

1 LEXINGTON LAW GROUP  
2 Mark N. Todzo, State Bar No. 168389  
3 Abigail Blodgett, State Bar No. 278813  
4 503 Divisadero Street  
5 San Francisco, CA 94117  
6 Telephone: (415) 913-7800  
7 Facsimile: (415) 759-4112  
8 mtodzo@lexlawgroup.com  
9 ablodgett@lexlawgroup.com

6 Attorneys for Plaintiff  
7 CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED  
FILED  
ALAMEDA COUNTY

JUL 28 2016

CLERK OF THE SUPERIOR COURT  
By Christina Momon, Deputy

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

12 CENTER FOR ENVIRONMENTAL HEALTH, ) Case No. RG 15-770932  
13 )  
14 Plaintiff, ) [PROPOSED] CONSENT  
15 v. ) JUDGMENT AS TO SPACE JAM  
16 SPACE JAM JUICE LLC, et al., ) JUICE LLC  
17 Defendants. )  
18 )

20 **1. INTRODUCTION**

21 **1.1.** This Consent Judgment is entered into by Plaintiff Center for Environmental  
22 Health, a non-profit corporation (“CEH”), and Space Jam Juice LLC (“Settling Defendant”) to  
23 settle claims asserted by CEH against Settling Defendant as set forth in the operative Complaint  
24 in the matter *Center for Environmental Health v. Space Jam Juice LLC, et al.*, Alameda County  
25 Superior Court Case No. RG-15770932 (the “Action”). CEH and Settling Defendant are referred  
26 to collectively as the “Parties.”

1           **1.2.**    On February 27, 2015, CEH served a 60-Day Notice of Violation (the “Notice”)  
2 relating to the California Safe Drinking Water and Toxic Enforcement Act of 1986, California  
3 Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”) on Settling Defendant, the California  
4 Attorney General, the District Attorneys of every County in the State of California, and the City  
5 Attorneys for every City in State of California with a population greater than 750,000. The  
6 Notice alleges violations of Proposition 65 with respect to the presence of nicotine in liquid for  
7 use with electronic cigarette devices manufactured, distributed, and/or sold by Settling Defendant.

8           **1.3.**    Settling Defendant is a corporation that employs ten (10) or more persons and that  
9 manufactures, distributes, and/or sells Covered Products (as defined herein) in the State of  
10 California or has done so in the past.

11           **1.4.**    For purposes of this Consent Judgment only, the Parties stipulate that: (i) this  
12 Court has jurisdiction over the allegations of violations contained in the Notice and Complaint  
13 and personal jurisdiction over Settling Defendant as to the acts alleged in the Complaint; (ii)  
14 venue is proper in the County of Alameda; and (iii) this Court has jurisdiction to enter this  
15 Consent Judgment as a full and final resolution of all claims which were or could have been  
16 raised in the Complaint based on the facts alleged in the Notice and Complaint with respect to  
17 Covered Products manufactured, distributed, and/or sold by Settling Defendant.

18           **1.5.**    The Parties enter into this Consent Judgment as a full and final settlement of all  
19 claims which were or could have been raised in the Complaint arising out of the facts or conduct  
20 related to Settling Defendant alleged therein. By execution of this Consent Judgment and  
21 agreeing to comply with its terms, the Parties do not admit any fact, conclusion of law, or  
22 violation of law, nor shall compliance with the Consent Judgment constitute or be construed as an  
23 admission by the Parties of any fact, conclusion of law, or violation of law. Settling Defendant  
24 denies the material, factual, and legal allegations in the Notice and Complaint and expressly  
25 denies any wrongdoing whatsoever. Except as specifically provided herein, nothing in this  
26 Consent Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense any  
27 of the Parties may have in this or any other pending or future legal proceedings. This Consent

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1 Judgment is the product of negotiation and compromise and is accepted by the Parties solely for  
2 purposes of settling, compromising, and resolving issues disputed in this Action.

3 **2. DEFINITIONS**

4 **2.1.** “Covered Products” means nicotine-containing liquid for use with electronic  
5 cigarette devices manufactured, distributed, and/or sold by Settling Defendant in California.

6 **2.2.** “Effective Date” means the date on which the Court enters this Consent  
7 Judgment.

8 **3. INJUNCTIVE RELIEF**

9 **3.1. Clear and Reasonable Warnings for Covered Products.** As of the Effective  
10 Date, no Covered Product may be manufactured for sale, distributed or sold in California unless  
11 such Covered Product has a clear and reasonable warning on the outer label of the product. The  
12 warning shall state the following:

13 **WARNING:** Use of this product will expose you to nicotine, a chemical  
14 known to cause birth defects or other reproductive harm and to other  
15 chemicals known to cause cancer and birth defects or reproductive harm.

16 The warning shall not be preceded by, surrounded by, or include any additional words or phrases  
17 that contradict, obfuscate, or otherwise undermine the warning. The warning statement shall be  
18 prominently displayed on the Covered Product with such conspicuousness, as compared with  
19 other words, statements, or designs as to render it likely to be read and understood by an ordinary  
20 individual prior to sale. To the extent that other warning statements are included on the outer  
21 label of a Covered Product, the warning required herein shall be separated from the other  
22 warnings by a line that is at least the same height as a line of text on the label. For internet,  
23 catalog, or any other sale where the consumer is not physically present and cannot see a warning  
24 displayed on the Covered Product prior to purchase or payment, the warning statement shall be  
25 displayed in such a manner that it is likely to be read and understood as being applicable to the  
26 Covered Product being purchased prior to the authorization of or actual payment. Placement of

1 the warning statement at the bottom of an internet webpage that offers multiple products for sale  
2 does not satisfy the requirements of this Section.

3 **3.1.1. Warnings for Covered Products in the Stream of Commerce.** In an  
4 effort to ensure that consumers receive clear and reasonable warnings in compliance with  
5 Proposition 65 for Covered Products that have not been labeled in accordance with Section 3.1,  
6 within thirty (30) days following the Effective Date, Settling Defendant shall provide warning  
7 materials by certified mail to each of its California retailers or distributors to whom Settling  
8 Defendant reasonably believes sold Covered Products that contained nicotine on or after the  
9 Effective Date. Such warning materials shall include a reasonably sufficient number of stickers  
10 in order to permit the retailer or distributor to affix the warning on each Covered Product such  
11 customer has purchased from Settling Defendant. The warning stickers shall contain the warning  
12 language set forth in Section 3.1 above. The warning materials shall also include a letter of  
13 instruction for the placement of the stickers, and a Notice and Acknowledgment postcard.

14 **3.2. Optional Additional Injunctive Provisions.** In order for Settling Defendant to be  
15 eligible for a waiver of the additional payment pursuant to Health and Safety Code §25249.7, set  
16 forth in Section 4.1.5 below, Settling Defendant shall undertake the additional actions below. A  
17 Settling Defendant opting to be bound by this Section must provide CEH with a written election.

18 **3.2.1. Product Safety Requirements.** A Settling Defendant opting to participate  
19 in Section 3.2 shall make the following change to the Covered Products to increase the safety of  
20 such Products: Within ninety (90) days following the Effective Date, all Covered Products  
21 manufactured for sale in California shall be manufactured with child proof caps.

22 **3.2.2. Prohibition on Sales and Advertising to Minors.** A Settling Defendant  
23 opting to participate in Section 3.2 shall take reasonable steps to prevent the sale of Covered  
24 Products to persons younger than eighteen (18) years of age , including, but not limited to the  
25 following measures:

26 **3.2.2.1.** Settling Defendant shall implement one or more systems for  
27 checking the age of persons who purchase Covered Products on the Internet or in person. The

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1 system shall include age verification by requiring and checking an official government  
2 identification card or verifying through a reputable credit agency the age of anyone who  
3 purchases Covered Products on the Internet, or of anyone under twenty-six (26) years old who  
4 purchases in person. The system shall be put into place within ninety (90) days of the Effective  
5 Date.

6 **3.2.2.2.** Settling Defendant shall not sell flavored cartridges or any  
7 substance to use with Covered Products or other e-cigarettes that are targeted to appeal to minors  
8 including, but not limited to, cereal and candy flavors.

9 **3.2.2.3.** Settling Defendant shall not use advertisements that target  
10 minors. Specifically, Settling Defendant will not use models or images of people that are younger  
11 than twenty-eight (28) years of age, cartoons, art, fashion, or music that is obviously intended and  
12 designed to appeal to people under the legal smoking age in advertisements or promotional  
13 materials that appear in California, including on the Internet. Additionally, Settling Defendant  
14 will not: (a) advertise in any media that is specifically targeted to under 18 readership; (b) utilize  
15 any form of outdoor advertising in California within 1,000 feet of any school or playground; and  
16 (c) sponsor any athletic, musical or other cultural events in California that specifically target an  
17 audience that is under 18 years of age.

18 **3.2.3. Prohibition on Health and Safety Claims.** A Settling Defendant opting  
19 to participate in Section 3.2 shall not make health and or safety claims in the United States unless  
20 such claims have been reviewed and approved by the Federal Food and Drug Administration.  
21 Examples of prohibited claims include the following:

22 **3.2.3.1.** Settling Defendant shall not advertise Covered Products in  
23 the United States as smoking-cessation devices. This prohibition includes any claims or  
24 testimonials about quitting smoking, using e-cigarettes as a treatment for tobacco dependence or  
25 addiction.

26 **3.2.3.2.** Settling Defendant shall not make any claim in the United  
27 States that the Covered Products do not contain carcinogens or are better or safer than tobacco.

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1                                   **3.2.3.3.**           Settling Defendant shall not make any claim in the United  
2 States that the Covered Products produce no second hand smoke.

3                                   **3.2.3.4.**           This section shall not apply to internet media or other forms  
4 of advertising specifically directed to the any market outside the United States.

5   **4.    PAYMENTS**

6           **4.1.**    Settling Defendant shall initially pay to CEH the total sum of \$95,000, which shall  
7 be allocated as set forth in this Section and in more detail on Exhibit A:

8                   **4.1.1.**   \$4,950 as a payment pursuant to California Health & Safety Code §  
9 25249.7(b), such money to be apportioned by CEH in accordance with California Health &  
10 Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of  
11 Environmental Health Hazard Assessment).

12                   **4.1.2.**   \$7,425 as a payment in lieu of payment pursuant to California Health &  
13 Safety Code § 25249.7(b) and California Code of Regulations, Title 11, § 3203(b). CEH will use  
14 such funds to continue its work educating and protecting people from exposures to toxic  
15 chemicals. CEH may also use a portion of such funds to monitor compliance with this Consent  
16 Judgment and to purchase and test Settling Defendant's Products to confirm compliance. In  
17 addition, as part of its Community Environmental Action and Justice Fund, CEH will use four  
18 percent (4%) of such funds to award grants to grassroots environmental justice groups working to  
19 educate and protect the public from exposures to toxic chemicals. The method of selection of  
20 such groups can be found at the CEH website at [www.ceh.org/justicefund](http://www.ceh.org/justicefund).

21                   **4.1.3.**   \$82,625 as a reimbursement of a portion of CEH's reasonable attorneys'  
22 fees and costs. This amount shall be divided into two amounts: (1) \$73,125 to the Lexington Law  
23 Group; and (2) \$9,500 to the Center for Environmental Health.

24                   **4.1.4.**   The payments required under Sections 4.1.1-4.1.3 shall be made in  
25 accordance with the payment schedule attached hereto as Exhibit A. The payments required  
26 pursuant to Sections 4.1.1 and 4.1.2 shall each be made payable to the Center for Environmental  
27 Health. The payment required pursuant to Section 4.1.3 shall be made payable to Lexington Law

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1 Group and the Center for Environmental Health. All checks shall be delivered to Mark Todzo at  
2 Lexington Law Group at the address set forth in Section 8.1.2.

3 **4.1.5.** In the event that Settling Defendant elects not to certify its compliance with  
4 Section 3.2 in accordance with that Section, within ninety (90) days following the Effective Date,  
5 Settling Defendant must make an additional payment for each provision not certified, as follows:  
6 (i) \$12,000 if Settling Defendant elects to not participate in Section 3.2.1; (ii) \$11,500 if Settling  
7 Defendant elects to not participate in Section 3.2.2; and (3) \$11,500 if Settling Defendant elects  
8 to not participate in Section 3.2.3. Each of these payments shall be paid in two (2) separate  
9 checks, each payable to the Center for Environmental Health, to be allocated as set forth on  
10 Exhibit A and as follows:

11 **4.1.5.1.** Forty percent (40%) shall constitute a payment pursuant to  
12 California Health & Safety Code § 25249.7(b), such money to be apportioned by CEH in  
13 accordance with California Health & Safety Code § 25249.12 (25% to CEH and 75% to the State  
14 of California's Office of Environmental Health Hazard Assessment).

15 **4.1.5.2.** Sixty percent (60%) shall constitute a payment in lieu of  
16 payment pursuant to California Health & Safety Code § 25249.7(b) and California Code of  
17 Regulations, Title 11, § 3203(b). CEH will use such funds to continue its work educating and  
18 protecting people from exposures to toxic chemicals. CEH may also use a portion of such funds  
19 to monitor compliance with this Consent Judgment and to purchase and test Settling Defendant's  
20 Products to confirm compliance. In addition, as part of its Community Environmental Action and  
21 Justice Fund, CEH will use four percent (4%) of such funds to award grants to grassroots  
22 environmental justice groups working to educate and protect the public from exposures to toxic  
23 chemicals. The method of selection of such groups can be found at the CEH website at  
24 [www.ceh.org/justicefund](http://www.ceh.org/justicefund).

25 **5. ENFORCEMENT OF CONSENT JUDGMENT**

26 **5.1.** CEH may, by motion or application for an order to show cause before the Superior  
27 Court of Alameda County, enforce the terms and conditions contained in this Consent Judgment.

1 Prior to bringing any motion or application to enforce the requirements of Section 3 above, CEH  
2 shall provide Settling Defendant with a Notice of Violation and a copy of any test results which  
3 purportedly support CEH's Notice of Violation. The Parties shall then meet and confer regarding  
4 the basis for CEH's anticipated motion or application in an attempt to resolve it informally,  
5 including providing Settling Defendant with a reasonable opportunity of at least thirty (30) days  
6 to cure any alleged violation. Should such attempts at informal resolution fail, CEH may file its  
7 enforcement motion or application. The prevailing party on any motion to enforce this Consent  
8 Judgment shall be entitled to its reasonable attorney's fees and costs incurred as a result of such  
9 motion or application. This Consent Judgment may only be enforced by the Parties.

10 **6. MODIFICATION OF CONSENT JUDGMENT**

11 **6.1.** This Consent Judgment may only be modified by written agreement of CEH and  
12 Settling Defendant, or upon motion of CEH or Settling Defendant as provided by law.

13 **7. CLAIMS COVERED AND RELEASE**

14 **7.1.** This Consent Judgment is a full, final, and binding resolution between CEH acting  
15 in the public interest and Settling Defendant and Settling Defendant's parents, officers, directors,  
16 shareholders, divisions, subdivisions, subsidiaries, and their respective successors and assigns  
17 ("Defendant Releasees") and all entities to whom they distribute or sell or have distributed or sold  
18 Covered Products including, but not limited to, distributors, wholesalers, customers, retailers,  
19 franchisees, cooperative members, and licensees ("Downstream Defendant Releasees"), of all  
20 claims alleged in the Complaint in this Action arising from any violation of Proposition 65 that  
21 have been or could have been asserted in the public interest against Settling Defendant and  
22 Downstream Defendant Releasees, regarding the failure to warn about exposure to nicotine in the  
23 Covered Products manufactured, distributed, or sold by Settling Defendant prior to the Effective  
24 Date.

25 **7.2.** CEH, for itself, releases, waives, and forever discharges any and all claims alleged  
26 in the Complaint against Settling Defendant and Downstream Defendant Releasees arising from  
27 any violation of Proposition 65 that have been or could have been asserted regarding the failure to

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1 warn about exposure to nicotine or other chemicals in connection with Covered Products  
2 manufactured, distributed, or sold by Settling Defendant prior to the Effective Date.

3           **7.3.** Compliance with the terms of this Consent Judgment by Settling Defendant and  
4 the Downstream Defendant Releasees shall constitute compliance with Proposition 65 by Settling  
5 Defendant and Downstream Defendant Releasees with respect to any alleged failure to warn  
6 about nicotine or other chemicals in Covered Products manufactured, distributed, or sold by  
7 Settling Defendant after the Effective Date.

8           **8. PROVISION OF NOTICE**

9           **8.1.** When any Party is entitled to receive any notice under this Consent Judgment, the  
10 notice shall be sent by first class and electronic mail as follows:

11                   **8.1.1. Notices to Settling Defendant.** The persons for Settling Defendant to  
12 receive notices pursuant to this Consent Judgment shall be:

13                                   Brian M. Ledger  
14                                   Gordon & Rees LLP  
15                                   101 W. Broadway, Suite 2000  
16                                   San Diego, CA 92101  
17                                   bledger@gordonrees.com

18                                   Gregory G. Brown  
19                                   Space Jam Juice, LLC  
20                                   18001 Mitchell South, Irvine, CA 92614  
21                                   sjgencounsel@gmail.com

22                   **8.1.2. Notices to Plaintiff.** The persons for CEH to receive notices pursuant to  
23 this Consent Judgment shall be:

24                                   Mark Todzo  
25                                   Lexington Law Group  
26                                   503 Divisadero Street  
27                                   San Francisco, CA 94117  
28                                   mtodzo@lexlawgroup.com

**8.2.** Any Party may modify the person and address to whom the notice is to be sent by  
sending the other Parties notice by first class and electronic mail.

1       **9.       COURT APPROVAL**

2               **9.1.**     This Consent Judgment shall become effective on the Effective Date, provided  
3 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and  
4 Settling Defendant shall support approval of such Motion.

5               **9.2.**     If this Consent Judgment is not entered by the Court, it shall be of no force or  
6 effect and shall not be introduced into evidence or otherwise used in any proceeding for any  
7 purpose.

8       **10.     GOVERNING LAW AND CONSTRUCTION**

9               **10.1.**     The terms and obligations arising from this Consent Judgment shall be construed  
10 and enforced in accordance with the laws of the State of California.

11       **11.     ENTIRE AGREEMENT**

12               **11.1.**     This Consent Judgment contains the sole and entire agreement and understanding  
13 of CEH and Settling Defendant with respect to the entire subject matter hereof, and any and all  
14 prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby  
15 merged herein and therein.

16               **11.2.**     There are no warranties, representations, or other agreements between CEH and  
17 Settling Defendant except as expressly set forth herein. No representations, oral or otherwise,  
18 express or implied, other than those specifically referred to in this Consent Judgment have been  
19 made by any Party hereto.

20               **11.3.**     No other agreements not specifically contained or referenced herein, oral or  
21 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements  
22 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind  
23 any of the Parties hereto only to the extent that they are expressly incorporated herein.

24               **11.4.**     No supplementation, modification, waiver, or termination of this Consent  
25 Judgment shall be binding unless executed in writing by the Party to be bound thereby.

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1           **11.5.** No waiver of any of the provisions of this Consent Judgment shall be deemed or  
2 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall  
3 such waiver constitute a continuing waiver.

4           **12. RETENTION OF JURISDICTION**

5           **12.1.** This Court shall retain jurisdiction of this matter to implement or modify the  
6 Consent Judgment.

7           **13. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

8           **13.1.** Each signatory to this Consent Judgment certifies that he or she is fully authorized  
9 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and  
10 execute the Consent Judgment on behalf of the Party represented and to legally bind that Party.

11           **14. NO EFFECT ON OTHER SETTLEMENTS**

12           **14.1.** Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
13 against another entity on terms that are different from those contained in this Consent Judgment.

14           **15. EXECUTION IN COUNTERPARTS**

15           **15.1.** The stipulations to this Consent Judgment may be executed in counterparts and by  
16 means of facsimile, which taken together shall be deemed to constitute one document.

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18           **IT IS SO STIPULATED:**

19           **CENTER FOR ENVIRONMENTAL HEALTH**

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Charlie Pizarro  
Associate Director

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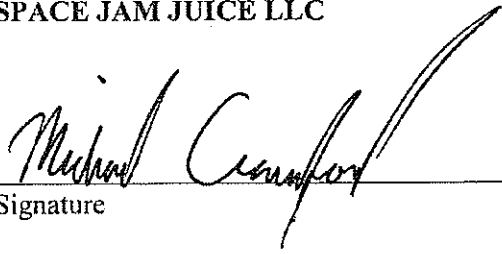
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SPACE JAM JUICE LLC

  
Signature

Michael Crawford  
Printed Name

President  
Title

IT IS SO ORDERED:

Dated: 6/28, 2016

GEORGE C. HERNANDEZ, JR.  
Judge of the Superior Court

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**EXHIBIT A**  
**Settlement Payments and Allocations**

**Total Settlement Payment:** \$130,000

**Payment 1: Total \$35,000 - Due 10 Days After the Effective Date**

Payment 1 Allocations:

Penalty Pursuant to Cal. Health & Safety Code § 25249.7(b):	\$4,950
Payment in Lieu of Civil Penalty:	\$7,425
Attorneys' Fees and Costs to CEH:	\$9,500
Attorneys' Fees and Costs to LLG:	\$13,125

**Payment 2: Total \$60,000 (or \$25,000 if all additional payments are waived pursuant to Section 4.1.5) - Due 90 Days After the Effective Date**

Payment 2 Allocations:

Attorneys' Fees and Costs to LLG:	\$25,000
<i>Waivable</i> Penalty:	\$14,000 total
<i>Waivable</i> Payment in Lieu of Civil Penalty:	\$21,000 total

**Payment 3: Total \$35,000- Due 180 Days After the Effective Date**

Payment 3 Allocation:

Attorneys' Fees and Costs to LLG:	\$35,000
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