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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF SAN FRANCISCO

15 UNLIMITED CIVIL JURISDICTION

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

17 Plaintiff,

18 v.

19 FORNEY INDUSTRIES, INC.; GATEWAY
20 SAFETY, INC. and DOES 1 – 150, inclusive,

21 Defendants.

Case No. CGC-18-566069

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

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

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1 that contain and expose consumers to DEHP such as the *Forney Starlite Squared Safety Glasses*,
2 #55402, UPC #032277554023.

3 6.2 Defendant Gateway Safety, Inc. manufactures, distributes, imports, sells, and/or
4 offers for sale without health hazard warnings in California, safety glasses (with vinyl/PVC temples)
5 that contain and expose consumers to DEHP such as the *Squared StarLite Safety Glasses*, #4483,
6 UPC #6 62302 44003 0.

7 7. All such safety glasses (with vinyl/PVC temples) containing DEHP, as identified more
8 specifically in paragraphs 6.1 and 6.2 shall be referred to collectively hereinafter as "PRODUCTS."

9 8. Defendants' failure to warn consumers in the State of California of the health hazards
10 associated with exposures to DEHP in conjunction with Defendants' sales of PRODUCTS are
11 violations of Proposition 65, and subject Defendants, and each of them, to enjoinder of such
12 conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a) and (b)(1).

13 9. For Defendants' violations of Proposition 65, plaintiff seeks preliminary and permanent
14 injunctive relief to compel Defendants to provide consumers of the PRODUCTS with the required
15 warning regarding the health hazards associated with exposures to DEHP. Health & Safety Code §
16 25249.7(a).

17 10. Pursuant to Health and Safety Code § 25249.7(b), Plaintiff also seeks civil penalties
18 against defendants for their violations of Proposition 65.

19 **PARTIES**

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

24 12. Defendant FORNEY INDUSTRIES, INC. (FORNEY) is a person in the course of doing
25 business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

26 13. FORNEY manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale
27 or use in the State of California, or implies by its conduct that it manufactures, imports, distributes,
28 sells, and/or offers the PRODUCTS for sale or use in the State of California.

1 14. Defendant GATEWAY SAFETY, INC. (GATEWAY) is a person in the course of doing
2 business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

3 15. GATEWAY manufactures, imports, distributes, sells, and/or offers the PRODUCTS for
4 sale or use in the State of California, or implies by its conduct that it manufactures, imports,
5 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

6 16. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a person in
7 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

8 17. MANUFACTURER DEFENDANTS, and each of them, research, test, design, assemble,
9 fabricate, and manufacture, or each implies by its conduct that it researches, tests, designs, assembles,
10 fabricates, and manufactures one or more of the PRODUCTS offered for sale or use in California.

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

13 19. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange, transfer,
14 process, and transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale
15 or use in the State of California, or each implies by its conduct that it distributes, exchanges, transfers,
16 processes, and transports one or more of the PRODUCTS to individuals, businesses, or retailers for
17 sale or use in the State of California.

18 20. Defendants DOES 101-150 (RETAILER DEFENDANTS) are each a person in the
19 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

20 21. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to
21 individuals in the State of California.

22 22. At this time, the true names of defendants DOES 1 through 150, inclusive, are unknown
23 to Plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to Code of Civil
24 Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that each of the
25 fictitiously named defendants is responsible for the acts and occurrences alleged herein. When
26 ascertained, their true names shall be reflected in an amended complaint.

23. FORNEY, GATEWAY, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where appropriate, be referred to collectively as the “DEFENDANTS.”

VENUE AND JURISDICTION

24. Venue is proper in the Superior Court for the County of San Francisco pursuant to Code of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS conducted, and continue to conduct, business in San Francisco with respect to the PRODUCTS.

25. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, section 10, which grants the Superior Court “original jurisdiction in all causes except those given by statute to other trial courts.” The statute under which this action is brought does not specify any other basis of subject matter jurisdiction.

26. The California Superior Court has jurisdiction over DEFENDANTS based on plaintiff's information and good faith belief that DEFENDANTS are each a person, firm, corporation or association that is a citizen of the State of California, has sufficient minimum contacts in the State of California, and/or otherwise purposefully avails itself of the California market. DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California courts consistent with traditional notions of fair play and substantial justice.

FIRST CAUSE OF ACTION

(Violation of Proposition 65 - Against All Defendants)

27. Plaintiff realleges and incorporates by reference, as if fully set forth herein, Paragraphs 1 through 26, inclusive.

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

29. Proposition 65 states, “[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive

1 toxicity without first giving clear and reasonable warning to such individual” Health & Safety
2 Code § 25249.6.

3 30. On October 24, 2017, plaintiff served a sixty-day notice of violation, together with the
4 accompanying certificate of merit, on FORNEY, the California Attorney General’s Office, and the
5 requisite public enforcement agencies alleging that, as a result of FORNEY’S sales of the
6 PRODUCTS, consumers in the State of California are being exposed to DEHP resulting from their
7 reasonably foreseeable use of the PRODUCTS, without the consumers first receiving a “clear and
8 reasonable warning” regarding the harms associated with exposures to DEHP, as required by
9 Proposition 65.

10 31. On December 13, 2017, plaintiff served a sixty-day notice of violation, together with the
11 accompanying certificate of merit, on GATEWAY, the California Attorney General’s Office, and the
12 requisite public enforcement agencies alleging that, as a result of GATEWAY’S sales of the
13 PRODUCTS, consumers in the State of California are being exposed to DEHP resulting from their
14 reasonably foreseeable use of the PRODUCTS, without the consumers first receiving a “clear and
15 reasonable warning” regarding the harms associated with exposures to DEHP, as required by
16 Proposition 65.

17 32. DEFENDANTS manufacture, import, distribute, sell, and/or offer the PRODUCTS for
18 sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS’ violations have
19 continued beyond their receipt of plaintiff’s sixty-day notices of violation. As such, DEFENDANTS’
20 violations are ongoing and continuous in nature and, unless enjoined will continue in the future.

21 33. After receiving plaintiff’s sixty-day notices of violation, no public enforcement agency
22 has commenced and diligently prosecuted a cause of action against any of the DEFENDANTS under
23 Proposition 65 to enforce the alleged violations that are the subject of plaintiff’s notices of violation.

24 34. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and offer for
25 sale or use in California cause exposures to DEHP as a result of the reasonably foreseeable use of the
26 PRODUCTS. Such exposures caused by DEFENDANTS and endured by consumers in California
27 are not exempt from the “clear and reasonable” warning requirements of Proposition 65, yet
28 DEFENDANTS provide no warning.

1 35. DEFENDANTS knew or should have known that the PRODUCTS they manufacture,
2 import, distribute, sell, and offer for sale in California contain DEHP.

3 36. DEHP is present in or on the PRODUCTS in such a way as to expose consumers through
4 dermal contact and/or ingestion during reasonably foreseeable use.

5 37. The normal and reasonably foreseeable use of the PRODUCTS has caused, and continues
6 to cause, consumer product exposures to DEHP, as defined by title 27 of the California Code of
7 Regulations, section 25600.1(e).

8 38. DEFENDANTS know that the normal and reasonably foreseeable use of the
9 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.

10 39. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable use of
11 the PRODUCTS will occur by their deliberate, non-accidental participation in the manufacture,
12 importation, distribution, sale, and offering of the PRODUCTS for sale or use to consumers in
13 California.

14 40. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers in
15 California who have been, or who will be, exposed to DEHP through dermal contact and/or ingestion
16 resulting from their use of the PRODUCTS.

17 41. Contrary to the express policy and statutory prohibition of Proposition 65 enacted directly
18 by California voters, consumers exposed to DEHP through dermal contact and/or ingestion as a result
19 of their use of the PRODUCTS that DEFENDANTS sold without a "clear and reasonable" health
20 hazard warning, have suffered, and continue to suffer, irreparable harm for which they have no plain,
21 speedy, or adequate remedy at law.

22 42. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-
23 described acts, DEFENDANTS, and each of them, are liable for a maximum civil penalty of \$2,500
24 per day for each violation.

25 43. As a consequence of the above-described acts, Health and Safety Code § 25249.7(a) also
26 specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

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1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiff prays for judgment against DEFENDANTS as follows:

3 1. That the Court, pursuant to Health and Safety Code § 25249.7(b), assess civil penalties
4 against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each violation;

5 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and
6 permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS
7 for sale or use in California without first providing a "clear and reasonable warning" in accordance
8 with title 27 of the California Code of Regulations, section 25600 et seq., regarding the harms
9 associated with exposures to DEHP;

10 3. That the Court, Pursuant to Health and Safety Code § 25249.7(a), issue preliminary and
11 permanent injunctions mandating that DEFENDANTS recall all PRODUCTS currently in the chain
12 of commerce in California without a "clear and reasonable warning" as defined by California Code of
13 Regulations title 27, section 25600 et seq.;

14 4. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

15 5. That the Court grant such other and further relief as may be just and proper.

16 Dated: October 3, 2018

Respectfully submitted,

17 THE CHANLER GROUP

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19 By: 

Laralei S. Paras

Attorneys for Plaintiff

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