

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

7 Attorneys for Plaintiff  
8 JOHN MOORE

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF ALAMEDA  
11 UNLIMITED CIVIL JURISDICTION

12 JOHN MOORE,

13 Plaintiff,

14 v.

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

17 Defendants.

Case No. RG11597933

**[PROPOSED] CONSENT JUDGMENT AS  
TO DEFENDANT TORIN JACKS, INC.**

1 **1. INTRODUCTION**

2 **1.1 John Moore and Torin Jacks, Inc.**

3 This Consent Judgment is entered into by and between plaintiff John Moore, (hereinafter  
4 “Moore” or “Plaintiff”), who brought this suit in the public interest, and defendant Torin Jacks,  
5 Inc. (hereinafter “Torin Jacks” or “Defendant”), with Plaintiff and Defendant collectively  
6 referred to as the “Parties” and each individually referred to as a “Party.”

7 **1.2 Plaintiff**

8 Moore is an individual residing in California who brought this suit in the public interest  
9 to promote awareness of exposure to toxic chemicals and improve human health by reducing or  
10 eliminating hazardous substances in consumer products.

11 **1.3 Defendant**

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

15 **1.4 General Allegations**

16 Moore alleges that Torin Jacks manufactured, imported, distributed, sold and/or offered  
17 for sale in the state of California stools that expose users to di(2-ethylhexyl)phthalate  
18 (hereinafter “DEHP”) without first providing “clear and reasonable warnings” under  
19 Proposition 65. DEHP is listed pursuant to Proposition 65 as known to the state of California to  
20 cause birth defects and other reproductive harm. As provided in Section 1.8 below, Torin Jacks  
21 denies that its products contains any levels of DEHP that are in any way harmful, cause birth  
22 defects and other reproductive harm.

23 **1.5 Product Description**

24 The products that are covered by this Consent Judgment are defined as follows: stools  
25 containing DEHP including, but not limited to, the *Torin Big Red Jacks Pneumatic Creeper*  
26 *Seat, TR6351 (#6 15268 36351 6)*, manufactured, imported, distributed, sold and/or offered for  
27 sale in California by Torin Jacks, hereinafter referred to as the “Products.”

1           **1.6 Notice of Violation**

2           On June 29, 2011, Moore served Torin Jacks and various public enforcement agencies  
3 with a document entitled “60-Day Notice of Violation” (hereinafter “Notice”) that provided the  
4 recipients with notice of alleged violations of Proposition 65 for failing to warn consumers that  
5 the Products exposed users in California to DEHP. To the best of the Parties’ knowledge, no  
6 public enforcer has commenced and is diligently prosecuting the allegations set forth in the  
7 Notice.

8           **1.7 Complaint**

9           On September 30, 2011, Moore, who was and is acting in the interest of the general  
10 public of California, filed a complaint (hereinafter “Complaint” or “Action”) in the Superior  
11 Court in and for the County of Alameda against Torin Jacks, Inc. and Does 1 through 150,  
12 alleging violations of California Health & Safety Code §25249.6 based on the alleged exposures  
13 to DEHP contained in the Products.

14           **1.8 No Admission**

15           Torin Jacks denies the material, factual and legal allegations contained in Moore's  
16 Notice and Complaint, and maintains that all Products sold and distributed in California have  
17 been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed  
18 as an admission by Torin Jacks of any fact, finding, issue of law, or violation of law; nor shall  
19 compliance with this Consent Judgment constitute or be construed as an admission by Torin  
20 Jacks of any fact, finding, conclusion, issue of law, or violation of law, such being specifically  
21 denied by Torin Jacks. However, this section shall not diminish or otherwise affect Torin Jacks’  
22 obligations, responsibilities, and duties under this Consent Judgment.

23           **1.9 Consent to Jurisdiction**

24           For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
25 jurisdiction over Torin Jacks as to the allegations contained in the Complaint, that venue is  
26 proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce the  
27 provisions of this Consent Judgment.

1           **1.10 Effective Date**

2           For purposes of this Consent Judgment, the term “Effective Date” shall mean March 31,  
3 2012.

4           **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

5           After the Effective Date, Torin Jacks shall comply with this Consent Judgment by only  
6 manufacturing, importing, distributing, selling and/or offering for sale in California: (1) Products  
7 that comply with the agreed upon warning requirements provided in Section 2.1 below; or, (2)  
8 Products that are “Reformulated Products” as provided in Section 2.2 below if Torin Jacks does  
9 not comply with the agreed upon warning requirements set forth in Section 2.1.

10           **2.1 Warnings Commitment**

11           Commencing on the Effective Date, Torin Jacks shall, for all Products other than  
12 Reformulated Products as defined in Section 2.2 below, provide clear and reasonable warnings as  
13 set forth in subsections 2.1(a) and (b). Each warning shall be prominently placed with such  
14 conspicuousness as compared with other words, statements, designs, or devices as to render it  
15 likely to be read and understood by an ordinary individual under customary conditions before  
16 purchase or use. Each warning shall be provided in a manner such that the consumer or user  
17 understands to which *specific* Product the warning applies, so as to minimize the risk of consumer  
18 confusion.

19                   (a)   **Retail Store Sales**

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

23  
24                           **WARNING:** This product contains chemicals known to  
25                                   the state of California to cause birth defects  
26                                   and other reproductive harm including  
27                                   DEHP, a phthalate chemical.  
28

1 (b) **Mail Order Catalog and Internet Sales**

2 Torin Jacks does not currently sell Products via mail order catalog. However, in the event  
3 that Torin Jacks begins selling Products via mail order catalog and/or the internet, to customers  
4 located in California, after the Effective Date that are not Reformulated Products, Torin Jacks  
5 shall provide warnings for such Products sold via mail order catalog or the internet to California  
6 residents. Warnings given in the mail order catalog or on the internet shall identify the *specific*  
7 Product to which the warning applies as further specified in Sections 2.2(b)(i) and (ii).

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

12  
13 **WARNING:** This product contains chemicals known to  
14 the state of California to cause birth defects  
15 and other reproductive harm, including  
DEHP, a phthalate chemical.

16 Where it is impracticable to provide the warning on the same page and in the same  
17 location as the display and/or description of the Product, Torin Jacks may utilize a designated  
18 symbol to cross reference the applicable warning and shall define the term “designated symbol”  
19 with the following language on the inside of the front cover of the catalog or on the same page as  
20 any order form for the Product(s):

21  
22 **WARNING:** Certain products identified with this symbol  
23 ▼ and offered for sale in this catalog  
24 contain DEHP, a phthalate chemical known  
to the state of California to cause birth  
defects and other reproductive harm.

1 The designated symbol must appear on the same page and in close proximity to the  
2 display and/or description of the Product. On each page where the designated symbol appears,  
3 Torin Jacks must provide a header or footer directing the consumer to the warning language and  
4 definition of the designated symbol.

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

13  
14 **WARNING:** This product contains chemicals known to  
15 the state of California to cause birth defects  
16 and other reproductive harm, including  
DEHP, a phthalate chemical.

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

20  
21 **WARNING:** Products identified on this page with the  
22 following symbol ▼ contain DEHP, a  
23 chemical known to the state of California to  
cause birth defects and other reproductive  
harm.

## 24 **2.2 Reformulation Standards and Commitment**

25 For purposes of this Consent Judgment, Products that are “Reformulated Products” shall  
26 mean Products containing less than or equal to 1,000 parts per million (0.1%) of DEHP when  
27 analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and  
28

1 8270C or any other methodology utilized by federal and state agencies for the purpose of  
2 determining DEHP content in a solid substance. Reformulated Products shall be deemed to  
3 comply with Proposition 65 as it relates to the presence of DEHP in the Products and shall be  
4 exempt from any Proposition 65 warning requirements regarding exposure to DEHP.

5 **3. MONETARY PAYMENTS**

6 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

7 Torin Jacks shall make a payment of \$2,000 to be apportioned in accordance with Health  
8 & Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked  
9 for the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")  
10 and the remaining 25% of these penalty monies earmarked for Moore.

11 **3.2 Reimbursement of Plaintiff's Fees and Costs**

12 The Parties acknowledge that Moore and his counsel offered to resolve this dispute  
13 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby  
14 leaving this fee issue to be resolved after the material terms of the agreement had been settled.  
15 Torin Jacks then expressed a desire to resolve the fee and cost issue shortly after the other  
16 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on  
17 the compensation due to Moore and his counsel under general contract principles and the private  
18 attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all  
19 work performed in this matter, except fees that may be incurred on appeal. Under these legal  
20 principles, Torin Jacks shall pay the amount of \$24,000 for fees and costs incurred investigating,  
21 litigating and enforcing this matter, including the fees and costs incurred (and yet to be  
22 incurred) negotiating, drafting, and obtaining the Court's approval of this Consent Judgment  
23 in the public interest.

24 **3.3 Payment Procedures**

25 **3.3.1 Funds Held In Trust.** All payments required by Sections 3.1 and 3.2  
26 shall be delivered on or before the Effective Date to either The Chanler Group or the attorney of  
27 record for Torin Jacks and shall be held in trust pending the Court's approval of this Consent  
28

1 Judgment.

2 Payments delivered to The Chanler Group shall be made payable, as follows:

- 3 (a) One check made payable to “The Chanler Group in Trust for
- 4 OEHHA” in the amount of \$1,500;
- 5 (b) One check made payable to “The Chanler Group in Trust for John
- 6 Moore” in the amount of \$500; and
- 7 (c) One check made payable to “The Chanler Group in Trust” in the
- 8 amount of \$24,000.

9 Payments delivered to Best Best & Krieger LLP shall be made payable, as follows:

- 10 (a) One check made payable to “Best Best & Krieger LLP in Trust for
- 11 OEHHA” in the amount of \$1,500;
- 12 (b) One check made payable to “Best Best & Krieger LLP in Trust for
- 13 John Moore” in the amount of \$500; and
- 14 (c) One check made payable to “Best Best & Krieger LLP in Trust for
- 15 The Chanler Group” in the amount of \$24,000.

16 If Torin Jacks elects to deliver payments to its attorney of record, the attorney of record  
17 shall confirm, in writing within five days of deposit, that the funds have been deposited in a trust  
18 account.

19 Within two days of the date of the hearing on which the Court approves the Consent  
20 Judgment, the payments being held in trust by the attorney of record for Torin Jacks shall be  
21 delivered to The Chanler Group in three separate checks payable, as follows:

- 22 (a) One check made payable to “The Chanler Group in Trust for
- 23 OEHHA” in the amount of \$1,500;
- 24 (b) One check made payable to “The Chanler Group in Trust for John
- 25 Moore” in the amount of \$500; and
- 26 (c) One check made payable to “The Chanler Group” in the amount of
- 27 \$24,000.

28



1                   **3.3.2 Issuance of 1099 Forms.** After the Consent Judgment has been approved  
2 and the settlement funds have been transmitted to plaintiff's counsel, Torin Jacks shall issue  
3 three separate 1099 forms, as follows:

4                   (a)     The first 1099 shall be issued to the Office of Environmental  
5                   Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN:  
6                   68-0284486) in the amount of \$1,500;

7                   (b)     The second 1099 shall be issued to Moore in the amount of \$500,  
8                   whose address and tax identification number shall be furnished upon  
9                   request; and

10                  (c)     The third 1099 shall be issued to The Chanler Group (EIN: 94-  
11                  3171522) in the amount of \$24,000.

12                   **3.3.3 Payment Address.** All payments to the Chanler Group shall be delivered  
13 to the following payment address:

14                   The Chanler Group  
15                   Attn: Proposition 65 Controller  
16                   2560 Ninth Street  
17                   Parker Plaza, Suite 214  
18                   Berkeley, CA 94710

17 **4.     CLAIMS COVERED AND RELEASED**

18 **4.1   Plaintiff's Public Release of Proposition 65 Claims**

19                  Moore acting on his own behalf and in the public interest releases Torin Jacks from all  
20 claims for violations of Proposition 65 up through the Effective Date based on exposure to  
21 DEHP from the Products as set forth in the Notice. Compliance with the terms of this Consent  
22 Judgment constitutes compliance with Proposition 65 with respect to exposures to DEHP from  
23 the Products as set forth in the Notice.

24 **4.2   Plaintiff's Individual Release of Claims**

25                  Moore also, in his individual capacity only and not in his representative capacity,  
26 provides a release herein which shall be effective as a full and final accord and satisfaction, as a  
27  
28

1 bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,  
2 claims, liabilities and demands of plaintiff of any nature, character or kind, whether known or  
3 unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to  
4 DEHP in the Products manufactured, imported, distributed, sold and/or offered for sale by Torin  
5 Jacks.

6 **4.3 Defendant's Release of Plaintiff**

7 Torin Jacks on behalf of itself, its past and current agents, representatives, attorneys,  
8 successors, and/or assignees, hereby waives any and all claims against Moore, his attorneys and  
9 other representatives, for any and all actions taken or statements made (or those that could have  
10 been taken or made) by Moore and his attorneys and other representatives, whether in the  
11 course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this  
12 matter with respect to the Products.

13 **5. COURT APPROVAL**

14 This Consent Judgment is not effective until it is approved and entered by the Court and  
15 shall be null and void if, for any reason, it is not approved and entered by the Court within one  
16 year after it has been fully executed by all Parties, in which event any monies that have been  
17 provided to Moore or his counsel pursuant to Section 3 above, shall be refunded within fifteen  
18 (15) days after receiving written notice from Torin Jacks that the one-year period has expired.

19 **6. SEVERABILITY**

20 If, subsequent to court approval of this Consent Judgment, any of the provisions of this  
21 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable  
22 provisions remaining shall not be adversely affected.

23 **7. GOVERNING LAW**

24 The terms of this Consent Judgment shall be governed by the laws of the state of  
25 California and apply within the state of California. In the event that Proposition 65 is repealed  
26 or is otherwise rendered inapplicable by reason of law generally, or as to DEHP and/or the  
27 Products, then Torin Jacks shall provide written notice to Moore of any asserted change in the  
28

1 law, and shall have no further obligations pursuant to this Consent Judgment with respect to,  
2 and to the extent that, the Products are so affected.

3 **8. NOTICES**

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

8 To Torin Jacks:

9 Piero Dallarda  
10 Best Best & Krieger LLP  
11 3750 University Avenue Suite 400  
12 P.O. Box 1028  
Riverside, CA 92502

13 With a copy to:

14 Jun Ji, President  
15 Torin Jacks, Inc.  
16 4355 East Brickell Street  
Ontario, CA 91761

17 To Moore:

18 Proposition 65 Coordinator  
19 The Chanler Group  
20 2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

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

23 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

24 This Consent Judgment may be executed in counterparts and by facsimile or portable  
25 document format (.pdf), each of which shall be deemed an original, and all of which, when taken  
26

1 together, shall constitute one and the same document. A facsimile or .pdf signature shall be as  
2 valid as the original.

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

4 Moore agrees to comply with the reporting form requirements referenced in California  
5 Health & Safety Code §25249.7(f) and to file a motion for approval of this Consent Judgment.

6 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

7 The Parties agree to mutually employ their, and their counsel's, reasonable best efforts to  
8 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent  
9 Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to  
10 California Health and Safety Code section 25249.7, a noticed motion is required to obtain  
11 judicial approval of this Consent Judgment, which Moore shall file, and which Torin Jacks shall  
12 not oppose. If any third party objection to the noticed motion is filed, Moore and Torin Jacks  
13 shall work together to file a joint reply and appear at any hearing before the Court. If the  
14 Superior Court does not approve the motion to approve this Consent Judgment, and the Parties  
15 choose not to pursue a modified Consent Judgment within 30 days of said denial, or in the event  
16 that the Superior Court approve this Consent Judgment and any person successfully appeals that  
17 approval, all payments made pursuant to this Consent Judgment will be returned to Torin Jacks.

18 **12. MODIFICATION**

19 This Consent Judgment may be modified only: (1) by written agreement of the parties  
20 and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful  
21 motion of any Party and entry of a modified Consent Judgment by the court.

22 **13. ENTIRE AGREEMENT**

23 This Consent Judgment contains the sole and entire agreement and understanding of the  
24 Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
25 negotiations, commitments, and understandings related hereto. No representations, oral or  
26 otherwise, express or implied, other than those contained herein have been made by any party  
27  
28

1 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed  
2 to exist or to bind any of the parties.

3 **14. AUTHORIZATION**

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

7 **AGREED TO:**

**AGREED TO:**

8  
9 Date: March 21, 2012 Date: \_\_\_\_\_

10  
11 By:  By: \_\_\_\_\_  
12 Plaintiff JOHN MOORE Defendant TORIN JACKS, INC.

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed  
2 to exist or to bind any of the parties.

3 **14. AUTHORIZATION**

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

7  
8 **AGREED TO:**

**AGREED TO:**

9 Date: \_\_\_\_\_

Date: 4/9/12

10  
11 By: \_\_\_\_\_  
12 Plaintiff JOHN MOORE

By: Michael P. Jordan  
Defendant TORIN JACKS, INC.