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21
22 **SUPERIOR COURT OF CALIFORNIA**
23 **FOR THE COUNTY OF ALAMEDA**
24

<p>25 PEOPLE OF THE STATE OF 26 CALIFORNIA, ex rel. KAMALA D. 27 HARRIS, Attorney General, 28 29 Plaintiff, 30 31 v. 32 BAY AREA JUMP, et al. 33 34 Defendants.</p>	<p>Case No. RG 10-530436 CONSENT JUDGMENT AS TO DEFENDANTS JUMP FOR FUN, INC. AND JUMP FOR FUN NATIONAL, INC.</p>
<p>35 CENTER FOR ENVIRONMENTAL 36 HEALTH, a non-profit corporation, 37 38 Plaintiff, 39 40 v. 41 CUTTING EDGE CREATIONS, INC., et al. 42 43 Defendants.</p>	<p>Case No. RG 10-530300</p>

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 (the
8 “Products”) contain lead and lead compounds (together “Lead”), and that use of, and contact with,
9 those Products results in exposure to Lead, a chemical known to the State of California to cause
10 cancer and reproductive harm. The Complaint further alleges that under the Safe Drinking Water
11 and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6, also known as
12 “Proposition 65,” businesses must provide persons with a “clear and reasonable warning” before
13 exposing individuals to these chemicals, and that the defendants failed to do so. The Complaint
14 further alleges that the Lead levels in the Products exceed the standards set by the Consumer
15 Product Safety Improvement Act (“CPSIA”) of 2008. The Complaint also alleges that the
16 violations of Proposition 65 and the CPSIA constitute unlawful acts in violation of the Unfair
17 Competition Law, pursuant to Business & Professions Code §§ 17200, *et seq.*

18 **1.2** The Center for Environmental Health (“CEH”) first brought the issue of Lead
19 exposures from the Products to the attention of the Attorney General by issuing its first 60-Day
20 Notice of Violation on February 19, 2010. On March 16, 2010, CEH issued a 60-Day Notice of
21 Violation (the “Notice”) to defendants Jump For Fun, Inc. and Jump For Fun National, Inc.
22 (“Settling Defendants”) alleging violations of Proposition 65 based on Settling Defendants
23 introducing the Products into the stream of commerce thereby exposing individuals to Lead. CEH
24 filed its case, *Center for Environmental Health v. Cutting Edge Creations, Inc., et al.*, Alameda
25 County Superior Court, Case No. RG 10-530300, on August 11, 2010, naming Settling
26 Defendants as parties. CEH also seeks civil penalties and injunctive relief for alleged violations
27 of Proposition 65. On October 25, 2010, the People’s action was coordinated with CEH’s action.

28

1 **1.3** Settling Defendants are named as defendants in both the People’s and CEH’s
2 Complaints.

3 **1.4** Settling Defendants are corporations which employ more than ten (10) persons and
4 employed ten or more persons at all times relevant to the allegations of the Complaints, and which
5 manufacture, distribute, rent and/or sell Products (as defined below) in the State of California
6 and/or have done so in the past four years.

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

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

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 Kamala D. Harris, CEH and Settling Defendants Jump For Fun, Inc. and Jump For Fun National,
10 Inc..

11 **2.5** “Plaintiffs” shall mean People of the State of California, ex rel. Kamala D. Harris,
12 Attorney General, and CEH.

13 **2.6** “Old Products” means any Product sold by Settling Defendants after January 1,
14 2007, but prior to the Effective Date.

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

16 **3.1** Immediate Product Reformulation. Immediately upon the Effective Date of this
17 Consent Judgment, Settling Defendants shall not manufacture, distribute, sell, rent or otherwise
18 make available to consumers in California any Products with Lead levels higher than 100 parts per
19 million (“ppm”) (“Compliance Level”) as determined pursuant to total Lead testing, EPA Method
20 3050B or CPSIA Method CPSC-CH-E1001-08 (the “Test Protocols”).

21 **3.2** Specifications and Certifications. For so long as Settling Defendants manufacture,
22 distribute, sell, rent or otherwise make available to consumers in California any Product, Settling
23 Defendants shall issue specifications to their suppliers of the Products requiring that the vinyl
24 used in the Products shall not contain Lead in excess of the Compliance Level. Settling
25 Defendants shall obtain and maintain written certifications from their suppliers of the Products
26 certifying that the vinyl used in the Products does not contain Lead in excess of the Compliance
27 Level.

28

1 **3.3 Settling Defendants’ Independent Testing.** In order to ensure compliance with
2 Section 3.1, Settling Defendants shall conduct (or cause to be conducted) testing to confirm
3 Products made available to consumers in California comply with the Compliance Level. Settling
4 Defendants shall either conduct the testing of the vinyl used in the Products using an X-Ray
5 Fluorescence Analyzer or shall cause to have the testing performed by an independent, CPSIA-
6 approved laboratory in accordance with either of the Test Protocols. Settling Defendants shall
7 perform the testing described in this section on each Product purchased from their suppliers.
8 Settling Defendants’ purchase of Products from defendants who have settled with either the
9 Attorney General or CEH in the Actions shall constitute compliance with this Section 3.3 subject
10 to the certification requirements of Section 3.2.

11 (a) Products in Existing Inventory. If the results of the testing of any Product
12 in Settling Defendants’ existing inventory show Lead levels in excess of 300 ppm, Settling
13 Defendants are prohibited from distributing, selling, renting or otherwise making such
14 Product available to consumers.

15 (b) Newly Acquired Products That Exceed the Compliance Level. If the
16 results of the testing required pursuant to this Section 3.3 show Lead levels in excess of the
17 Compliance Level for any Product purchased by Settling Defendants subsequent to the
18 Effective Date, Settling Defendants shall: (1) refuse to accept any Product that tested
19 above the Compliance Level; and (2) send a notice to the supplier explaining that such
20 Product does not comply with either Settling Defendants’ specifications for Lead or the
21 supplier’s certification.

22 **4. PAYMENTS**

23 **4.1 Payments by Settling Defendants.** Settling Defendants shall pay a total of \$20,000
24 as a settlement payment to be allocated between the categories set forth below in this Section 4.
25 On or before May 1, 2012, or within ten (10) days of the Effective Date, whichever date is later,
26 Settling Defendant shall pay the sum of \$7,250 to the Attorney General by check made payable to
27 the “California Department of Justice,” and \$2,750 to CEH by check payable to the “Center for
28 Environmental Health.” On or before July 1, 2012, Settling Defendant shall pay the sum of

1 \$10,000 by check payable to the “Lexington Law Group.”

2 **4.2** Civil Penalties. Settling Defendants shall \$6,000 as a civil penalty pursuant to
3 California Health & Safety Code §§ 25249.7(b) and 25249.12. Pursuant to Health & Safety Code
4 § 25249.12, 75% of these funds shall be remitted to the California Office of Environmental Health
5 Hazard Assessment (“OEHHA”), and the remaining 25% apportioned evenly among the Attorney
6 General and CEH.

7 **4.3** Cy Pres Product Testing. Settling Defendants shall pay \$2,000 to CEH as a
8 payment in lieu of additional civil penalties. CEH shall use such funds exclusively for testing of
9 inflatable structures made with vinyl such as bounce houses, combos, obstacle courses and
10 interactives.

11 **4.4** Other Payments. Settling Defendants shall also make the following payments:

12 (a) Attorney General. Settling Defendants shall pay the sum of \$2,000 to the
13 Attorney General, to reimburse the fees and costs her office has expended with respect to this
14 matter. Funds paid pursuant to this paragraph shall be placed in an interest-bearing Special
15 Deposit Fund established by the Attorney General. These funds, including any interest, shall be
16 used by the Attorney General, until all funds are exhausted, for the costs and expenses associated
17 with the enforcement and implementation of Proposition 65, including investigations,
18 enforcement actions, other litigation or activities as determined by the Attorney General to be
19 reasonably necessary to carry out his duties and authority under Proposition 65. Such funding
20 may be used for the costs of the Attorney General’s investigation, filing fees and other court costs,
21 payment to expert witnesses and technical consultants, purchase of equipment, travel, purchase of
22 written materials, laboratory testing, sample collection, or any other cost associated with the
23 Attorney General’s duties or authority under Proposition 65. Funding placed in the Special
24 Deposit Fund pursuant to this paragraph, and any interest derived therefrom, shall solely and
25 exclusively augment the budget of the Attorney General’s Office and in no manner shall supplant
26 or cause any reduction of any portion of the Attorney General’s budget.

27 (b) CEH’s Attorney Fees. Settling Defendants shall pay \$10,000 to reimburse
28 CEH and its attorneys for their reasonable investigation fees and costs, attorneys’ fees, and any

1 other costs incurred as a result of investigating, bringing this matter to the attention of Settling
2 Defendants and the People, litigating and negotiating a settlement in the public interest.

3 **4.5** Each payment required by this Consent Judgment shall be made through the
4 delivery of separate checks payable to the applicable person, as follows:

5 (a) Attorney General and OEHHA. Payments due to the Attorney General and
6 OEHHA shall be made payable to the “California Department of Justice,” and sent to the attention
7 of Robert Thomas, Legal Analyst, Department of Justice, 1515 Clay Street, 20th Floor, Oakland,
8 CA 94612.

9 (b) CEH and Lexington Law Group. The payments due to CEH and the
10 Lexington Law Group shall be made payable as set forth above and sent to: Mark N. Todzo,
11 Lexington Law Group, LLP, 503 Divisadero Street, San Francisco, CA 94117.

12 (c) Copies of checks. Settling Defendants will cause copies of each check
13 issued pursuant to this Consent Judgment to be sent to: Jamie Jefferson, Deputy Attorney
14 General, 1515 Clay Street, 20th Floor, Oakland, CA 94612.

15 **5. MODIFICATION OF CONSENT JUDGMENT**

16 **5.1** This Consent Judgment may only be modified by express written agreement of the
17 Parties with the approval of the Court; by an order of this Court on noticed motion from the
18 People, CEH or Settling Defendants in accordance with law; or by the Court in accordance with
19 its inherent authority to modify its own judgments.

20 **5.2** Before filing an application with the Court for a modification to this Consent
21 Judgment, the Party seeking modification shall meet and confer with the other parties to determine
22 whether the modification may be achieved by consent. If a proposed modification is agreed upon,
23 then the Parties will present the modification to the Court by means of a stipulated modification to
24 the Consent Judgment.

25 **6. ENFORCEMENT**

26 **6.1** Enforcement by Plaintiffs. Plaintiffs may, by motion or application for an order to
27 show cause before this Court, enforce the terms and conditions contained in this Consent
28 Judgment or seek resolution of any dispute arising under this Consent Judgment. In any

1 proceeding to enforce the terms of this Consent Judgment, Plaintiffs may seek whatever fines,
2 costs, penalties, or remedies are provided by law for failure to comply with the Consent Judgment.
3 However, Plaintiffs may not seek any fees or costs if Settling Defendants agree to take the action
4 demanded by Plaintiffs during the meet and confer process described in Section 8.3, below, and
5 implements such action in a prompt manner.

6 **6.2** Enforcement by Separate Action. Where violations of this Consent Judgment
7 constitute subsequent violations of Proposition 65 or other laws independent of the Consent
8 Judgment and/or those alleged in the Complaint, Plaintiffs and/or CEH are not limited to
9 enforcement of the Consent Judgment, but may instead elect to seek, in another action, whatever
10 fines, costs, penalties, or remedies are provided for by law for failure to comply with Proposition
11 65 or other laws. In any action brought by the People and/or CEH or another enforcer alleging
12 subsequent violations of Proposition 65 or other laws, Settling Defendants may assert any and all
13 defenses that are available, including the *res judicata* or collateral estoppel effect of this Consent
14 Judgment. Plaintiffs must elect whether (a) to use the enforcement provisions of Section 8.1 of
15 this Consent Judgment or (b) to bring a new action pursuant to this Subsection 8.2.

16 **6.3** Meet and Confer Required. Before any party institutes any proceeding or separate
17 action based on an alleged violation of the Consent Judgment, the moving or enforcing party
18 (Moving Party) shall meet and confer with the other party (Other Party) in good faith in an
19 attempt to informally resolve the alleged violation.

20 **6.4** The terms of this Consent Judgment shall be enforced exclusively by the Parties
21 hereto.

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

23 **7.1** Each signatory to this Consent Judgment certifies that he or she is fully authorized
24 to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on
25 behalf of the party he or she represents.

26 **8. CLAIMS COVERED**

27 **8.1** Full and Binding Resolution. This Consent Judgment is a full, final, and binding
28 resolution between the Plaintiffs, CEH, and Settling Defendants, of any violation of Proposition

1 65., Business & Professions Code §§ 17200, *et seq.*, and 17500, *et seq.*, or any other statutory or
2 common law claims that have been or could have been asserted in the Notice or Complaints
3 against Settling Defendants and their downstream distributors, wholesalers and retailers for failure
4 to provide clear and reasonable warnings of exposure to Lead from the use of the Products, or any
5 other claim based on the facts or conduct alleged in the Notice or Complaints, whether based on
6 actions committed by Settling Defendants or by any entity to whom Settling Defendants distribute
7 or sell Products, or any entity that sells the Products to consumers. Compliance with the terms of
8 this Consent Judgment resolves any issue now, in the past, and in the future, concerning
9 compliance by Settling Defendants, their parents, divisions, subdivisions, subsidiaries, sister
10 companies, affiliates, cooperative members, licensors and licensees; their distributors,
11 wholesalers, and retailers who sell Products; and the shareholders, officers, predecessors,
12 successors, and assigns of any of them, with the requirements of Proposition 65 or Business &
13 Professions Code §§ 17200, *et seq.*, and 17500, *et seq.*, arising from or relating to exposures to
14 Lead in or from the Products. This Consent Judgment does not resolve any claims that Plaintiffs
15 may assert with respect to (i) products other than the Products or (ii) chemicals other than Lead.

16 **9. PROVISION OF NOTICE**

17 **9.1** Notices sent pursuant to this Consent Judgment shall be sent to the person(s) and
18 addresses set forth in this paragraph. Any Party may modify the person and address to whom the
19 notice is to be sent by sending each other Party notice by certified mail, return receipt requested.
20 Said change shall take effect for any notice mailed at least five days after the date the return
21 receipt is signed by the party receiving the change.

22 **9.2** Notices shall be sent by overnight delivery, or by concurrent e-mail and by First
23 Class Mail, to the following when required:

24 For the Attorney General:

25 Jamie Jefferson, Deputy Attorney General
26 California Department of Justice
27 1515 Clay Street, 20th Floor,
28 Oakland, CA 94612
Jamie.Jefferson@doj.ca.gov

and simultaneously to:

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

For the Center for Environmental Health

Mark N. Todzo
Lexington Law Group
503 Divisadero Street
San Francisco, CA 94117
mtodzo@lexlawgroup.com

For the Settling Defendants:

Jeffrey Baraban
Baraban & Teske Attorneys at Law
215 N. Marengo Ave., 3rd Floor
Pasadena, CA 91101
J_baraban@msn.com

9.3 Written Notification. Within 15 days of completing the actions required by Sections 3.1 (Immediate Product Reformulation), and also on Plaintiffs’ written request with respect to any other action required by this Consent Judgment, Settling Defendants shall provide Plaintiffs with written notification that the required action has been completed.

10. COURT APPROVAL AND DISMISSAL OF CEH ACTION

10.1 Plaintiffs shall submit this Consent Judgment to the Court for entry by noticed motion or as otherwise may be required or permitted by the Court. If this Consent Judgment is not approved by the Court, it shall be of no force or effect and may not be used by the Plaintiffs or Settling Defendants for any purpose.

11. ENTIRE AGREEMENT

11.1 This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

1 **12. RETENTION OF JURISDICTION**

2 12.1 This Court shall retain jurisdiction of this matter to implement and enforce the
3 Consent Judgment, and to resolve any disputes that may arise as to the implementation of this
4 Judgment.

5 **13. EXECUTION IN COUNTERPARTS**

6 13.1 The stipulations to this Consent Judgment may be executed in counterparts and by
7 means of facsimile, which taken together shall be deemed to constitute one document.
8

9 **IT IS SO ORDERED and ADJUDGED:**


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11 DATED: _____

JUDGE OF THE SUPERIOR COURT

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13 **IT IS SO STIPULATED:**

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15 DATED: 7/30/12 _____

KAMALA D. HARRIS
Attorney General of California
MARK BRECKLER,
Chief Assistant Attorney General
SALLY MAGNANI
Senior Assistant Attorney General

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19 By: 
20 _____
JAMIE JEFFERSON
Deputy Attorney General
For People of the State of California

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24 DATED: _____

CENTER FOR ENVIRONMENTAL HEALTH

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26 By: _____
27 CHARLIE PIZARRO
Associate Director

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7 means of facsimile, which taken together shall be deemed to constitute one document.

8
9 **IT IS SO ORDERED and ADJUDGED:**

10
11 DATED: _____
12 _____
13 JUDGE OF THE SUPERIOR COURT

14 **IT IS SO STIPULATED:**

15 DATED: _____
16 KAMALA D. HARRIS
17 Attorney General of California
18 MARK BRECKLER,
19 Chief Assistant Attorney General
20 SALLY MAGNANI
21 Senior Assistant Attorney General

22
23 By: _____
24 JAMIE JEFFERSON
25 Deputy Attorney General
26 For People of the State of California

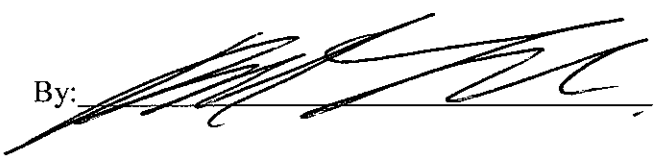
27 DATED: Aug 3, 2012
28 _____
29 CENTER FOR ENVIRONMENTAL HEALTH

30 By: 
31 _____
32 CHARLIE PIZARRO
33 Associate Director

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DATED: 8/14/12

JUMP FOR FUN, INC.
JUMP FOR FUN NATIONAL, INC.

By: 

Title: Pres.