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ENDORSED
FILED
ALAMEDA COUNTY

AUG 11 2010

CLERK OF THE SUPERIOR COURT
By Barbara LaMotte Deputy

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 CENTER FOR ENVIRONMENTAL HEALTH,)
12 a non-profit corporation,)

13 Plaintiff,)

14 v.)

15 CUTTING EDGE CREATIONS, INC.; BAY)
AREA JUMP; FUNTASTIC FACTORY, INC.)
16 DBA EINFLATABLES.COM; THE)
INFLATABLE STORE, INC.; JUMP FOR)
17 FUN, INC.; JUMP FOR FUN NATIONAL,)
INC.; LEISURE ACTIVITIES CO., LTD.;)
18 MAGIC JUMP, INC.; THRILLWORKS, INC.;)
and Defendant DOES 1 through 200, inclusive,)

19 Defendants.)
20)
21)
22)
23)
24)
25)
26)
27)
28)

Case No. AG 10530300

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

Health & Safety Code § 25249.6, *et seq.*

(Other)

1 Plaintiff, the Center for Environmental Health, in the public interest, based on
2 information and belief and investigation of counsel, except for information based on knowledge,
3 hereby makes the following allegations:

4 INTRODUCTION

5 1. This Complaint seeks to remedy Defendants' continuing failure to warn
6 individuals in California that they are being exposed to lead and lead compounds (collectively,
7 "Lead"), chemicals known to the State of California to cause cancer and birth defects and other
8 reproductive harm. Such exposures have occurred, and continue to occur, through the
9 manufacture, distribution, sale and/or use of Defendants' inflatable structures made with vinyl
10 such as bounce houses, combos, obstacle courses and interactives (the "Products"). Consumers,
11 including children, and workers in California are exposed to Lead when they touch or handle the
12 Products.

13 2. Under California's Safe Drinking Water and Toxic Enforcement Action of
14 1986, commonly known as "Proposition 65" (Health & Safety Code §§ 25249.5, *et seq.*), it is
15 unlawful for businesses to knowingly and intentionally expose individuals in California to
16 chemicals known to the State to cause cancer, birth defects or other reproductive harm without
17 providing clear and reasonable warnings to individuals prior to their exposure. Defendants
18 introduce Products contaminated with significant quantities of Lead into the California
19 marketplace, exposing consumers of their Products, many of whom are children, and workers in
20 California to Lead.

21 3. Despite the fact that Defendants expose children and other people who
22 come into contact with the Products to Lead, Defendants provide no warnings whatsoever about
23 the carcinogenic or reproductive hazards associated with these Lead exposures. Defendants'
24 conduct thus violates the warning provision of Proposition 65. Health & Safety Code § 25249.6.

25 PARTIES

26 4. Plaintiff the CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a
27 non-profit corporation dedicated to protecting the public from environmental health hazards and
28 toxic exposures. CEH is based in Oakland, California and incorporated under the laws of the

1 State of California. CEH is a “person” within the meaning of Health & Safety Code
2 § 25249.11(a) and brings this enforcement action in the public interest pursuant to Health &
3 Safety Code § 25249.7(d). CEH is a nationally recognized non-profit environmental advocacy
4 group that has prosecuted a large number of Proposition 65 cases in the public interest. These
5 cases have resulted in significant public benefit, including the reformulation of thousands of
6 products to remove toxic chemicals to make them safer. CEH also provides information to
7 Californians about the health risks associated with exposure to hazardous substances, where
8 manufacturers and other responsible parties fail to do so.

9 5. Defendant CUTTING EDGE CREATIONS, INC. is a person in the course
10 of doing business within the meaning of Health & Safety Code § 25249.11. Cutting Edge
11 Creations, Inc. manufactures, distributes and/or sells the Products for sale or use in California.

12 6. Defendant BAY AREA JUMP is a person in the course of doing business
13 within the meaning of Health & Safety Code § 25249.11. Bay Area Jump manufactures,
14 distributes and/or sells the Products for sale or use in California.

15 7. Defendant FUNTASTIC FACTORY, INC. DBA EINFLATABLES.COM
16 is a person in the course of doing business within the meaning of Health & Safety Code
17 § 25249.11. Funtastic Factory, Inc. dba eInflatables.com manufactures, distributes and/or sells
18 the Products for sale or use in California.

19 8. Defendant THE INFLATABLE STORE, INC. is a person in the course of
20 doing business within the meaning of Health & Safety Code § 25249.11. The Inflatable Store,
21 Inc. manufactures, distributes and/or sells the Products for sale or use in California.

22 9. Defendant JUMP FOR FUN, INC. is a person in the course of doing
23 business within the meaning of Health & Safety Code § 25249.11. Jump For Fun, Inc.
24 manufactures, distributes and/or sells the Products for sale or use in California.

25 10. Defendant JUMP FOR FUN NATIONAL, INC. is a person in the course
26 of doing business within the meaning of Health & Safety Code § 25249.11. Jump For Fun
27 National, Inc. manufactures, distributes and/or sells the Products for sale or use in California.

28 11. Defendant LEISURE ACTIVITIES CO., LTD. is a person in the course of

1 doing business within the meaning of Health & Safety Code § 25249.11. Leisure Activities Co.,
2 Ltd. manufactures, distributes and/or sells the Products for sale or use in California.

3 12. Defendant MAGIC JUMP, INC. is a person in the course of doing
4 business within the meaning of Health & Safety Code § 25249.11. Magic Jump, Inc.
5 manufactures, distributes and/or sells the Products for sale or use in California.

6 13. Defendant THRILLWORKS, INC. is a person in the course of doing
7 business within the meaning of Health & Safety Code § 25249.11. Thrillworks, Inc.
8 manufactures, distributes and/or sells the Products for sale or use in California.

9 14. DOES 1 through 200 are each a person in the course of doing business
10 within the meaning of Health & Safety Code § 25249.11. DOES 1 through 200 manufacture,
11 distribute and/or sell the Products for sale or use in California. DOES 1 through 200 have
12 workplaces in California, and are therefore liable for both consumer and occupational exposures
13 under Proposition 65.

14 15. The true names of DOES 1 through 200 are unknown to CEH at this time.
15 When their identities are ascertained, the Complaint shall be amended to reflect their true names.

16 16. The defendants identified in paragraphs 5 through 13 and DOES 1 through
17 200 are collectively referred to herein as "Defendants."

18 JURISDICTION AND VENUE

19 17. The Court has jurisdiction over this action pursuant to Health & Safety
20 Code § 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant
21 to California Constitution Article VI, Section 10, because this case is a cause not given by statute
22 to other trial courts.

23 18. This Court has jurisdiction over Defendants because each is a business
24 entity that does sufficient business, has sufficient minimum contacts in California or otherwise
25 intentionally avails itself of the California market through the sale, marketing or use of the
26 Products in California and/or by having such other contacts with California so as to render the
27 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair
28 play and substantial justice.

1 19. Venue is proper in the Alameda County Superior Court because one or
2 more of the violations arise in the County of Alameda.

3 BACKGROUND FACTS

4 20. The People of the State of California have declared by initiative under
5 Proposition 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth
6 defects, or other reproductive harm.” Proposition 65, § 1(b).

7 21. To effectuate this goal, Proposition 65 prohibits exposing people to
8 chemicals listed by the State of California as known to cause cancer, birth defects or other
9 reproductive harm without a “clear and reasonable warning” unless the business responsible for
10 the exposure can prove that it fits within a statutory exemption. Health & Safety Code § 25249.6
11 states, in pertinent part:

12 No person in the course of doing business shall knowingly and
13 intentionally expose any individual to a chemical known to the
14 state to cause cancer or reproductive toxicity without first giving
 clear and reasonable warning to such individual. . .

15 22. On February 27, 1987, the State of California officially listed lead as a
16 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive
17 toxicant under three subcategories: “developmental reproductive toxicity,” which means harm to
18 the developing fetus, “female reproductive toxicity,” which means harm to the female
19 reproductive system, and “male reproductive toxicity,” which means harm to the male
20 reproductive system. 27 California Code of Regulations (“C.C.R.”) § 27001(c). On February 27,
21 1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead
22 became subject to the clear and reasonable warning requirement regarding reproductive toxicants
23 under Proposition 65. 27 C.C.R. § 27001(c); Health & Safety Code § 25249.10(b).

24 23. On October 1, 1992, the State of California officially listed lead and lead
25 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
26 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
27 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.
28 § 27001(c); Health & Safety Code § 25249.10(b).

1 24. Lead is found in the polyvinyl chloride ("PVC") fabric and/or material
2 from which many of the Products are made. Lead is used in the Products as a stabilizer in the
3 vinyl and as a chemical ingredient in some of the dyes, paints and other coloring agents used in
4 the Products.

5 25. Many of the Products are exclusively made for and marketed for use by
6 children. Young children are exposed to Lead from the Products when they touch their hands to
7 their mouths after they play in the Product or after their hands have touched or handled the
8 Products.

9 26. Defendants' Products contain sufficient quantities of Lead such that
10 individuals, including children, who touch and/or handle the Products are exposed to Lead
11 through the average use of the Products. The route of exposure for the violations is ingestion via
12 hand-to-mouth contact and dermal absorption directly through the skin. Consumer exposures to
13 Lead from the Products occur when consumers play in, or otherwise touch or handle the
14 Products. Occupational exposures to Lead from the Products occur throughout the State of
15 California when workers manufacture, assemble, set up, move or otherwise touch or handle the
16 Products.

17 27. Young children are especially susceptible to the toxic effects of Lead.
18 Children show a greater sensitivity to Lead's effects than do adults. Adverse health impacts from
19 Lead exposure generally occur in children at lower blood Lead levels than in adults. Children
20 absorb and retain more Lead in proportion to their weight than do adults. Young children also
21 show a greater prevalence of iron deficiency, a condition that can increase gastrointestinal
22 absorption of Lead. The body accumulates Lead over a lifetime and releases it slowly, so even
23 small doses received in childhood, over time, can cause adverse health impacts, including but not
24 limited to reproductive toxicity, later in life. For example, in times of physiological stress, such
25 as pregnancy, the body can mobilize accumulated stores of Lead in tissue and bone, thereby
26 increasing the level of Lead in the blood and increasing the risk of harm to the fetus.

27 28. There is no safe level of exposure to Lead and even minute amounts of
28 Lead exposure have been shown to permanently reduce mental capacity. Davis, J.M.,

1 Svendgaard, D.J., "Lead and Child Development," *Nature* 329:297-300, 1987. One study on the
2 effect of childhood Lead exposure declared that even the smallest detectable amount of blood
3 Lead levels in children can mean the difference between an A or B grade in school. Lanphear,
4 B.P., Dietrich, K., Auinger, P., Cox, C., "Subclinical Lead Toxicity in U.S. Children and
5 Adolescents," *Neurodevelopmental Disabilities II Platform*, 2000. Another study followed
6 children into adulthood and found a sevenfold increase in the risk for developing a reading
7 disability among children exposed to sufficient levels of Lead as toddlers. Needleman, H.L.,
8 Schell, A., Bellinger, D., Leviton, A., Allred, E.N., "The Long-Term Effects of Exposure to Low
9 Doses of Lead in Childhood: An 11-Year Follow-up Report," *New England Journal of Medicine*
10 322:83-88, 1990.

11 29. Lead exposures to pregnant women are also of particular concern in light
12 of evidence that even short term Lead exposures *in utero* may have long-term harmful effects.
13 Hu, H., *et al.*, "Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant Mental
14 Development," *Environmental Health Perspectives* 114:11, 2006; Schnaas, L., *et al.*, "Reduced
15 Intellectual Development in Children with Prenatal Lead Exposure," *Environmental Health*
16 *Perspectives* 114:5, 2006.

17 30. No clear and reasonable warning is provided with the Products regarding
18 the carcinogenic or reproductive hazards of Lead.

19 31. Any private party acting in the public interest has standing to enforce
20 violations of Proposition 65 provided that such person has supplied the requisite public enforcers
21 with a valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting
22 the action within such time. Health & Safety Code § 25249.7(d).

23 32. More than sixty days prior to naming each Defendant in this lawsuit, CEH
24 provided a 60-Day "Notice of Violation of Proposition 65" to the California Attorney General,
25 the District Attorneys of every county in California, the City Attorneys of every California city
26 with a population greater than 750,000 and to each of the named Defendants. In compliance with
27 Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the
28 following information: (1) the name and address of each violator; (2) the statute violated; (3) the

1 time period during which violations occurred; (4) specific descriptions of the violations,
2 including (a) the routes of exposure to Lead from the Products, and (b) the specific type of
3 products sold and used in violation of Proposition 65; and (5) the name of the specific
4 Proposition 65-listed chemical that is the subject of the violations described in each Notice.

5 33. In compliance with 8 C.C.R. § 338(b), to the extent occupational
6 exposures are alleged, each of CEH's 60-Day Notices to the California Attorney General, the
7 District Attorneys of every county in California, the City Attorneys of every California city with
8 a population greater than 750,000 and to the named Defendants included the following statement:

9 This notice alleges the violation of Proposition 65 with respect to
10 occupational exposures governed by the California State Plan for
11 Occupational Safety and Health. The State Plan incorporates the
12 provisions of Proposition 65, as approved by Federal OSHA on
13 June 6, 1997. This approval specifically placed certain conditions
14 with regard to occupational exposures on Proposition 65, including
15 that it does not apply to the conduct of manufacturers occurring
16 outside the State of California. The approval also provides that an
17 employer may use the means of compliance in the general hazard
18 communication requirements to comply with Proposition 65. It
19 also requires that supplemental enforcement is subject to the
20 supervision of the California Occupational Safety and Health
21 Administration. Accordingly, any settlement, civil complaint, or
22 substantive court orders in this matter must be submitted to the
23 Attorney General.

24 34. CEH also sent a Certificate of Merit for each Notice to the California
25 Attorney General, the District Attorneys of every county in California, the City Attorneys of
26 every California city with a population greater than 750,000 and to the named Defendants. In
27 compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, each of the
28 Certificates certified that CEH's counsel: (1) has consulted with one or more persons with
relevant and appropriate experience or expertise who reviewed facts, studies or other data
regarding the exposures to Lead alleged in each of the Notices; and (2) based on the information
obtained through such consultations, believes that there is a reasonable and meritorious case for a
citizen enforcement action based on the facts alleged in each of the Notices. In compliance with

1 Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3102, each of the Certificates served on the
2 Attorney General included factual information – provided on a confidential basis – sufficient to
3 establish the basis for the Certificate, including the identity of the person(s) consulted by CEH’s
4 counsel and the facts, studies or other data reviewed by such persons.

5 35. None of the public prosecutors with the authority to prosecute violations
6 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against
7 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in each
8 of CEH’s Notices.

9 36. Defendants both know and intend that individuals will touch and/or handle
10 the Products, thus exposing them to Lead.

11 37. Under Proposition 65, an exposure is “knowing” where the party
12 responsible for such exposure has:

13 knowledge of the fact that a[n] . . . exposure to a chemical listed
14 pursuant to [Health and Safety Code § 25249.8(a)] is occurring.
15 No knowledge that the . . . exposure is unlawful is required.

16 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
17 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
18 § 12201).

19 38. The Products are typically made from PVC. The association between
20 PVC and Lead exposure has been widely discussed in the media in recent years, with particular
21 attention given to products made from PVC that are marketed exclusively to children. The use of
22 Lead in children’s products made from PVC has been further publicized with the passage of the
23 federal Consumer Product Safety Improvement Act (“CPSIA”) in 2008. Although the CPSIA
24 sets strict Lead content limits for all children’s products, Defendants continue to manufacture,
25 distribute, sell and/or rent the Products with substantial quantities of Lead, quantities that far
26 exceed the limits imposed by the CPSIA.

27 39. As companies that manufacture, import, distribute, sell, rent or otherwise
28 introduce the Products into the California marketplace, Defendants know or should know that the

1 Products contain Lead and that individuals who use the Products will be exposed to Lead. The
2 Lead exposures to consumers who use the Products are a natural and foreseeable consequence of
3 Defendants' placing the Products into the stream of commerce.

4 40. Defendants have been informed of the Lead in their Products by CEH's
5 60-Day Notice of Violation and accompanying Certificate of Merit served on them by CEH.

6 41. Nevertheless, Defendants continue to expose consumers and workers in
7 California to Lead without prior clear and reasonable warnings regarding the carcinogenic and/or
8 reproductive hazards of Lead.

9 42. CEH has engaged in good-faith efforts to resolve the claims alleged herein
10 prior to filing this Complaint.

11 43. Any person "violating or threatening to violate" Proposition 65 may be
12 enjoined in any court of competent jurisdiction. Health & Safety Code § 25249.7. "Threaten to
13 violate" is defined to mean "to create a condition in which there is a substantial probability that a
14 violation will occur." Health & Safety Code § 25249.11(e). Proposition 65 provides for civil
15 penalties not to exceed \$2,500 per day for each violation of Proposition 65.

16 FIRST CAUSE OF ACTION

17 (Violations of the Health & Safety Code § 25249.6 – Consumer Exposures)

18 44. CEH realleges and incorporates by reference as if specifically set forth
19 herein Paragraphs 1 through 43, inclusive.

20 45. By placing the Products into the stream of commerce, each Defendant is a
21 person in the course of doing business within the meaning of Health & Safety Code § 25249.11.

22 46. Lead is a chemical listed by the State of California as known to cause
23 cancer and birth defects or other reproductive harm.

24 47. Defendants know that average use of the Products will expose users of the
25 Products to Lead. Defendants intend that the Products be used in a manner that results in users
26 of the Products being exposed to Lead contained in the Products.

27 48. Defendants have failed, and continue to fail, to provide prior clear and
28 reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead contained in

1 the Products to users of the Products.

2 49. By committing the acts alleged above, Defendants have at all times
3 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing
4 individuals to Lead without first giving clear and reasonable warnings to such individuals
5 regarding the carcinogenicity and reproductive toxicity of Lead. By offering the Products for sale
6 and/or use in California without a clear and reasonable warning regarding the Lead in the
7 Products, Defendants also have, and continue to threaten to violate Proposition 65.

8 Wherefore, CEH prays for judgment against Defendants, as set forth hereafter.

9 **SECOND CAUSE OF ACTION**

10 **(Violations of the Health & Safety Code § 25249.6 – Occupational Exposures)**

11 50. CEH realleges and incorporates by reference as if specifically set forth
12 herein Paragraphs 1 through 49, inclusive.

13 51. By placing the Products into the stream of commerce, each Defendant is a
14 person in the course of doing business within the meaning of Health & Safety Code § 25249.11.

15 52. Lead is a chemical listed by the State of California as known to cause
16 cancer and birth defects or other reproductive harm.

17 53. Defendants know that the Products will expose workers in California to
18 Lead. Defendants intend that the Products be touched or handled in a manner that results in
19 workers in California being exposed to Lead contained in the Products.

20 54. Defendants have failed, and continue to fail, to provide clear and
21 reasonable warnings regarding the carcinogenicity and reproductive toxicity of the Lead in the
22 Products to workers in California that touch or handle the Products.

23 55. By committing the acts alleged above, Defendants have at all times
24 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing
25 workers in California to Lead in their workplaces without first giving clear and reasonable
26 warnings to such individuals regarding the carcinogenicity and reproductive toxicity of Lead. By
27 offering the Products for sale and/or use in California without a clear and reasonable warning
28 regarding the Lead in the Products, Defendants also have, and continue to threaten to violate

1 Proposition 65.

2 Wherefore, CEH prays for judgment against Defendants, as set forth hereafter.

3 **PRAYER FOR RELIEF**

4 Wherefore, CEH prays for judgment against Defendants as follows:

5 1. That the Court, pursuant to Health & Safety Code § 25249.7(b), assess
6 civil penalties against each Defendant in the amount of \$2,500 per day for each violation of
7 Proposition 65 according to proof;

8 2. That the Court, pursuant to Health & Safety Code § 25249.7(a),
9 preliminarily and permanently enjoin Defendants from offering the Products for sale in
10 California without providing prior clear and reasonable warnings, as CEH shall specify in further
11 application to the Court;

12 3. That the Court, pursuant to Health & Safety Code § 25249.7(a), order
13 Defendants to take action to stop ongoing unwarned exposures to Lead resulting from the
14 manufacture, distribution, sale and/or use of Products sold by Defendants, as CEH shall specify
15 in further application to the Court;

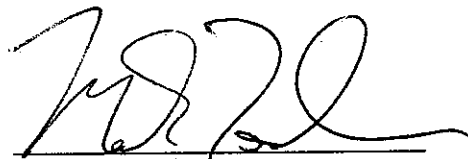
16 4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other
17 applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

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

20
21 Dated: August 11, 2010

Respectfully submitted,

22 LEXINGTON LAW GROUP

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25 Mark N. Todzo

Attorneys for Plaintiff

26 CENTER FOR ENVIRONMENTAL HEALTH