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Attorneys for Plaintiff
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ENDORSED

2014 FEB 20 A 12:46

David H. Yamasaki, Clerk of the Superior Court
County of Santa Clara, California
By: _____ Deputy Clerk

T. Gaighardi

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

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

Plaintiff,

v.

DREW INDUSTRIES INCORPORATED;
LIPPERT COMPONENTS, INC.; SEATING
TECHNOLOGY, INC.; and DOES 1-150,
inclusive,

Defendants.

Case No. 114CV261120

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5 *et seq.*)

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff ANTHONY E.
3 HELD, PH.D., P.E. in the public interest of the citizens of the State of California to enforce the
4 People's right to be informed of the health hazards caused by exposures to di(2-
5 ethylhexyl)phthalate ("DEHP"), a toxic chemical found in chairs with vinyl/PVC upholstery
6 sold by defendants in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to
8 warn California citizens and other individuals about the risks of exposure to DEHP present in
9 and on chairs with vinyl/PVC upholstery manufactured, distributed, and offered for sale or use
10 to consumers and other individuals throughout the State of California.

11 3. Detectable levels of DEHP are found in and on the chairs with vinyl/PVC
12 upholstery that defendants manufacture, distribute, and offer for sale to consumers and other
13 individuals throughout the State of California.

14 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
15 Health and Safety Code section 25249.6 *et seq.* ("Proposition 65"), "[n]o person in the course of
16 doing business shall knowingly and intentionally expose any individual to a chemical known to
17 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
18 warning to such individual" Health & Safety Code § 25249.6.

19 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
20 DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became
21 subject to the "clear and reasonable warning" requirements of the act one year later on October
22 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
23 25249.10(b).

24 6. Defendants manufacture, distribute, import, sell, and offer for sale without health
25 hazard warnings in California, chairs with vinyl/PVC upholstery containing DEHP that require
26 a warning under Proposition 65 including, but not limited to, the *Swivel Rocker, #9221, #60181*.

1 All such chairs with vinyl/PVC upholstery containing DEHP are referred to collectively
2 hereinafter as "PRODUCTS."

3 7. Defendants' failure to warn consumers and other individuals in the State of
4 California of the health hazards associated with exposures to DEHP in conjunction with
5 defendants' sales of the PRODUCTS are violations of Proposition 65, and subject defendants,
6 and each of them, to enjoinder of such conduct as well as civil penalties for each violation.
7 Health & Safety Code § 25249.7(a) & (b)(1).

8 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
9 permanent injunctive relief to compel defendants to provide purchasers or users of the
10 PRODUCTS with the required warning regarding the health hazards associated with exposures
11 to DEHP. Health & Safety Code § 25249.7(a).

12 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
13 penalties against defendant for their violations of Proposition 65.

14 PARTIES

15 10. Plaintiff ANTHONY E. HELD, PH.D., P.E. is a citizen of the State of California
16 who is dedicated to protecting the health of California citizens through the elimination or
17 reduction of toxic exposures from consumer products; and he brings this action in the public
18 interest pursuant to Health and Safety Code section 25249.7(d).

19 11. Defendant DREW INDUSTRIES INCORPORATED ("DREW") is a person in
20 the course of doing business within the meaning of Health and Safety Code sections 25249.6
21 and 25249.11.

22 12. DREW manufactures, imports, distributes, sells, and/or offers the PRODUCTS for
23 sale or use in the State of California, or implies by its conduct that it manufactures, imports,
24 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

25 13. Defendant LIPPERT COMPONENTS, INC. ("LIPPERT") is a person in the
26 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
27 25249.11.

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1 14. LIPPERT manufactures, imports, distributes, sells, and/or offers the PRODUCTS
2 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,
3 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

4 15. Defendant SEATING TECHNOLOGY, INC. ("STI") is a person in the course of
5 doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

6 16. STI manufactures, imports, distributes, sells, and/or offers the PRODUCTS for
7 sale or use in the State of California, or implies by its conduct that it manufactures, imports,
8 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

9 17. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a
10 person in the course of doing business within the meaning of Health and Safety Code sections
11 25249.6 and 25249.11.

12 18. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
13 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
14 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
15 California.

16 19. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person
17 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
18 and 25249.11.

19 20. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and
20 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
21 in the State of California.

22 21. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in
23 the course of doing business within the meaning of Health and Safety Code sections 25249.6
24 and 25249.11.

25 22. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
26 State of California.

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1 **FIRST CAUSE OF ACTION**

2 **(Violation of Proposition 65 - Against All Defendants)**

3 28. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
4 Paragraphs 1 through 27, inclusive.

5 29. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
6 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be
7 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
8 harm.”

9 30. Proposition 65 states, “[n]o person in the course of doing business shall
10 knowingly and intentionally expose any individual to a chemical known to the state to cause
11 cancer or reproductive toxicity without first giving clear and reasonable warning to such
12 individual” Health & Safety Code § 25249.6.

13 31. On October 18, 2013, plaintiff’s served a sixty-day notice of violation, together
14 with the requisite certificate of merit, on DREW, LIPPERT, STI and certain public enforcement
15 agencies alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS containing
16 DEHP, purchasers and users in the State of California were being exposed to DEHP resulting
17 from their reasonably foreseeable use of the PRODUCTS, without the individual purchasers and
18 users first having been provided with a “clear and reasonable warning” regarding the harms
19 associated with such exposures, as required by Proposition 65.

20 32. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
21 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’
22 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation.
23 DEFENDANTS’ violations are ongoing and continuous in nature, and, as such, will continue in
24 the future.

25 33. After receiving plaintiff’s sixty-day notice of violation, none of the appropriate
26 public enforcement agencies have commenced and diligently prosecuted a cause of action
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1 against DEFENDANTS under Proposition 65 to enforce the alleged violations that are the
2 subject of plaintiff's notice of violation.

3 34. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
4 offer for sale or use in California cause exposures to DEHP as a result of the reasonably
5 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
6 consumers and other individuals in California are not exempt from the "clear and reasonable"
7 warning requirements of Proposition 65, yet DEFENDANTS provide no warning.

8 35. DEFENDANTS knew or should have known that the PRODUCTS they
9 manufactured, imported, distributed, sold, and offered for sale or use in California contained
10 DEHP.

11 36. DEHP is present in or on the PRODUCTS in such a way as to expose individuals
12 to DEHP through dermal contact, inhalation and/or ingestion during reasonably foreseeable use.

13 37. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
14 continues to cause, consumer exposures to DEHP, as defined by title 27 of the California Code
15 of Regulations, section 25602(b).

16 38. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
17 the PRODUCTS exposed individuals to DEHP through dermal contact, inhalation and/or
18 ingestion.

19 39. DEFENDANTS intended that exposures to DEHP from the reasonably
20 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
21 in the manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or
22 use to consumers and other individuals in California.

23 40. DEFENDANTS failed to provide a "clear and reasonable warning" to those
24 consumers and other individuals in California who were or who would become exposed to
25 DEHP through dermal contact, inhalation and/or ingestion resulting from their use of the
26 PRODUCTS.

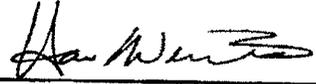
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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: February 21, 2014

Respectfully Submitted,
THE CHANLER GROUP

By: 

Harris A. Weinstein
Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.