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

Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

UNLIMITED CIVIL JURISDICTION

ANTHONY E. HELD, PH.D., P.E., Plaintiff, v. TRONEX INTERNATIONAL, INC.; *et al.*, Defendants.	Case No. CIV1503941 **[PROPOSED] CONSENT JUDGMENT** (Health & Safety Code § 25249.6 *et seq.*)

1. INTRODUCTION

1.1 Parties

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

1.2 Plaintiff

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

1.3 Defendant

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

1.4 General Allegations

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

1.5 Product Description

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

1.6 Notice of Violation

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

1.7 Complaint

On October 28, 2015, Held filed the instant action ("Complaint"), naming Tronex 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

Tronex 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 Tronex'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 Defendant as to the allegations in the Complaint, that venue is proper in the County of Marin, 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.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulated Products

Commencing within thirty (30) days of the Effective Date, and continuing thereafter, Tronex shall only 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) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the DINP content in a solid substance.

2.2 Product Warnings

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

(a) Retail Store Sales.

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

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

Or

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

(ii) Point-of-Sale Warnings. Alternatively, Tronex may provide warning signs to its customers in California with instructions to post the warnings in close proximity to the point of display of the Products. Warnings provided in this manner shall contain the same language as described in Section 2.2(a)(i). Such instruction sent to Tronex customers shall be sent by certified mail, return receipt requested. Where more than one Product is sold in proximity to other like items or to those that do not

require a warning (*e.g.,* Reformulated Products as defined in Section 2.1), the following statement shall be used:[1]

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

Or

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

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

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

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

Or

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

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

[1]For 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.

applicable warning and shall define the term "designated symbol" with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Product(s):

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

Or

WARNING: Certain products identified with this symbol ▼contain [a] chemical[s] known to the State of California to cause cancer[and birth defects, and other reproductive harm].

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears, Tronex must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

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

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

Or

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

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Product for which the warning is being given.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

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

3.1.1 Initial Civil Penalty

Within five (15) days of the mutual execution of this Consent Judgment, Tronex shall issue a check in care of Greg Sperla, Esq. for its initial civil penalty payment in the amount of $2,400 to "Greenberg Traurig, LLP" Greenberg Traurig, 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, Greenberg Traurig, LLP shall issue a check for the initial civil penalty payment to "Anthony E. Held, Ph.D., P.E., Client Trust Account." Held and his counsel subsequently will direct 75% of the initial civil penalty to OEHHA.

3.1.2 Final Civil Penalty

On or before November 30, 2016, Tronex shall make a final civil penalty payment of $10,000. 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 November 15, 2016, an officer of Tronex 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 Tronex 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, Tronex 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. Tronex shall, within fifteen (15) days of the mutual execution of this Consent Judgment, issue a check in care of Greg Sperla, Esq. and payable to "Greenberg Traurig, LLP" in the amount of fees and costs of $25,250 to be held in trust by Greenberg Traurig, LLP for The Chanler Group. Greenberg Traurig, 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, Greenberg Traurig, LLP shall issue a check payable to "The Chanler Group" to the address found in Section 3.3.1 below.

3.3 Payment Procedures

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

3.3.1 Payment Address

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

The Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

4. CLAIMS COVERED AND RELEASED

4.1 Held's Public Release of Proposition 65 Claims

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

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

4.2 Held's Individual Release of Claims

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

4.3 Tronex's Release of Held

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

5. COURT APPROVAL

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

6. SEVERABILITY

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

7. GOVERNING LAW

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

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

8. NOTICE

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

For Tronex:

Greg Sperla, Esq.
Greenberg Traurig, LLP
1201 K Street
Suite 1100
Sacramento, CA 95814

For Held:

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

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

9. COUNTERPARTS; FACSIMILE SIGNATURES

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

10. POST EXECUTION ACTIVITIES

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

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

11. MODIFICATION

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

12. AUTHORIZATION

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

AGREED TO:

Date: January 14, 2016

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

AGREED TO:

Date: January 13, 2016

By: _____
Donald Chu, President
TRONEX INTERNATIONAL, INC.