

1 Clifford A. Chanler, State Bar No. 135534
THE CHANLER GROUP
2 2560 Ninth Street
Parker Plaza, Suite 214
3 Berkeley, CA 94710-2565
Telephone: (510) 848-8880
4 clifford@chanler.com

5 Laralei S. Paras, State Bar No. 203319
LAW OFFICE OF LARALEI PARAS
6 832 Autumn Lane, Suite B
Mill Valley, CA 94941
7 Telephone: (415) 279-2212
laralei@paras-law.com

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

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO
13 UNLIMITED CIVIL JURISDICTION
14

15
16 ANTHONY E. HELD, PH.D., P.E.,

17 Plaintiff,

18 v.
19

20 FORNEY INDUSTRIES, INC.; GATEWAY
SAFETY, INC., *et al.*,

21 Defendants.
22

Case No. CGC-18-566069

**CONSENT JUDGMENT AS TO
DEFENDANT GATEWAY SAFETY,
INC.**

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D., P.E.
4 (“Held”), and Gateway Safety, Inc. (“Gateway”), with Held and Gateway each individually referred
5 to as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Held alleges that Gateway purchases, imports, sells, or distributes for sale in California, safety
16 products with vinyl/PVC components that contain di(2-ethylhexyl)phthalate (“DEHP”) without first
17 providing the exposure warning required by Proposition 65.

18 **1.5 Listed Chemicals**

19 DEHP, a phthalate chemical used to plasticize PVC, is listed pursuant to Proposition 65 as a
20 chemical known to the State of California to cause birth defects or other reproductive harm. 27 CCR
21 § 27001(c). Other phthalate plasticizers listed pursuant to Proposition 65 as chemicals known to the
22 State of California to cause birth defects or other reproductive harm are butyl benzyl phthalate
23 (“BBP”), di-n-butyl phthalate (“DBP”), Di-isodecyl phthalate (“DIDP”), and Di-n-hexyl Phthalate
24 (“DnHP”). *Id.* In addition, DEHP and Diisononyl phthalate (“DINP”) have been listed under
25 Proposition 65 as chemicals known to the State of California to cause cancer. 27 CCR § 27001(b).
26 DEHP, BBP, DBP, DIDP, DINP, and DnHP are collectively referred to herein as the “Listed
27 Chemicals.”

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1 **1.6 Product Description**

2 The products covered by this Consent Judgment are safety products with vinyl/PVC
3 components containing DEHP, including, but not limited to, the *Squared StarLite Safety Glasses*,
4 #4483, UPC #6 62302 44003 0 that are manufactured, imported, or purchased for sale in California
5 by Gateway (“Safety Products”). For purposes of this Consent Judgment, Gateway’s Safety Products
6 include the following three subcategories: Safety Eye Protection Products; Safety Head & Face
7 Protection Products; and Safety Hearing Protection Products.

8 **1.7 Notices of Violation**

9 On October 24, 2017, Held served Forney Industries, Inc. (“Forney”), and the requisite public
10 enforcement agencies with a 60-Day Notice of Violation (“Forney Notice”) alleging that Forney
11 violated Proposition 65 by failing to warn its customers and consumers in California of the health
12 hazards associated with exposures to DEHP from safety glasses, including the Forney Starlite
13 Squared Safety Glasses provided to Forney by Gateway. No public enforcer has commenced and is
14 diligently prosecuting an action to enforce the violations alleged in the Forney Notice.

15 On December 13, 2017, Held served Gateway, and the requisite public enforcement agencies
16 with a 60-Day Notice of Violation (“Gateway Notice”) alleging that Gateway violated Proposition 65
17 by failing to warn its customers and consumers in California of the health hazards associated with
18 exposures to DEHP from safety glasses. No public enforcer has commenced and is diligently
19 prosecuting an action to enforce the violations alleged in the Notice.

20 On October 24, 2018, Held served Gateway, and the requisite public enforcement agencies
21 with an Amended 60-Day Notice of Violation (“Amended Gateway Notice”) alleging that Gateway
22 violated Proposition 65 by failing to warn its customers and consumers in California of the health
23 hazards associated with exposures to DEHP from the Safety Products.

24 The Forney Notice, the Gateway Notice, and the Amended Gateway Notice are collectively
25 referred to herein as the “Notices.” No public enforcer has commenced and is diligently prosecuting
26 an action to enforce the violations alleged in the Notices.

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1 **1.8 Complaint**

2 On or about April 25, 2018, Held filed a complaint in the instant action, naming Forney as a
3 defendant for the alleged violations of Health and Safety Code § 25249.6 that are the subject of the
4 Forney Notice. On or about October 3, 2018, Held filed a First Amended Complaint in the instant
5 action (“Complaint”), naming Gateway as a defendant for the alleged violations of Health and Safety
6 Code § 25249.6 that are the subject of the Notices. Upon the Court’s entry of this Consent Judgment
7 as a judgment, the Parties stipulate and agree that the Complaint shall be deemed amended *nunc pro*
8 *tunc* to include all Products and all claims and allegations that are the subject of the Notices.

9 **1.9 No Admission**

10 Gateway denies the material, factual, and legal allegations contained in the Notices and
11 Complaint, and maintains that all of the products it has sold and distributed for sale in California,
12 including the Safety Products, have been, and are, in compliance with all laws. Nothing in this
13 Consent Judgment shall be construed as, nor shall compliance with this Consent Judgment constitute
14 or be construed as, an admission of any fact, finding, conclusion of law, issue of law, or violation of
15 law. This Section shall not, however, diminish or otherwise affect Gateway’s obligations,
16 responsibilities, and duties under this Consent Judgment.

17 **1.10 Jurisdiction**

18 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
19 jurisdiction over Gateway as to the allegations in the Complaint, that venue is proper in the County of
20 San Francisco, and that the Court has jurisdiction to enter and enforce the provisions of this Consent
21 Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

22 **1.11 Effective Date**

23 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
24 the Court approves this Consent Judgment.

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1 **2. INJUNCTIVE RELIEF: PRODUCT REFORMULATION AND WARNINGS**

2 **2.1 Commitment to Reformulate or Warn**

3 Commencing on the Effective Date and continuing thereafter, Gateway agrees to only
4 manufacture, import, or purchase for sale in California, Safety Products that are either
5 (a) Reformulated Products as defined by Section 2.2, below, or (b) Safety Products that bear a clear
6 and reasonable health hazard warning pursuant to Section 2.3 below.

7 **2.2 Reformulation Standard**


8 For the purposes of this Consent Judgment, “Reformulated Products” are defined as Safety
9 Products that contain Listed Chemicals in concentrations that do not exceed 3,000 parts per million
10 (0.3%). For purposes of compliance with this reformulation standard, testing samples shall be
11 prepared and extracted using Consumer Product Safety Commission (CPSC) methodology CPSC-
12 CH-C1001.09.3 or U.S. Environmental Protection Agency (“EPA”) testing methodologies 3580A
13 and analyzed using EPA methodology 8270D, or other methodologies utilized by federal or state
14 government agencies to determine phthalate content in a solid substance.

15 **2.3 Clear and Reasonable Warnings**

16 For any Safety Products that are not Reformulated Products, Gateway agrees to only
17 manufacture, import, or purchase for sale in California such Safety Products with a clear and
18 reasonable warning as set forth in this Section in accordance with California Code of Regulations,
19 title 27, sections 25602 and 25603. Gateway further agrees that any warning used will be
20 prominently placed in relation to the Safety Products with such conspicuousness when compared with
21 other words, statements, designs, or devices as to render it likely to be read and understood by an
22 ordinary individual under customary conditions of purchase or use. The entire warning shall appear
23 in a type size of at least 6-point type and no smaller than the largest type size used for other consumer
24 information on the product. For purposes of this Consent Judgment, a warning satisfying the above
25 criteria that is affixed directly to a Safety Product or its accompanying labeling or packaging
26 containing the following statement shall be deemed clear and reasonable:

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1  **WARNING:** This product can expose you to chemicals including Diisononyl
2 phthalate (DINP), which is known to the State of California to cause
3 cancer, and di(2-ethylhexyl)phthalate (DEHP), which is known to the
4 State of California to cause birth defects or other reproductive harm.
 For more information go to www.P65Warnings.ca.gov.

5 **2.3.1 Foreign Language Requirement.** Where a consumer product sign, label or
6 shelf tag used to provide a warning includes consumer information in a language other than English,
7 the warning must also be provided in that language in addition to English.

8 **2.3.2 Mail Order Catalog Warnings.** If, after the Effective Date, Gateway prints
9 new catalogs and sells Safety Products via mail order through such catalogs to consumers located in
10 California, Gateway shall also provide the above referenced warning for each Safety Product in the
11 catalog in a manner that clearly associates the warning with the specific Product being purchased.
12 Any warning provided in a mail order catalog shall be in the same type size or larger than other
13 consumer information provided for the Safety Product within the catalog and shall be provided on the
14 same page and in the same location as the display and/or description of the Safety Product.

15 **2.3.3 Internet Warnings.** If, after the Effective Date, Gateway sells Safety
16 Products via the internet to consumers located in California, Gateway shall also provide the above-
17 referenced warnings for each Safety Product by prominently displaying the warning to the consumer
18 prior to completing the purchase or during the purchase of the Safety Products without requiring
19 consumers to seek out the warning. The warning or a clearly marked hyperlink to the warning using
20 the word “**WARNING**” given in conjunction with the sale of the Safety Products via the internet
21 shall appear either: (a) on the same web page on which the Safety Product is displayed; (b) on the
22 same web page as the order form for the Safety Product; or (c) on one or more web pages displayed
23 to a purchaser during the checkout process. The warning shall appear in any of the above instances
24 adjacent to or immediately following the display or description of the Safety Product for which it is
25 given in the same type size or larger than the Safety Product description text.

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1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Civil Penalty Payments**

3 Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all the claims referred
4 to in the Notices, Complaint, and this Consent Judgment, Gateway shall pay \$115,000 in civil
5 penalties. Each civil penalty payment shall be allocated according to Health and Safety Code
6 § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office
7 of Environmental Health Hazard Assessment (“OEHHA”), and the remaining twenty-five percent
8 (25%) of the penalty retained by Held. Held’s counsel shall send OEHHA’s portion of the penalties
9 paid by Gateway to OEHHA.

10 **3.1.1 Initial Civil Penalty Payment.** Gateway shall pay an initial civil penalty of
11 \$15,000. Pursuant to Section 3.3, Gateway’s counsel shall provide Gateway’s initial civil penalty
12 payment in a check made payable to “Anthony E. Held, Client Trust Account” in the amount of
13 \$3,750 and a check made payable to “OEHHA” in the amount of \$11,250 to be delivered to the
14 address provided in Section 3.4.

15 **3.1.2 Second Waivable Civil Penalty Payment.** Gateway shall pay a second civil
16 penalty of \$30,000. However, the second civil penalty shall be waived in its entirety, if, on or before
17 July 30, 2019, an officer of Gateway certifies that as of July 30, 2019, and continuing thereafter, all
18 Safety Eye Protection Products manufactured, imported, or purchased for sale by Gateway are
19 Reformulated Products as defined by Section 2.2. The option to certify to product reformulation in
20 lieu of making the second civil penalty payment required by this Section is a material term, and time
21 is of the essence. Unless waived, on or before July 30, 2019, Gateway shall provide its second civil
22 penalty payment in a check made payable to “Anthony E. Held, Client Trust Account” in the amount
23 of \$7,500 and a check made payable to “OEHHA” in the amount of \$22,500 to be delivered to the
24 address provided in Section 3.4.

25 **3.1.3 Third Waivable Civil Penalty Payment.** Gateway shall pay a third civil
26 penalty of \$40,000. However, the third civil penalty shall be waived in its entirety, if, on or before
27 July 30, 2019, an officer of Gateway certifies that as of July 30, 2019, and continuing thereafter, all
28 Safety Products, manufactured, imported, or purchased for sale by Gateway are Reformulated

1 Products as defined by Section 2.2. The option to certify to product reformulation in lieu of making
2 the civil penalty payment required by this Section is a material term, and time is of the essence.
3 Unless waived, on or before July 30, 2019, Gateway shall provide its third civil penalty payment in a
4 check made payable to “Anthony E. Held, Client Trust Account” in the amount of \$10,000, and a
5 check made payable to “OEHHA” in the amount of \$30,000 to be delivered to the address provided
6 in Section 3.4, below.

7 **3.1.4 Final Waivable Civil Penalty Payment.** Gateway shall pay a final civil
8 penalty of \$30,000. However, the final civil penalty shall be waived in its entirety, if, on or before
9 the December 31, 2019, an officer of Gateway certifies that as of December 31, 2019, and continuing
10 thereafter, all Safety Products, manufactured, imported, or purchased for sale by Gateway contain
11 Listed Chemicals in concentrations that do not exceed 1,000 parts per million (0.1%). The option to
12 certify to the 1,000 parts per million product reformulation standard in lieu of making the civil
13 penalty payment required by this Section is a material term, and time is of the essence. Unless
14 waived, on or before December 31, 2019, Gateway shall provide its initial civil penalty payment in a
15 check made payable to “Anthony E. Held, Client Trust Account” in the amount of \$7,500 and a
16 check made payable to “OEHHA” in the amount of \$22,500 to be delivered to the address provided
17 in Section 3.4.

18 **3.2 Reimbursement of Attorney’s Fees and Costs**

19 The parties acknowledge that Held and his counsel offered to resolve this dispute without
20 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
21 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
22 other settlement terms had been finalized, the Parties negotiated the compensation due to Held and
23 his counsel under general contract principles and the private attorney general doctrine codified at
24 California Code of Civil Procedure § 1021.5 for all work performed through the mutual execution of
25 this Consent Judgment, and court approval of the same, but exclusive of fees and costs on appeal, if
26 any. Under these legal principles, Gateway shall pay \$34,000 for all fees and costs incurred by Held
27 investigating, bringing this matter to Gateway’s attention, litigating and negotiating a settlement in
28 the public interest in a check payable to “The Chanler Group”.

1 **3.3 Payment Timing; Payments Held in Trust**

2 Exclusive of the waivable civil penalties in Sections 3.1.2, 3.1.3, and 3.1.4, all payments due
3 under this Consent Judgment shall be held in trust until such time as the Court approves the Parties’
4 settlement. Within ten (10) days of the date that this Consent Judgment is fully executed by the
5 Parties, all payments due under this agreement shall be delivered to Gateway’s counsel and held in
6 trust until the Effective Date. Gateway’s counsel shall provide Held’s counsel with written
7 confirmation upon its receipt of the settlement payments. Within five days of the Effective Date,
8 Gateway’s counsel shall deliver the initial civil penalty and attorneys’ fee reimbursement payments
9 to Held’s counsel.

10 **3.4 Payment Address**

11 All payments required by this Consent Judgment shall be delivered to:

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

15 **4. CLAIMS COVERED AND RELEASED**

16 **4.1 Held’s Public Release of Proposition 65 Claims**

17 Held, acting on his own behalf and in the public interest, releases Gateway and its parents,
18 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
19 attorneys (“Releasees”), and each entity to whom Releasees directly or indirectly distributes or sells
20 the Safety Products including, without limitation, its downstream customers including Forney
21 Industries, Inc., distributors, wholesalers, and retailers (“Downstream Releasees”) for any violation
22 arising under Proposition 65 pertaining to the failure to warn about exposures to DEHP from Safety
23 Products manufactured, purchased, sold or distributed for sale by Gateway prior to the Effective
24 Date and subsequently distributed or sold by Gateway or its Releasees or Downstream Releases, as
25 set forth in the Notices. Compliance with the terms of this Consent Judgment constitutes
26 compliance with Proposition 65 with respect to exposures to DEHP from Safety Products sold or
27 distributed for sale by Gateway and Releasees after the Effective Date.

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

2 Held, in his individual capacity only and *not* in any representative capacity, also provides a
3 release to Gateway, Releasees, and Downstream Releasees, which shall be effective as a full and
4 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
5 attorneys’ fees, damages, losses, claims, liabilities and demands of Held of any nature, character or
6 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
7 exposures to Listed Chemicals in Safety Products manufactured, purchased, sold or distributed for
8 sale by Gateway before the Effective Date.

9 **4.3 Gateway’s Release of Held**

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

15 **5. COURT APPROVAL**

16 This Consent Judgment is not effective until it is approved and entered by the Court and shall
17 be null and void if it is not approved and entered by the Court within one year after it has been fully
18 executed by the Parties, or by such additional time as the Parties may agree in writing.

19 **6. SEVERABILITY**

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

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1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the state of California
3 and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise
4 rendered inapplicable by reason of law generally or as to the Safety Products, then Gateway may
5 provide written notice to Held of any asserted change in the law, and shall have no further injunctive
6 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Safety
7 Products are so affected.

8 **8. NOTICE**

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

12 For Gateway:

For Held:

13 Michael Love, President
14 Gateway Safety, Inc.
15 11111 Memphis Avenue
 Cleveland, OH 44144

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

16 with a copy to:

17 Whitney Jones Roy, Esq.
18 Sheppard, Mullin, Richter & Hampton LLP
 333 South Hope Street, Forty-Third Floor
 Los Angeles, CA 90071

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

21 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

22 This Consent Judgment may be executed in counterparts and by facsimile signature, each of
23 which shall be deemed an original, and all of which, when taken together, shall constitute one and the
24 same document.

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1 **10. POST EXECUTION ACTIVITIES**

2 Held agrees to comply with the reporting form requirements referenced in Health and Safety
3 Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
4 § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which motion
5 Held shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually
6 employ their best efforts, and those of their counsel, to support the entry of this agreement as
7 judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of this
8 Section, “best efforts” shall include, at a minimum, supporting the motion for approval, responding to
9 any objection that any third-party may file or lodge, and appearing at the hearing before the Court if
10 so requested.

11 **11. MODIFICATION**

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

15 **12. AUTHORIZATION**

16 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
17 have read, understand, and agree to all of the terms and conditions contained herein.
18

19 **AGREED TO:**

AGREED TO:

20 Date: 4/18/2019

Date: _____

21
22 By:  _____

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

By: _____

Michael Love, President
GATEWAY SAFETY, INC.

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17 have read, understand, and agree to all of the terms and conditions contained herein.
18

19 **AGREED TO:**

20 Date: _____

21
22 By: _____
23 ANTHONY E. HELD, PH.D., P.E.

AGREED TO:

24 Date: 4/12/19

25 By: [Signature]
26 Michael Love, President
27 GATEWAY SAFETY, INC.
28