

1 Josh Voorhees, State Bar No. 241436
2 Troy C. Bailey, State Bar No. 277424
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

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

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SANTA CLARA
13 UNLIMITED CIVIL JURISDICTION

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

15 Plaintiff,

16 v.

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

21 Defendants.

22 Case No. 114CV261120

23 **[PROPOSED] CONSENT JUDGMENT**

24 Action Filed: February 24, 2014

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E. and Lippert Components, Inc.**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D.,
4 P.E. (“Held” or “Plaintiff”) and defendant Lippert Components, Inc. (“Lippert” or “Defendant”),
5 with Plaintiff and Defendant collectively referred to as the “parties.”

6 **1.2 Anthony E. Held, Ph.D., P.E.**

7 Held is an individual residing in the State of California who seeks to promote awareness of
8 exposure to toxic chemicals and to improve human health by reducing or eliminating hazardous
9 substances contained in consumer and commercial products.

10 **1.3 Lippert Components, Inc.**

11 Held alleges that Lippert employs ten or more persons and is a person in the course of doing
12 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California
13 Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that Lippert has manufactured, imported, distributed and/or sold in the State of
16 California chairs with vinyl/PVC upholstery containing di(2-ethylhexyl)phthalate (“DEHP”)
17 without the requisite Proposition 65 warnings. DEHP is listed pursuant to Proposition 65 as a
18 chemical known to the State of California to cause birth defects and other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are defined as chairs with
21 vinyl/PVC upholstery containing DEHP including, but not limited to, *Swivel Rocker, #9221,*
22 *#60181,* which are manufactured, imported, distributed, sold and/or offered for sale by Lippert in
23 the State of California, hereinafter the “Products.”

24 **1.6 Notice of Violation**

25 On October 18, 2013, Held served Lippert, Drew Industries Incorporated (“Drew”), Seating
26 Technology, Inc. (“Seating Tech”) and various public enforcement agencies with a document
27 entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice that
28 Lippert, Drew and Seating Tech were allegedly in violation of California Health & Safety Code §

1 25249.6 for failing to warn consumers that their chairs with vinyl/PVC upholstery exposed users in
2 California to DEHP. To the best of the parties' knowledge, no public enforcer has prosecuted the
3 allegations set forth in the Notice.

4 **1.7 Complaint**

5 On February 24, 2014, Held filed a complaint in the Superior Court in and for the County of
6 Santa Clara against Drew, Lippert, Seating Tech and Does 1 through 150, *Held v. Drew Industries*
7 *Incorporated, et al.*, Case No. 114CV261120 (the "Action"), alleging violations of California
8 Health & Safety Code § 25249.6, based on the alleged exposures to DEHP contained in certain
9 chairs with vinyl/PVC upholstery sold by Lippert, Drew and Seating Tech in the State of California.

10 **1.8 No Admission**

11 Lippert denies the material, factual and legal allegations contained in Held's Notice and
12 Complaint and maintains that all products that it has sold, manufactured, imported and/or
13 distributed in California, including the Products, have been and are in compliance with all laws.
14 Nothing in this Consent Judgment shall be construed as an admission by Lippert of any fact,
15 finding, issue of law or violation of law, nor shall compliance with this Consent Judgment constitute
16 or be construed as an admission by Lippert of any fact, finding, conclusion, issue of law or violation
17 of law. However, this section shall not diminish or otherwise affect Lippert's obligations,
18 responsibilities and duties under this Consent Judgment.

19 **1.9 Consent to Jurisdiction**

20 For purposes of this Consent Judgment only, the parties stipulate that this Court has
21 jurisdiction over Lippert as to the allegations contained in the Complaint, that venue is proper in the
22 County of Santa Clara and that this Court has jurisdiction to enter and enforce the provisions of this
23 Consent Judgment.

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date upon
26 which Lippert receives written notice of the Court's approval of this Consent Judgment.
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28

1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1 Reformulation Standards**

3 “Reformulated Products” are defined as those Products containing DEHP in concentrations
4 less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental
5 Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by
6 federal or state government agencies for the purpose of determining DEHP content in a solid
7 substance.

8 **2.2 Reformulation Commitment**

9 As of the Effective Date all Products manufactured for sale and/or purchased for sale in the
10 State of California by Lippert shall be Products that qualify as Reformulated Products as defined in
11 Section 2.1 above or shall carry appropriate Proposition 65 health hazard warnings as described in
12 Section 2.3 below.

13 **2.3 Product Warnings**

14 As of the Effective Date, Lippert shall, for all Products other than Reformulated Products,
15 provide clear and reasonable warnings as set forth in subsection 2.3(a). Each warning shall be
16 prominently placed with such conspicuousness as compared with other words, statements, designs,
17 or devices as to render it likely to be read and understood by an ordinary individual under
18 customary conditions before purchase or use. Each warning shall be provided in a manner such that
19 the consumer or user understands to which *specific* Product the warning applies, so as to minimize
20 the risk of consumer confusion.

21 **(a) Retail Store Sales.**

22 **(i) Product Labeling.** Defendant shall affix a warning to the packaging,
23 labeling, or directly on each Product sold in retail outlets in California by Defendant or any person
24 selling the Products, that states:

25 **WARNING:** This product contains one or more chemicals,
26 including DEHP, a phthalate chemical, known
27 to the State of California to cause cancer, birth
28 defects and other reproductive harm.

1 (ii) **Point-of-Sale Warnings.** Alternatively, Defendant may provide
2 warning signs in the form below to its customers in California with instructions to post the
3 warnings in close proximity to the point of display of the Products. Such instruction sent to
4 Defendant's customers shall be sent by certified mail, return receipt requested.

5 **WARNING:** This product contains one or more chemicals,
6 including DEHP, a phthalate chemical, known
7 to the State of California to cause cancer, birth
8 defects and other reproductive harm.

9 Where more than one Product is sold in proximity to other like items or to those that do not
10 require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement
11 must be used:¹

12 **WARNING:** The following products contain one or more
13 chemicals, including DEHP, a phthalate
14 chemical, known to the State of California to
15 cause cancer, birth defects and other
16 reproductive harm:

17 [*list products for which warning is required*]

18 (b) **Mail Order Catalog and Internet Sales.** In the event that Lippert sells
19 Products via mail order catalog and/or the internet, to customers located in California, after the
20 Effective Date, that are not Reformulated Products, Lippert shall provide warnings for such
21 Products sold via mail order catalog or the internet to California residents. Warnings given in the
22 mail order catalog or on the internet shall identify the *specific* Product to which the warning applies
23 as further specified in Sections 2.3(b)(i) and (ii).

24 (i) **Mail Order Catalog Warning.** Any warning provided in a mail
25 order catalog shall be in the same type size or larger than the Product description text within the
26 catalog. The following warning shall be provided on the same page and in the same location as the
27 display and/or description of the Product:
28

¹For purposes of the Consent Judgment, "sold in proximity" shall mean that the Product and another 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.

1 **WARNING:** This product contains one or more chemicals,
2 including DEHP, a phthalate chemical, known
3 to the State of California to cause cancer, birth
 defects and other reproductive harm.

4 Where it is impracticable to provide the warning on the same page and in the same location
5 as the display and/or description of the Product, Lippert may utilize a designated symbol to cross
6 reference the applicable warning and shall define the term “designated symbol” with the following
7 language on the inside of the front cover of the catalog or on the same page as any order form for
8 the Product(s):

9 **WARNING:** Certain products identified with this symbol
10 ▼ and offered for sale in this catalog contain
11 one or more chemicals, including DEHP, a
12 phthalate chemical, known to the State of
 California to cause cancer, birth defects and
 other reproductive harm.

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

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

25 **WARNING:** This product contains one or more chemicals,
26 including DEHP, a phthalate chemical, known
27 to the State of California to cause cancer, birth
 defects and other reproductive harm.

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

4 **WARNING:** Products identified on this page with the
5 following symbol ▼ contain one or more
6 chemicals, including DEHP, a phthalate
7 chemical, known to the State of California to
 cause cancer, birth defects and other
 reproductive harm.

8 **3. MONETARY PAYMENTS**

9 **3.1 Civil Penalty Payments**

10 In settlement of all the claims referred to in this Consent Judgment, Lippert shall pay a total
11 of \$3,000 in civil penalties in accordance with this Section. Each penalty payment will be allocated
12 in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds
13 remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the
14 remaining 25% of the penalty remitted to Held.

15 Within thirty days of the mutual execution of this Consent Judgment, Lippert shall issue a
16 check for its civil penalty payment in the amount of \$3,000 to “Yoka & Smith, LLP Client Trust
17 Account”. Yoka & Smith, LLP shall provide The Chanler Group with written confirmation within
18 five days of receipt that the funds have been deposited in a trust account. Within two business days
19 of the date that Lippert receives written notice that this Consent Judgment is approved by the Court,
20 Lippert’s counsel shall deliver payment to Held’s counsel, made payable to “Dr. Anthony E. Held,
21 Client Trust Account” in the amount of \$750 and “The Chanler Group In Trust for OEHHA” in the
22 amount of \$2,250. All penalty payments shall be delivered to the addresses listed in Section 3.3,
23 below. Lippert has provided certification that it now will only manufacture for sale and/or purchase
24 for sale in the State of California Products that qualify as Reformulated Products.

25 **3.2 Reimbursement of Fees and Costs**

26 The parties acknowledge that Held and his counsel offered to resolve this dispute without
27 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
28 issue to be resolved after the material terms of the agreement had been settled. Held then expressed

1 a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized.
2 The parties then attempted to (and did) reach an accord on the compensation due to Held and his
3 counsel under general contract principles and the private attorney general doctrine codified at
4 California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution
5 of this agreement. Lippert shall, within thirty days of the mutual execution of this Consent
6 Judgment by the Parties, issue a check payable to “Yoka & Smith, LLP Client Trust Account” in the
7 amount of \$26,000 to be held in trust by Yoka & Smith, LLP for The Chanler Group for fees and
8 costs incurred as a result of investigating, bringing this matter to Lippert’s attention, and negotiating
9 a settlement in the public interest. This figure includes Held’s future costs and attorney’s fees to be
10 incurred in seeking judicial approval of this Consent Judgment. Yoka & Smith, LLP shall provide
11 The Chanler Group with written confirmation within five days of receipt that the funds have been
12 deposited in a trust account. Within two business days of the date that Lippert receives written
13 notice that this Consent Judgment is approved by the Court, Lippert’s counsel shall deliver payment
14 to Held’s counsel for Held’s counsel’s fees and costs and the check shall be issued to “The Chanler
15 Group” to the address listed in Section 3.3.1(a), below.

16 **3.3 Payment Procedures**

17 **3.3.1. Issuance of Payments.** Payments shall be delivered as follows:

- 18 (a) All payments owed to Held and his counsel, pursuant to Sections 3.1
19 through 3.2, shall be delivered to the following payment address:

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

25 **3.3.2. W-9 Forms.** Within fifteen days of the mutual execution of this Consent
26 Judgment by the Parties, Plaintiff’s counsel will provide Lippert’s counsel with W-9 forms for
27 OEHHA, Dr. Anthony E. Held and The Chanler Group. Lippert’s counsel will not be required to
28 issue any payment identified in sections 3.1 – 3.2 above if Plaintiff’s counsel does not provide
Lippert’s counsel with W-9s for OEHHA, Dr. Anthony E. Held and The Chanler Group.

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Held’s Public Release of Proposition 65 Claims**

3 Held, acting on his own behalf and in the public interest pursuant to Health & Safety Code §
4 25249.7(d), and his past and current agents, representatives, attorneys, successors, and/or assignees
5 hereby releases Lippert, Drew and Seating Tech and their parents, subsidiaries, affiliated entities
6 under common ownership, directors, officers, employees, and attorneys (“Releasees”) and each
7 entity to whom they directly or indirectly distribute or sell the Products including, but not limited to,
8 their downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members,
9 licensors and licensees (“Downstream Releasees”) for any violations arising under Proposition 65
10 for unwarned exposures to DEHP from the Products sold by Lippert prior to the Effective Date, as
11 set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance
12 with Proposition 65 with respect to exposures to DEHP from the Products. In addition, Held, acting
13 on his own behalf and in the public interest pursuant to Health & Safety Code § 25249.7(d), and his
14 past and current agents, representatives, attorneys, successors, and/or assignees hereby waives all
15 rights to institute or participate in directly or indirectly, any form of legal action against Defendants,
16 Releasees, and Downstream Releasees for any violations arising under Proposition 65 for unwarned
17 exposures to DEHP from the Products sold by Lippert prior to the Effective Date, as set forth in the
18 Notice.

19 **4.2 Held’s Individual Release of Claims**

20 Held, in his individual capacity only and *not* in his representative capacity, and his past and
21 current agents, representatives, attorneys, successors, and/or assignees also provides a release to
22 Defendants, Releasees, and Downstream Releasees which shall be effective as a full and final
23 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
24 attorneys’ fees, damages, losses, claims, liabilities and demands of Held of any nature, character or
25 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
26 exposures to DEHP in the Products sold or distributed for sale by Defendants before the Effective
27 Date.

1 **4.3 Lippert’s Release of Held**

2 Lippert on behalf of itself, its past and current agents, representatives, attorneys, successors
3 and/or assignees, hereby waives any and all claims against Held, his attorneys and other
4 representatives, for any and all actions taken or statements made (or those that could have been
5 taken or made) by Held and his attorneys and other representatives, whether in the course of
6 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
7 respect to the Products.

8 **5. COURT APPROVAL**

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

12 **6. SEVERABILITY**

13 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
14 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions
15 remaining shall not be adversely affected.

16 **7. GOVERNING LAW**

17 The terms of this Consent Judgment shall be governed by the laws of the State of California
18 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or
19 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
20 Consent Judgment are rendered inapplicable or no longer required as a result of any such repeal or
21 preemption or rendered inapplicable by reason of law generally as to the Products, then Lippert
22 shall have no further obligations pursuant to this Consent Judgment with respect to, and to the
23 extent that, the Products are so affected.

24 **8. NOTICES**

25 Unless specified herein, all correspondence and notices required to be provided pursuant to
26 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
27 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the
28 other party at the following addresses:

1 To Lippert Components, Inc:

2 Shawn Lewis, General Counsel
3 Lippert Components, Inc.
4 3501 County Road 6 East
5 Elkhart, IN 46514

To Anthony E. Held, Ph.D., P.E.:

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

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

8 **9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

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

12 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

15 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

16 Held and Lippert agree to mutually employ their best efforts to support the entry of this
17 agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a
18 timely manner. The parties acknowledge that, pursuant to California Health & Safety Code
19 § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which
20 Held shall draft and file, and Lippert shall join. If any third party objection to the noticed motion is
21 filed, Held and Lippert shall work together to file a joint reply and appear at any hearing before the
22 Court. This provision is a material component of the Consent Judgment and shall be treated as such
23 in the event of a breach.

24 **12. MODIFICATION**

25 This Consent Judgment may be modified only: (1) by written agreement of the parties and
26 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
27 of any party and entry of a modified Consent Judgment by the Court.
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1 **13. AUTHORIZATION**

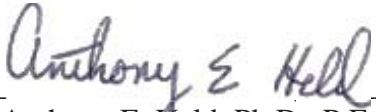
2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective parties and have read, understood and agree to all of the terms and conditions of this
4 Consent Judgment.

5
6 AGREED TO:

AGREED TO:

7
8 Date: March 27, 2015

Date: _____

9
10 By: 
Anthony E. Held, Ph.D., P.E.

By: _____
Shawn Lewis, General Counsel
Lippert Components, Inc.

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13. 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: 3-31-15

By: _____
Anthony E. Held, Ph.D., P.E.

By: 
Shawn Lewis, General Counsel
Lippert Components, Inc.