

1 Christopher M. Martin, State Bar No. 186021
2 THE CHANLER GROUP
3 2560 Ninth Street
4 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
Telephone: (510) 848-8880
Facsimile: (510) 848-8118

5 Attorneys for Plaintiff
6 JOHN MOORE

ENDORSED
FILED
ALAMEDA COUNTY

SEP 20 2011

CLERK OF THE SUPERIOR COURT
By MCN MATEO Deputy

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION

11 JOHN MOORE,

12 Plaintiff,

13 v.

14
15 TORIN JACKS, INC.; and DOES 1-150,
16 inclusive,

17 Defendants.

Case No. RG11597933

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

(Cal. Health & Safety Code. § 25249.6 *et seq.*)

18
19
20
21
22
23
24
25
26
27
28
BY FAX

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5

6
7
8
9

10
11

12
13
14
15
16

17
18
19
20
21

22
23
24
25

26
27
28

1 harm in conjunction with Defendants' distribution, importation, manufacturing, and/or sale of
2 the PRODUCTS is a violation of Proposition 65 and subjects Defendants to enjoinder of such
3 conduct as well as civil penalties for each such violation.

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

8 9. Plaintiff also seeks civil penalties against defendants for their violations of
9 Proposition 65, as provided by California Health & Safety Code § 25249.7(b).

10 PARTIES

11 10. Plaintiff, JOHN MOORE, is a citizen of the State of California who is dedicated
12 to protecting the health of California citizens through the elimination or reduction of toxic
13 exposures from consumer products; he brings this action in the public interest pursuant to
14 California Health & Safety Code § 25249.7(d).

15 11. Defendant TORIN JACKS, INC. ("TORIN JACKS") is a person in the course of
16 doing business within the meaning of California Health & Safety Code § 25249.11.

17 12. Defendant TORIN JACKS manufactures, distributes, and/or offers the
18 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
19 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of
20 California.

21 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
22 persons in the course of doing business within the meaning of California Health & Safety Code
23 § 25249.11.

24 14. MANUFACTURER DEFENDANTS engage in the process of researching,
25 testing, designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that
26 they engage in the process of researching, testing, designing, assembling, fabricating, and/or
27 manufacturing, one or more of the PRODUCTS offered for sale or use in the State of California.

28 15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons

1 in the course of doing business within the meaning of California Health & Safety Code §
2 25249.11.

3 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
4 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
5 in the State of California.

6 17. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each persons in
7 the course of doing business within the meaning of California Health & Safety Code §
8 25249.11.

9 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
10 State of California.

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

16 20. TORIN JACKS, MANUFACTURER DEFENDANTS, DISTRIBUTOR
17 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
18 referred to as "DEFENDANTS."

19 **VENUE AND JURISDICTION**

20 21. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
21 Procedure §§ 394, 395, & 395.5, because this Court is a court of competent jurisdiction, because
22 one or more instances of wrongful conduct occurred, and continue to occur, in the County of
23 Alameda, and/or because DEFENDANTS conducted, and continue to conduct, business in this
24 County with respect to the PRODUCTS.

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

23. The California Superior Court has jurisdiction over DEFENDANTS based on plaintiff's information and good faith belief that each defendant is a person, firm, corporation, or association that is a citizen of the State of California, has sufficient minimum contacts in the State of California, 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)

24. Plaintiff realleges and incorporates by reference, as if fully set forth herein, Paragraphs 1 through 23, inclusive.

25. The citizens of the State of California have expressly stated in the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.* that they must be informed “about exposures to chemicals that cause cancer, birth defects and other reproductive harm.” (Cal. Health & Safety Code, § 25249.6.)

26. 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 toxicity without first giving clear and reasonable warning to such individual....” (*Ibid.*)

27. On or about June 29, 2011, a sixty-day notice of violation, together with the requisite certificate of merit, was provided to TORIN JACKS and various public enforcement agencies stating that, as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers and users in the State of California were being exposed to DEHP resulting from the reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first having been provided with a "clear and reasonable warning" regarding such toxic exposures.

28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6, and DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 has continued to occur beyond

1 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and
2 believes that such violations will continue to occur into the future.

3 29. After receipt of the claims asserted in the sixty-day notice of violation, the
4 appropriate public enforcement agencies have failed to commence and diligently prosecute a
5 cause of action against DEFENDANTS under Proposition 65.

6 30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
7 California by DEFENDANTS contained DEHP in an amount above the allowable state limits.

8 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
9 distributed, and/or offered for sale or use in California contained DEHP.

10 32. DEHP was present in or on the PRODUCTS in such a way as to expose
11 individuals to DEHP through dermal contact and/or ingestion during the reasonably foreseeable
12 use of the PRODUCTS.

13 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
14 continues to cause, consumer exposures to DEHP, as such exposure is defined by Title 27 CCR
15 § 25602(b).

16 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
17 the PRODUCTS would expose individuals to DEHP through dermal contact and/or ingestion.

18 35. DEFENDANTS intended that such exposures to DEHP from the reasonably
19 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
20 in the manufacture, distribution, and/or offering of the PRODUCTS for sale or use to
21 individuals in the State of California.

22 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those
23 consumers and/or other individuals in the State of California who were, or who could become
24 exposed to DEHP through dermal contact and/or ingestion during the reasonably foreseeable
25 use of the PRODUCTS.

26 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
27 directly by California voters, individuals exposed to DEHP through dermal contact and/or
28 ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold by

1 DEFENDANTS without a "clear and reasonable warning," have suffered, and continue to
2 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

3 38. As a consequence of the above-described acts, DEFENDANTS are liable for a
4 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &
5 Safety Code § 25249.7(b).

6 39. As a consequence of the above-described acts, California Health & Safety Code
7 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
8 DEFENDANTS.

9 **PRAYER FOR RELIEF**

10 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

11 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess
12 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation
13 alleged herein;

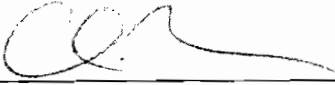
14 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
15 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, and/or
16 offering the PRODUCTS for sale or use in California, without providing "clear and reasonable
17 warnings" as defined by 27 CCR § 25601, as to the harms associated with exposure to DEHP;

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

19 4. That the Court grant such other and further relief as may be just and proper.

20 Dated: September 30, 2011

21 Respectfully Submitted,
22 THE CHANLER GROUP

23 By: 
24 Christopher M. Martin
25 Attorneys for Plaintiff
26 JOHN MOORE
27
28