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9 CENTER FOR ENVIRONMENTAL HEALTH

10 **SUPERIOR COURT OF CALIFORNIA**
11 **FOR THE COUNTY OF ALAMEDA**

12 CENTER FOR ENVIRONMENTAL 13 HEALTH, a non-profit corporation, 14 Plaintiff, 15 v. 16 CUTTING EDGE CREATIONS, INC., et al. 17 Defendants	Case No. RG 10-530300 CONSENT JUDGMENT AS TO DEFENDANT JINGO JUMP, INC.
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1 **1. INTRODUCTION**

2 **1.1** On August 11, 2010, the Center for Environmental Health (“CEH”) filed the action
3 *Center for Environmental Health v. Cutting Edge Creations, Inc.*, Case No. RG 10-530300, in
4 Alameda County Superior Court for civil penalties and injunctive relief for violations of
5 Proposition 65. CEH’s Complaint alleges that the named defendants failed to provide clear and
6 reasonable warnings that their inflatable structures made with vinyl such as bounce houses,
7 combos, obstacle courses and interactives contain lead and lead compounds (together “Lead”),
8 and that use of, and contact with, such products results in exposure to Lead, a chemical known to
9 the State of California to cause cancer and reproductive harm. The Complaint further alleges that
10 under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code
11 section 25249.6, also known as “Proposition 65,” businesses must provide persons with a “clear
12 and reasonable warning” before exposing individuals to these chemicals, and that the defendants
13 failed to do so.

14 **1.2** On July 2, 2010, CEH issued a 60-day Notice of Violation (the “Notice”) alleging
15 that defendant Jingo Jump, Inc. (“Settling Defendant”) and others were violating Proposition 65
16 by introducing the Covered Products into the stream of commerce thereby exposing individuals to
17 Lead. On December 3, 2010, CEH amended its complaint to name Settling Defendant as a
18 defendant.

19 **1.3** Settling Defendant is a corporation that employs more than ten (10) persons and
20 employed ten or more persons during much of the time relevant to the allegations of the
21 Complaints, and manufactures, distributes and/or sells Covered Products (as defined below) in the
22 State of California and/or has done so in the past four years.

23 **1.4** For purposes of this Consent Judgment only, CEH and the Settling Defendant
24 stipulate that this Court has jurisdiction over the allegations of violations contained in the Notice
25 and Complaints and personal jurisdiction over Settling Defendant as to the acts alleged in the
26 Notice and Complaints, that venue is proper in Alameda County, and that this Court has
27 jurisdiction to enter this Consent Judgment as a full and final resolution of all claims which were
28 or could have been raised in the Complaints based on the facts alleged therein.

1 **1.5** CEH and Settling Defendant enter into this Consent Judgment as a full and final
2 settlement of all claims relating to the Covered Products (as that term is defined below) arising
3 from the failure to warn regarding the presence of Lead in such Covered Products. Nothing in this
4 Consent Judgment shall be construed as an admission by the Parties of any fact, conclusion of
5 law, issue of law or violation of law, nor shall compliance with the Consent Judgment constitute
6 or be construed as an admission by Parties of any fact, conclusion of law, issue of law or violation
7 of law. Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy
8 argument or defense the Parties may have in this or any other future legal proceedings. By
9 execution of this Consent Judgment and agreeing to provide the relief and remedies specified
10 herein, Settling Defendant does not admit any violations of Proposition 65, applicable Business
11 and Professions Code sections or any other law or legal duty. Settling Defendant expressly asserts
12 that its Covered Products do not require a warning under Proposition 65 and denies any liability
13 whatsoever.

14 **2. DEFINITIONS**

15 **2.1** The “Action” shall mean the *Center for Environmental Health v. Cutting Edge*
16 *Creations, Inc., et al.*, Case No. RG 10-530300, Alameda County Superior Court (filed August 11,
17 2010).

18 **2.2** “Covered Products” shall mean all inflatable structures made with vinyl such as
19 bounce houses, combos, obstacle courses and interactives manufactured, distributed or sold by
20 Settling Defendant.

21 **2.3** The “Effective Date” of this Consent Judgment shall be the date on which this
22 Consent Judgment is entered as a judgment by the trial court.

23 **2.4** “Parties” shall mean the following entities: CEH and Settling Defendant.

24 **2.5** “Old Covered Products” means any Covered Products that were sold by Settling
25 Defendant in California between October 1, 2006 and May 15, 2008.

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

27 **3.1** Immediate Product Reformulation. Immediately upon the Effective Date of this
28 Consent Judgment, Settling Defendant shall reduce the level of Lead in the Covered Products sold

1 in California from the current levels to a level no higher than 100 ppm (“Compliance Level”) as
2 determined pursuant to total Lead testing, EPA Method 3050B or CPSIA method CPSC-CH-
3 E1001-08 (the “Test Protocols”).

4 **3.2** Specification and Certification of Vinyl. For so long as Settling Defendant
5 manufactures, distributes, or ships the Covered Products for sale in California, Settling Defendant
6 shall issue specifications to its vinyl suppliers requiring that the vinyl used in the Covered
7 Products shall not contain Lead in excess of the Compliance Level. Defendant shall obtain and
8 maintain written certification from its suppliers of the vinyl certifying that the vinyl used in the
9 Covered Products does not contain Lead in excess of the Compliance Level.

10 **3.3** Settling Defendant’s Independent Testing. In order to ensure compliance with
11 Section 3.1, Settling Defendant shall conduct (or cause to be conducted) testing twice annually to
12 confirm that vinyl purchased from its suppliers and used in its Covered Products sold in California
13 comply with the Compliance Level. Defendant shall either conduct (or cause to be conducted) the
14 testing of the vinyl used in the Covered Products using an X-Ray Fluorescence Analyzer or shall
15 cause to have the testing performed by an independent, CPSIA-approved laboratory in accordance
16 with either of the Test Protocols. Settling Defendant shall perform the testing described in this
17 Section on each roll of vinyl purchased from its suppliers.

18 (a) Vinyl That Exceeds the Compliance Level. If the results of the testing
19 required pursuant to Section 3.3 show Lead levels in excess of the Compliance Level in
20 the vinyl, Settling Defendant shall: (1) refuse to accept all the vinyl that tested above the
21 Compliance Level; and (2) send a notice to the supplier explaining that such vinyl does not
22 comply with either Settling Defendant’s specifications for Lead or the supplier’s
23 certification.

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

25 **4.1** CEH alleges that warnings are necessary as to the Old Covered Products because
26 these products purportedly cause continuing exposures to Lead. While expressly denying such
27 allegations, Settling Defendant agrees to implement the following programs to provide clear and
28 reasonable warnings to persons who come into contact with Old Covered Products sold before the

1 Effective Date of this Consent Judgment:

2 (a) Informational Program. Settling Defendant shall provide the mailed
3 warnings and informational materials attached hereto as Exhibit A, in English and
4 Spanish, to all parties who purchased Old Covered Products. The informational materials
5 provided pursuant to this Section shall include an offer to either perform testing on the Old
6 Covered Products or pay for testing of such Old Covered Products.

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

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

12 **5.1 Testing of Old Covered Products**. Upon request by an individual or entity that
13 purchased an Old Covered Product, Settling Defendant shall either perform or pay for testing for
14 the Old Covered Products. The testing pursuant to this Section may be performed by X-Ray
15 Fluorescence or pursuant to either of the Test Protocols. An individual or entity that purchased
16 any Old Covered Product must request testing no later than six (6) months from the date of the
17 mailing of the warning and informational materials referred to in paragraph 4.1(a).

18 **5.2 Discounted Replacement of Certain Old Covered Products**. To the extent that the
19 testing described in Section 5.1 reveals Lead levels that exceed 600 ppm, Settling Defendant shall
20 provide the individual or entity with a discount amounting to 50% of the list price of a comparable
21 Covered Product to the one that tested in excess of 600 ppm. The Old Covered Product must be
22 in useable condition to qualify for the discount.

23 **6. PAYMENTS**

24 **6.1 Payments and Payment Timing**. Settling Defendant shall pay a total of \$22,500 to
25 be divided as set forth in Sections 6.2-6.4. The payment shall be due as follows:

26 (a) the first payment of \$11,250 shall be due within thirty (30) days following
27 the Effective Date; and
28

1 (b) the second payment of \$11,250 shall be due within ninety (90) days
2 following the Effective Date.

3 **6.2** Civil Penalties. Settling Defendant shall pay a civil penalty of \$2,250 pursuant to
4 California Health & Safety Code §§ 25249.7(b) and 25249.12. Pursuant to § 25249.12, 75% of
5 these funds shall be remitted to the California Office of Environmental Health Hazard Assessment
6 (“OEHHA”), and the remaining 25% to CEH.

7 **6.3** Cy pres. Settling Defendant shall make the following payments in lieu of
8 additional civil penalties. Settling Defendant shall pay \$6,250 to CEH to be used exclusively for
9 testing of inflatable structures made with vinyl such as bounce houses, combos, obstacle courses
10 and interactives. The payment required under this section shall be made payable to CEH.

11 **6.4** Other Payments. Settling Defendant shall also make the following payments:

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

17 **6.5** Each payment required by this Consent Judgment shall be made through the
18 delivery of separate checks payable to the applicable person, as follows:

19 (a) CEH/Lexington Law Group. The payments due to CEH and the Lexington
20 Law Group shall be made payable as set forth above and sent to: Mark N. Todzo, Lexington Law
21 Group, 503 Divisadero Street, San Francisco, CA 94117.

22 **7. MODIFICATION OF CONSENT JUDGMENT**

23 **7.1** This Consent Judgment may only be modified by express written agreement of the
24 Parties with the approval of the Court; by an order of this Court on noticed motion from CEH or
25 Settling Defendant in accordance with law; or by the Court in accordance with its inherent
26 authority to modify its own judgments.

27 **7.2** Before filing an application with the Court for a modification to this Consent
28 Judgment, the Party seeking modification shall meet and confer with the other parties to determine

1 whether the modification may be achieved by consent. If a proposed modification is agreed upon,
2 then the Parties will present the modification to the Court by means of a stipulated modification to
3 the Consent Judgment.

4 **8. ENFORCEMENT**

5 **8.1 Enforcement by CEH.** CEH may, by motion or application for an order to show
6 cause before this Court, enforce the terms and conditions contained in this Consent Judgment or
7 seek resolution of any dispute arising under this Consent Judgment. In any proceeding to enforce
8 the terms of this Consent Judgment, CEH may seek whatever fines, costs, penalties, or remedies
9 are provided by law for failure to comply with the Consent Judgment. However, CEH may not
10 seek any fees or costs if Settling Defendant agrees to take the action demanded by CEH during the
11 meet and confer process described in Section 8.3, below, and implements such action in a prompt
12 manner.

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

23 **8.3 Meet and Confer Required.** Before any party institutes any proceeding or separate
24 action based on an alleged violation of the Consent Judgment, the moving or enforcing party
25 (Moving Party) shall meet and confer with the other party (Other Party) in good faith in an
26 attempt to informally resolve the alleged violation.

27 **8.4** The terms of this Consent Judgment shall be enforced exclusively by the Parties
28 hereto.

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

2 **9.1** Each signatory to this Consent Judgment certifies that he or she is fully authorized
3 to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on
4 behalf of the party he or she represents.

5 **10. CLAIMS COVERED**

6 **10.1 Full and Binding Resolution.** This Consent Judgment is a full, final, and binding
7 resolution between CEH and Settling Defendant and its parents, divisions, subdivisions,
8 subsidiaries, sister companies, affiliates, cooperative members, licensors and licensees; its
9 distributors, wholesalers, and retailers who sell Covered Products; and the shareholders, officers,
10 predecessors, successors, and assigns of any of them, (“Defendant Releasees”), and all entities to
11 whom they distribute or sell Covered Products, including but not limited to distributors,
12 wholesalers, and customers (“Downstream Defendant Releasees”) of any violation of Proposition
13 65, or any other statutory or common law claims that have been or could have been asserted in the
14 Notice or Complaint against Settling Defendant. Defendant Releasees, and Downstream
15 Defendant Releasees, for failure to provide clear and reasonable warnings of exposure to Lead
16 from the use of the Covered Products, or any other claim based on the facts or conduct alleged in
17 the Notice or Complaints, whether based on actions committed by Settling Defendant or by any
18 entity to whom Settling Defendant distributes or sells Covered Products, or any entity that sells
19 the Covered Products to consumers. Compliance with the terms of this Consent Judgment
20 resolves any issue now, in the past, and in the future, concerning compliance by Settling
21 Defendant, Defendant Releasees, and Downstream Defendant Releasees with the requirements of
22 Proposition 65 arising from or relating to exposures to Lead in or from the Covered Products. This
23 Consent Judgment does not resolve any claims that CEH may assert with respect to (i) products
24 other than the Covered Products or (ii) chemicals other than Lead.

25 **11. PROVISION OF NOTICE**

26 **11.1** Notices sent pursuant to this Consent Judgment shall be sent to the person(s) and
27 addresses set forth in this Section 11. Any Party may modify the person and address to whom the
28 notice is to be sent by sending each other Party notice by certified mail, return receipt requested.

1 Said change shall take effect for any notice mailed at least five days after the date the return
2 receipt is signed by the Party receiving the change.

3 **11.2** Notices shall be sent by overnight delivery, or by concurrent e-mail and by First
4 Class Mail, to the following when required:

5 For the Center for Environmental Health

6 Mark N. Todzo
7 Lexington Law Group
8 503 Divisadero Street
9 San Francisco, CA 94117
10 mtodzo@lexlawgroup.com

11 For the Settling Defendant:

12 Jeffrey B. Margulies Esq.
13 Fulbright & Jaworski LLP
14 555 South Flower Street, 41st Floor
15 Los Angeles, CA 90071
16 jmargulies@fulbright.com

17 **11.3** Written Notification. Within 30 days of completing the actions required by
18 Sections 3.1 (Immediate Product Reformulation) and 4.1 (b) (Web Notice), and also on CEH's
19 written request with respect to any other action required by this Consent Judgment, Settling
20 Defendant shall provide CEH with written notification that the required action has been
21 completed.

22 **12. COURT APPROVAL**

23 **12.1** This Consent Judgment shall be submitted to the Court for entry by noticed motion
24 or as otherwise may be required or permitted by the Court. If this Consent Judgment is not
25 approved by the Court, it shall be of no force or effect and may not be used by CEH or Settling
26 Defendant for any purpose.

27 **13. ENTIRE AGREEMENT**

28 **13.1** 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

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

3 **14. RETENTION OF JURISDICTION**

4 **14.1** This Court shall retain jurisdiction of this matter to implement and enforce the
5 Consent Judgment, and to resolve any disputes that may arise as to the implementation of this
6 Judgment.

7 **15. EXECUTION IN COUNTERPARTS**

8 **15.1** The stipulations to this Consent Judgment may be executed in counterparts and by
9 means of facsimile, which taken together shall be deemed to constitute one document.

10
11 **IT IS SO ORDERED and ADJUDGED:**

12
13 DATED: _____ JUDGE OF THE SUPERIOR COURT
14

15
16
17 **IT IS SO STIPULATED:**

18 DATED: 2/15/12 _____ CENTER FOR ENVIRONMENTAL HEALTH
19

20
21 By:  _____
22 CHARLIE PIZARRO
Associate Director

23
24 DATED: _____ JINGO JUMP, INC.
25

26
27 By: _____
28 Its: _____

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

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

10
11 **IT IS SO ORDERED and ADJUDGED:**


12
13 DATED: _____
14 JUDGE OF THE SUPERIOR COURT

15
16
17 **IT IS SO STIPULATED:**

18 DATED: _____ CENTER FOR ENVIRONMENTAL HEALTH

19
20
21 By: _____
22 CHARLIE PIZARRO
23 Associate Director

24 DATED: 02-14-2014 JINGO JUMP, INC.

25
26
27 By: GRANT AKOPYAN
28 Its: CEO 

1 **Exhibit A**

2 **Letter to Customers of Unreformulated Products**

3 Dear Customer:

4 Our records show that you purchased products from us during the period October 1, 2006
5 through May 1, 2008. This letter is written to inform you that some of the products manufactured
6 by Jingo Jump, Inc. during those time periods contain lead.

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

9 Since 2008, all of our products have been formulated to reduce the amount of lead to
10 levels below those of concern. However, some of our older products manufactured during the
11 time periods identified above may have lead levels that are of concern.

12 We would like to provide you with the opportunity to have the products you purchased
13 from us during those time periods tested to determine if such products contain lead levels that are
14 of concern. If you purchased a product or products from us that was manufactured during the
15 period from October 1, 2006 to May 1, 2008 that are still in use, please contact [Name] at
16 [telephone number] to arrange for testing of those products. Jingo Jump will conduct or pay for
17 all testing of the products.

18 If the testing of any of the products reveals lead levels in excess of 600 parts per million,
19 Jingo Jump will provide a discount amounting to 50% of the list price of a comparable product.

20 In the meantime, you can reduce exposures to lead from these products by employing the
21 following practices:

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

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

Sincerely,

Name