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**ENDORSED
FILED
ALAMEDA COUNTY**

FEB 23 2011

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15 CENTER FOR ENVIRONMENTAL HEALTH

16 **SUPERIOR COURT OF CALIFORNIA**
17 **FOR THE COUNTY OF ALAMEDA**

18 19 20 21 22 23 24 25 26 27 28	PEOPLE OF THE STATE OF CALIFORNIA, ex rel. EDMUND G. BROWN, JR., Attorney General, Plaintiff, v. BAY AREA JUMP, et al., Defendants	Case No. RG 10-530436 CONSENT JUDGMENT AS TO DEFENDANT FUNTASTIC FACTORY, INC., DBA EINFLATABLES.COM
	CENTER FOR ENVIRONMENTAL HEALTH, a non-profit corporation, Plaintiff, v. CUTTING EDGE CREATIONS, INC., et al., Defendants	Case No. RG 10-530300

1 **1. INTRODUCTION**

2 **1.1** On August 11, 2010, the People of the State of California (“People”), by and
3 through the Attorney General of the State of California (“Attorney General”) filed a complaint for
4 civil penalties and injunctive relief for violations of Proposition 65 and unlawful business
5 practices in the Superior Court for the County of Alameda. The People’s Complaint alleges that
6 the named Defendants failed to provide clear and reasonable warnings that their inflatable
7 structures made with vinyl such as bounce houses, combos, obstacle courses and interactives (see
8 “Products” as defined in Section 2.2) contain lead and lead compounds (together “Lead”), and that
9 use of, and contact with, those Products results in exposure to Lead, a chemical known to the State
10 of California to cause cancer and reproductive harm. The Complaint further alleges that under the
11 Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section
12 25249.6, also known as “Proposition 65,” businesses must provide persons with a “clear and
13 reasonable warning” before exposing individuals to these chemicals, and that the Defendants
14 failed to do so. The Complaint further alleges that the Lead levels in the Products exceed the
15 standards set by the Consumer Product Safety Improvement Act (“CPSIA”) of 2008. The
16 Complaint also alleges that the violations of Proposition 65 and the CPSIA constitute unlawful
17 acts in violation of the Unfair Competition Law, pursuant to Business and Professions Code
18 sections 17200 *et seq.*

19 **1.2** The Center for Environmental Health (“CEH”) first brought the issue of Lead
20 exposures from the Products to the attention of the Attorney General by issuing its first 60-Day
21 Notice of Violation on February 19, 2010 (“Notice”). The Notice alleges that defendant Funtastic
22 Factory, Inc., dba eInflatables.com (“Settling Defendant”) and others were violating Proposition
23 65 by introducing the Products into the stream of commerce thereby exposing individuals to Lead.
24 CEH filed its case, *Center for Environmental Health v. Cutting Edge Creations, LLC, et al.*,
25 Alameda County Superior Court, Case No. RG 19-530300, on August 11, 2010. CEH also seeks
26 civil penalties and injunctive relief for alleged violations of Proposition 65. On September 13,
27 2010, the People’s action was coordinated with CEH’s action. The People and CEH are together
28 referred to as “Plaintiffs.”

1 1.3 Settling Defendant is named as a defendant in both the People's and CEH's
2 complaints.

3 1.4 Settling Defendant is a corporation that employs more than ten (10) persons and
4 employed ten or more persons at all times relevant to the allegations of the Complaints, and
5 manufactures, distributes and/or sells Products (as defined below) in the State of California and/or
6 has done so in the past four years.

7 1.5 For purposes of this Consent Judgment only, the People, CEH and the Settling
8 Defendant stipulate that this Court has jurisdiction over the allegations of violations contained in
9 the Notice and Complaints and personal jurisdiction over Settling Defendant as to the acts alleged
10 in the Notice and Complaints, that venue is proper in Alameda County, and that this Court has
11 jurisdiction to enter this Consent Judgment as a full and final resolution of all claims which were
12 or could have been raised in the Complaints based on the facts alleged therein.

13 1.6 The People, CEH and Settling Defendant enter into this Consent Judgment as a full
14 and final settlement of all claims relating to the Products (as that term is defined below) arising
15 from the alleged failure to warn regarding the presence of Lead in such Products. Nothing in this
16 Consent Judgment shall be construed as an admission by the Parties of any fact, conclusion of
17 law, issue of law or violation of law, nor shall compliance with the Consent Judgment constitute
18 or be construed as an admission by Parties of any fact, conclusion of law, issue of law or violation
19 of law. Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy
20 argument or defense the Parties may have in this or any other future legal proceedings. By
21 execution of this Consent Judgment and agreeing to provide the relief and remedies specified
22 herein, Settling Defendant does not admit any violations of Proposition 65, applicable Business
23 and Professions Code sections or any other law or legal duty. Settling Defendant expressly asserts
24 that its Products do not require a warning under Proposition 65 and denies any liability
25 whatsoever.

26 **2. DEFINITIONS**

27 2.1 The "Actions" shall collectively mean the *People of the State of California v. Bay*
28 *Area Jump, et al.*, Case No. RG 10-530436, Alameda County Superior Court (filed August 11,

1 2010) and the *Center for Environmental Health v. Cutting Edge Creations, LLC, et al.*, Case No.
2 RG 10-530300, Alameda County Superior Court (filed August 11, 2010).

3 2.2 Products shall mean all inflatable structures made with vinyl such as bounce
4 houses, combos, obstacle courses and interactives manufactured, distributed or sold by Settling
5 Defendant.

6 2.3 The “Effective Date” of this Consent Judgment shall be the date on which this
7 Consent Judgment is entered as a judgment by the trial court.

8 2.4 “Parties” shall mean the following entities: People of the State of California ex rel.
9 Edmund G. Brown, Jr., CEH and Settling Defendant

10 2.5 “Plaintiffs” shall mean People of the State of California ex rel. Edmund G. Brown,
11 Jr., Attorney General and CEH.

12 2.6 “Old Products” means any Products sold by Defendant after January 1, 2007 but
13 prior to the Effective Date.

14 **3. INJUNCTIVE RELIEF: LEAD REDUCTION**

15 3.1 Immediate Product Reformulation. Immediately upon the Effective Date of this
16 Consent Judgment, Settling Defendant shall reduce the level of Lead in the Products Sold in
17 California from the current levels to a level no higher than 100 ppm (“Compliance Level”) as
18 determined pursuant to total Lead testing, EPA Method 3050B or CPSIA Method CPSC-CH-
19 E1001-08 (the “Test Protocols”).

20 3.2 Specification and Certification of Vinyl. For so long as Settling Defendant
21 manufactures, distributes, or ships the Products for sale in California, Settling Defendant shall
22 issue specifications to its vinyl suppliers requiring that the vinyl used in the Products shall not
23 contain Lead in excess of the Compliance Level. Defendant shall obtain and maintain written
24 certification from its suppliers of the vinyl certifying that the vinyl used in the Products does not
25 contain Lead in excess of the Compliance Level.

26 3.3 Settling Defendant’s Independent Testing. In order to ensure compliance with
27 Section 3.1, Settling Defendant shall conduct (or cause to be conducted) testing to confirm
28 Products sold in California comply with the Compliance Level. Defendant shall either conduct

1 the testing of the vinyl used in the Products using an X-Ray Fluorescence Analyzer or shall cause
2 to have the testing performed by an independent, CPSIA-approved laboratory in accordance with
3 either of the Test Protocols. Settling Defendant shall perform the testing described in this Section
4 on each roll of vinyl purchased from its suppliers.

5 (a) Vinyl That Exceeds the Compliance Level. If the results of the testing
6 required pursuant to Section 2.3 show Lead levels in excess of the Compliance Level in
7 the vinyl, Defendant shall: (1) refuse to accept all the vinyl that tested above the
8 Compliance Level; and (2) send a notice to the supplier explaining that such vinyl does not
9 comply with either Settling Defendant's specifications for Lead or the supplier's
10 certification.

11 **4. INJUNCTIVE RELIEF: CLEAR AND REASONABLE WARNINGS**

12 4.1 Plaintiffs allege that warnings are necessary as to the Old Products because these
13 products purportedly cause continuing exposures to Lead. While expressly denying such
14 allegations, Settling Defendant agrees to implement the following programs to provide clear and
15 reasonable warnings to persons who come into contact with Old Products sold before the
16 Effective Date of this Consent Judgment:

17 (a) Informational Program. Settling Defendant shall provide the mailed
18 warnings and informational materials attached hereto as Exhibit A, in English and
19 Spanish, to all parties who purchased Old Products within the State of California. The
20 informational materials provided pursuant to this Section shall include an offer to either
21 perform testing on the Old Products or pay for testing of such Products.

22 (b) Web Notice. For a period of two years following the Effective Date,
23 Settling Defendant will maintain a conspicuous link on its primary, customer oriented
24 website that directs users to the web page that CEH will maintain with respect to Lead in
25 the Products.

26 **5. ADDITIONAL ACTIONS BY SETTLING DEFENDANT**

27 5.1 Testing of Old Products. Upon a request within two years of the Effective Date by
28 an individual or entity that purchased directly from Settling Defendant any Old Products, Settling

1 Defendant shall either perform or pay for testing for all Old Products. The testing pursuant to this
2 section may be performed by X-Ray Fluorescence or pursuant to the Test Protocols.

3 **5.2** Replacing Certain Old Products. Settling Defendant shall, at its own cost, replace
4 any Old Products still in use and in good condition as of the Effective Date, if the testing
5 described in Section 5.1 reveals Lead levels in excess of 1,000 ppm. The Unreformulated Product
6 shall be returned to Settling Defendant.

7 **5.3** Discounted Replacement of Products That Exceed CPSIA Levels. To the extent
8 that the testing described in Section 5.1 of any Unreformulated Product still in use and in good
9 condition as of the Effective Date reveals Lead levels that exceed 300 ppm, but is less than 1,000
10 ppm, Settling Defendant shall provide the individual or entity with a discount amounting to 50%
11 of the regular list price of a comparable Product to the one that tested between 300 ppm and 1,000
12 ppm. The Unreformulated Product shall be returned to Settling Defendant.

13 **6. PAYMENTS**

14 **6.1** Payment Timing. All payments under the Consent Judgment shall be due within
15 thirty (30) days following the Effective Date.

16 **6.2** Civil Penalties. Settling Defendant shall pay a civil penalty of \$10,000 pursuant to
17 California Health & Safety Code §§ 25249.7(b) and 25249.12. Pursuant to § 25249.12, 75% of
18 these funds shall be remitted to the California Office of Environmental Health Hazard Assessment
19 (“OEHHA”), and the remaining 25% apportioned evenly among the Attorney General and CEH
20 such that \$1,250 is payable to the Attorney General and \$1,250 is payable to CEH.

21 **6.3** Cy pres – Product Testing. Settling Defendant shall make the following payment
22 in lieu of additional civil penalties. Settling Defendant shall pay \$5,000 to CEH to be used
23 exclusively for testing of inflatable structures made with vinyl such as bounce houses, combos,
24 obstacle courses and interactives. The payment required under this section shall be made payable
25 to CEH.

26 **6.4** Other Payments. Settling Defendant shall also make the following payments:

27 (a) Attorney General. Settling Defendant shall pay the sum of \$10,000 to the
28 Attorney General, to reimburse the fees and costs his office has expended with respect to this

1 matter. Funds paid pursuant to this paragraph shall be placed in an interest-bearing Special
2 Deposit Fund established by the Attorney General. These funds, including any interest, shall be
3 used by the Attorney General, until all funds are exhausted, for the costs and expenses associated
4 with the enforcement and implementation of Proposition 65, including investigations,
5 enforcement actions, other litigation or activities as determined by the Attorney General to be
6 reasonably necessary to carry out his duties and authority under Proposition 65. Such funding
7 may be used for the costs of the Attorney General's investigation, filing fees and other court costs,
8 payment to expert witnesses and technical consultants, purchase of equipment, travel, purchase of
9 written materials, laboratory testing, sample collection, or any other cost associated with the
10 Attorney General's duties or authority under Proposition 65. Funding placed in the Special
11 Deposit Fund pursuant to this paragraph, and any interest derived therefrom, shall solely and
12 exclusively augment the budget of the Attorney General's Office and in no manner shall supplant
13 or cause any reduction of any portion of the Attorney General's budget.

14 (b) CEH's Attorney Fees. Settling Defendant shall pay \$20,000 to reimburse
15 CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any
16 other costs incurred as a result of investigating, bringing this matter to the attention of Settling
17 Defendant and the People, litigating and negotiating a settlement in the public interest. The
18 payment required under this section shall be made payable to Lexington Law Group.

19 **6.5** Each payment required by this Consent Judgment shall be made through the
20 delivery of separate checks payable to the applicable person, as follows:

21 (a) Attorney General. Payments due to the Attorney General shall be made
22 payable to the "California Department of Justice," and sent to the attention of Robert Thomas,
23 Legal Analyst, Department of Justice, 1515 Clay Street, 20th Floor, Oakland, CA 94612.

24 (b) CEH/Lexington Law Group. The payments due to CEH and the Lexington
25 Law Group shall be made payable as set forth above and sent to: Mark N. Todzo, Lexington Law
26 Group, LLP, 1627 Irving Street, San Francisco, CA 94122.

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1 (c) Copies of checks. Settling Defendant will cause copies of each check
2 issued by it pursuant to this Consent Judgment to be sent to: Jamie Jefferson, Deputy Attorney
3 General, 1515 Clay Street, 20th Floor, Oakland, California 94612.

4 7. **MODIFICATION OF CONSENT JUDGMENT**

5 7.1 This Consent Judgment may only be modified by express written agreement of the
6 Parties with the approval of the Court; by an order of this Court on noticed motion from the
7 People, CEH or Settling Defendant in accordance with law; or by the Court in accordance with its
8 inherent authority to modify its own judgments.

9 7.2 Before filing an application with the Court for a modification to this Consent
10 Judgment, the Party seeking modification shall meet and confer with the other parties to determine
11 whether the modification may be achieved by consent. If a proposed modification is agreed upon,
12 then the Parties will present the modification to the Court by means of a stipulated modification to
13 the Consent Judgment.

14 8. **ENFORCEMENT**

15 8.1 Enforcement by Plaintiffs. Plaintiffs may, by motion or application for an order to
16 show cause before this Court, enforce the terms and conditions contained in this Consent
17 Judgment or seek resolution of any dispute arising under this Consent Judgment. In any
18 proceeding to enforce the terms of this Consent Judgment, Plaintiffs may seek whatever fines,
19 costs, penalties, or remedies are provided by law for failure to comply with the Consent Judgment.
20 However, Plaintiffs may not seek any fees or costs if Settling Defendant agrees to take the action
21 demanded by Plaintiffs during the meet and confer process described in section 8.4, below, and
22 implements such action in a prompt manner.

23 8.2 Enforcement by Separate Action. Where violations of this Consent Judgment
24 constitute subsequent violations of Proposition 65 or other laws independent of the Consent
25 Judgment and/or those alleged in the Complaint, Plaintiffs and/or CEH are not limited to
26 enforcement of the Consent Judgment, but may instead elect to seek, in another action, whatever
27 fines, costs, penalties, or remedies are provided for by law for failure to comply with Proposition
28 65 or other laws. In any action brought by the People and/or CEH or another enforcer alleging

1 subsequent violations of Proposition 65 or other laws, Settling Defendant may assert any and all
2 defenses that are available, including the *res judicata* or collateral estoppel effect of this Consent
3 Judgment. Plaintiffs must elect whether (a) to use the enforcement provisions of section 8.1 of
4 this Consent Judgment or (b) to bring a new action pursuant to this subsection 8.2.

5 **8.3 Meet and Confer Required.** Before any party institutes any proceeding or separate
6 action based on an alleged violation of the Consent Judgment, the moving or enforcing party
7 (Moving Party) shall meet and confer with the other party (Other Party) in good faith in an
8 attempt to informally resolve the alleged violation.

9 **8.4** The terms of this Consent Judgment shall be enforced exclusively by the Parties
10 hereto.

11 **9. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

12 **9.1** Each signatory to this Consent Judgment certifies that he or she is fully authorized
13 to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on
14 behalf of the party he or she represents.

15 **10. CLAIMS COVERED**

16 **10.1 Full and Binding Resolution.** This Consent Judgment is a full, final, and binding
17 resolution between the Plaintiffs, CEH, and Settling Defendant, of any violation of Proposition
18 65., Business & Professions Code sections 17200 *et seq.*, and 17500 *et seq.*, or any other statutory
19 or common law claims that have been or could have been asserted in the Notice or Complaints
20 against Settling Defendant and its downstream distributors, wholesalers and retailers for failure to
21 provide clear and reasonable warnings of exposure to Lead from the use of the Products, or any
22 other claim based on the facts or conduct alleged in the Notice or Complaints, whether based on
23 actions committed by Settling Defendant or by any entity to whom Settling Defendant distributes
24 or sells Products, or any entity that sells the Products to consumers. Compliance with the terms of
25 this Consent Judgment resolves any issue now, in the past, and in the future, concerning
26 compliance by Settling Defendant, its parents, divisions, subdivisions, subsidiaries, sister
27 companies, affiliates, cooperative members, licensors and licensees; its distributors, wholesalers,
28 and retailers who sell Products; and the shareholders, officers, predecessors, successors, and

1 assigns of any of them, with the requirements of Proposition 65 or Business and Professions Code
2 sections 17200 *et seq.* and 17500 *et seq.* arising from or relating to exposures to Lead in or from
3 the Products. This Consent Judgment does not resolve any claims that Plaintiffs may assert with
4 respect to (i) products other than the Products or (ii) chemicals other than Lead.

5 **11. PROVISION OF NOTICE**

6 **11.1** Notices sent pursuant to this Consent Judgment shall be sent to the person(s) and
7 addresses set forth in this paragraph. Any Party may modify the person and address to whom the
8 notice is to be sent by sending each other Party notice by certified mail, return receipt requested.
9 Said change shall take effect for any notice mailed at least five days after the date the return
10 receipt is signed by the party receiving the change.

11 **11.2** Notices shall be sent by overnight delivery, or by concurrent e-mail and by First
12 Class Mail, to the following when required:

13 For the Attorney General:

14 Jamie Jefferson, Deputy Attorney General
15 California Department of Justice
16 1515 Clay Street, 20th Floor,
Oakland, CA 94612
Jamie.Jefferson@doj.ca.gov

17 and simultaneously to:

18 Robert Thomas, Legal Analyst,
19 Department of Justice,
1515 Clay Street, 20th Floor,
20 Oakland, CA 94612
Robert.Thomas@doj.ca.gov

21 For the Center for Environmental Health

22 Mark N. Todzo
23 Lexington Law Group, LLP
1627 Irving Street
24 San Francisco, CA 94122
mtodzo@lexlawgroup.com

25 For the Settling Defendant:

26 Rick Rothman
27 Bingham McCutchen, LLP
355 South Grand Ave., Ste. 4400
28 Los Angeles, CA 90071-3106
Rick.Rothman@Bingham.com

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IT IS SO STIPULATED:

DATED: 12/17/10

EDMUND G. BROWN, JR.
Attorney General
J. MATTHEW RODRIQUEZ
Chief Assistant Attorney General
KEN ALEX
Senior Assistant Attorney General

By: Jamie Jefferson
JAMIE JEFFERSON
Deputy Attorney General
For People of the State of California

DATED: _____

CENTER FOR ENVIRONMENTAL HEALTH

By: _____
CHARLIE PIZARRO
Associate Director

DATED: _____

FUNASTIC FACTORY, INC., dba
EINFLATABLES.COM

By: _____
Its: _____

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IT IS SO STIPULATED:

DATED: _____

EDMUND G. BROWN, JR.
Attorney General
J. MATTHEW RODRIQUEZ
Chief Assistant Attorney General
KEN ALEX
Senior Assistant Attorney General

By: _____

JAMIE JEFFERSON
Deputy Attorney General
For People of the State of California

DATED: 1/5/10 _____

CENTER FOR ENVIRONMENTAL HEALTH

By:  _____

CHARLIE PIZARRO
Associate Director

DATED: _____

FUNTASTIC FACTORY, INC., dba
EINFLATABLES.COM

By: _____
Its: _____

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IT IS SO STIPULATED:

DATED: _____

EDMUND G. BROWN, JR.
Attorney General
J. MATTHEW RODRIQUEZ
Chief Assistant Attorney General
KEN ALEX
Senior Assistant Attorney General

By: _____

JAMIE JEFFERSON
Deputy Attorney General
For People of the State of California

DATED: _____

CENTER FOR ENVIRONMENTAL HEALTH

By: _____

CHARLIE PIZARRO
Associate Director

DATED: 01/03/11

FUNTASTIC FACTORY, INC., dba
EINFLATABLES.COM

By: *Jay H. Pate*
Its: _____

Exhibit A

1 Exhibit A

2 Letter to Customers of Old Products

3 Dear Customer:

4 Our records show that you purchased products from us between January 1, 2007 and
5 _____. This letter is written to inform you that some of the products manufactured by
eInflatables.com during those time periods may contain lead.

6 WARNING –Lead is a chemical known to the state of California to cause cancer and
7 reproductive harm.

8 All of our products have now been formulated to reduce the amount of lead to levels
9 below those of concern. However, some of our older products manufactured during the time
periods identified above may have lead levels that are of concern.

10 We would like to provide you with the opportunity to have the products you purchased
11 directly from us during those time periods tested to determine if such products contain high levels
12 of lead. If you purchased a product or products from us that was manufactured during the period
13 from **January 1, 2007** to [] that are still in use and in good condition, please contact [Name] at
[telephone number] to arrange for testing of those products. eInflatables will conduct or pay for
testing of the products if you call before _____.

14 If the testing of any of the products in good condition reveals lead levels in excess of 1,000
15 parts per million, eInflatables will replace the product, upon the return of the old product. If the
16 testing of a product in good condition reveals lead levels between 300 parts per million and 1000
17 parts per million, eInflatables will provide 50% off the regular price of any similar replacement
product purchased from eInflatables, upon the return of the old product.

18 In addition, you can reduce exposures to lead by employing the following practices:

- 19 a. Keeping the products clean;
20 b. Having children wash their hands after playing in or on one of the products;
21 c. Food, beverages and other ingestible items should not be allowed in or on the
products; and
22 d. Clothing worn when playing on the products should be cleaned after use.

23 For further information, please call [name] at [number].

24 Sincerely,

25 Name
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