written certification that all of
8 the Products it is selling or distributing for sale in California as of the date of such certification are
9 Reformulated Products as defined by Section 2.1, and that Ammex will continue to offer only
10 Reformulated Products for sale in California in the future. The option to certify to expedited
11 reformulation in lieu of making the final civil penalty payment required by this Section is a material
12 term, and with regard to such term, time is of the essence. Ammex shall deliver its certificate, if
13 any, to Held’s counsel at the address provided in Section 3.3, below. In the event that Ammex does
14 not timely certify its compliance or make the final civil penalty payment required by this Section,
15 the Parties agree that Held may file a motion or application seeking an order compelling Ammex’s
16 compliance with this Section. The Parties further agree that should Held have to file such a motion,
17 he shall be entitled to his reasonable attorneys’ fees and costs pursuant to general contract
18 principles and Code of Civil Procedure section 1021.5.

19 **3.2 Reimbursement of Attorneys’ Fees and Costs**

20 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
21 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
22 to be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
23 other settlement terms had been finalized, Ammex expressed a desire to resolve Held’s fees and
24 costs. The Parties then attempted to (and did) reach an accord that Ammex will pay Held and his
25 counsel \$29,500 in complete resolution of any claim for compensation due to Held and his counsel
26 under general contract principles and the private attorney general doctrine codified at California
27 Code of Civil Procedure section 1021.5, for all work they performed investigating, litigating, and
28 enforcing this matter, including the fees and costs incurred (and yet to be incurred) negotiating,

1 drafting, and obtaining the Court’s approval of this Consent Judgment in the public interest.
2 Accordingly, Defendant shall issue a check payable to “Rogers Joseph O’Donnell” in the amount
3 of \$29,500 to be held in trust by Rogers Joseph O’Donnell within ten days of the full execution of
4 this Consent Judgment. Rogers Joseph O’Donnell shall provide The Chanler Group with written
5 confirmation within five days of receipt that the funds have been deposited in a trust account.
6 Within five business days of the date this Consent Judgment is approved by the Court, Rogers
7 Joseph O’Donnell shall issue a check in the amount of \$29,500 made payable to “The Chanler
8 Group” and send it to the address set forth in Section 3.3 below.

9 **3.3 Payment Address**

10 All payments required by this Consent Judgment shall be delivered to the following
11 address:

12 The Chanler Group
13 Attn: Proposition 65 Controller
14 2560 Ninth Street
15 Parker Plaza, Suite 214
16 Berkeley, CA 94710

17 **4. CLAIMS COVERED AND RELEASED**

18 **4.1 Held’s Release of Proposition 65 Claims**

19 Held, acting on his own behalf and in the public interest, releases Ammex and its parents,
20 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
21 attorneys (“Releasees”), and each entity to whom they directly or indirectly distribute or sell the
22 Products, including, but not limited to, their downstream distributors, wholesalers, customers,
23 retailers, franchisers, franchisees, cooperative members, licensors and licensees (“Downstream
24 Releasees”) for any violations arising under Proposition 65 for unwarned exposures to DINP from
25 Products manufactured, imported, distributed or sold by Ammex prior to the Effective Date, as set
26 forth in the Notice and the Complaint. Compliance with the terms of this Consent Judgment
27 constitutes compliance with Proposition 65 by Ammex with respect to the alleged or actual failure
28 to warn about exposures to DINP from Products manufactured, imported, sold or distributed for
sale by Ammex after the Effective Date.

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

2 Held, in his individual capacity only and *not* in his representative capacity, on behalf of
3 himself, his past and current agents, representatives, attorneys, successors, and/or assignees, also
4 provides a release to Defendant, Releasees, and Downstream Releasees which shall be effective as a
5 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
6 expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of any nature, character
7 or kind, whether known or unknown, suspected or unsuspected, arising from their sale of Products
8 manufactured, imported, distributed or sold by Ammex before the Effective Date.

9 Held acknowledges that he is familiar with Section 1542 of the California Civil Code, which
10 provides as follows:

11 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
12 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
13 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.

14 Held, in his individual capacity only, and *not* in his representative capacity, expressly waives and
15 relinquishes any and all rights and benefits which he may have under, or which may be conferred
16 on him by the provisions of Section 1542 of the California Civil Code as well as under any other
17 state or federal statute or common law principle of similar effect, to the fullest extent that he may
18 lawfully waive such rights or benefits pertaining to Products manufactured, imported, distributed or
19 sold by Ammex before the Effective Date..

20 **4.3 Ammex’s Release of Held**

21 Ammex, on its own behalf and on behalf of its past and current agents, representatives,
22 attorneys, successors and/or assignees, hereby waives any and all claims against Held and his
23 attorneys and other representatives, for any and all actions taken or statements made by Held and
24 his attorneys and other representatives in the course of investigating claims, seeking to enforce
25 Proposition 65 against it in this matter, or with respect to the Products.

26 Ammex acknowledges that it is familiar with Section 1542 of the California Civil Code,
27 which provides as follows:
28

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
2 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
3 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.

4 Ammex expressly waives and relinquishes any and all rights and benefits which it may have under,
5 or which may be conferred on it by, the provisions of Section 1542 of the California Civil Code, as
6 well as under any other state or federal statute or common law principle of similar effect, to the
7 fullest extent that it may lawfully waive such rights or benefits pertaining to Products
8 manufactured, imported, distributed or sold before the Effective Date..

9 **5. COURT APPROVAL**

10 This Consent Judgment is not effective until it is approved and entered by the Court and
11 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
12 after it has been fully executed by the Parties. Held and Ammex agree act in good faith to support
13 the entry of this agreement as a judgment, and to obtain the Court's approval of their settlement in a
14 timely manner. The Parties acknowledge that, pursuant to California Health and Safety Code
15 section 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment,
16 which motion Held shall draft and file, and Ammex shall support, including by appearing at the
17 hearing if so requested, and both Parties agree to submit any supplemental information reasonably
18 requested by the Court to obtain approval and entry of this Consent Judgment. If any third-party
19 objection to the motion is filed, Held and Ammex agree to work together to file a reply and appear
20 at any hearing. This provision is a material component of the Consent Judgment and shall be
21 treated as such in the event of a breach.

22 **6. SEVERABILITY**

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

26 **7. GOVERNING LAW**

27 The terms of this Consent Judgment shall be governed by the laws of the State of California
28 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or

1 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Ammex
2 may provide Held with written notice of any asserted change in the law, and shall have no further
3 obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Products
4 are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Ammex from its
5 obligation to comply with any pertinent state or federal law or regulation.

6 **8. NOTICE**

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

11 **Ammex**

12
13 Keyo Gold, President
14 Ammex Corporation
15 1019 West James Street, Suite 200
16 Kent, WA 98032

J. Robert Maxwell, Esq.
Rogers Joseph O'Donnell
311 California Street, 10th fl
San Francisco, CA 94104

16 **Held**

17 Attn: Proposition 65 Coordinator
18 The Chanler Group
19 2560 Ninth Street
20 Parker Plaza, Suite 214
21 Berkeley, CA 94710-2565

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

23 **9. ENTIRE AGREEMENT**

24 **9.1** This Consent Judgment contains the sole and entire agreement and understanding of
25 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
26 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein. No
27 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
28 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of

1 this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions
2 hereof whether or not similar, nor shall such waiver constitute a continuing waiver unless set forth
3 in writing between the Parties.

4 **10. RETENTION OF JURISDICTION**

5 **10.1** This Court shall retain jurisdiction of this matter to implement or modify the
6 Consent Judgment and shall retain jurisdiction to enforce this Consent Judgment, or any provision
7 hereof, under C.C.P. §664.6. Should either Party allege a violation of this Consent Judgment, the
8 alleging Party agrees to provide written notice thereof, and to meet and confer and provide all
9 relevant evidence of any alleged violation to the other Party. If the Parties cannot agree on an
10 appropriate resolution of the alleged violation within 30 days of the written notice thereof and
11 provision of all relevant evidence, either Party shall be free to move the Court to enforce the terms
12 of this Consent Judgment.

13 **11. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

17 **12. COMPLIANCE WITH REPORTING REQUIREMENTS**

18 Held and his counsel agree to comply with the reporting form requirements referenced in
19 California Health and Safety Code section 25249.7(f).

20 **13. MODIFICATION**

21 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
22 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
23 any Party and the entry of a modified Consent Judgment by the Court thereon. Any Party seeking
24 to modify this Consent Judgment or to allege a violation thereof shall first attempt in good faith to
25 meet and confer with the other Party seeking a modification or alleging a violation prior to filing a
26 motion to modify or enforce the Consent Judgment.

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14. AUTHORIZATION

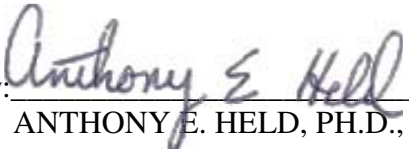
The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: 9/14/2015

Date: _____

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

By: _____
Keyo Gold, President
AMMEX CORPORATION

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14. AUTHORIZATION

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


AGREED TO:

AGREED TO:

Date: _____

Date: 9/8/15 _____

By: _____

By:  _____

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

Keyo Gold, President
AMMEX CORPORATION