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12 **SUPERIOR COURT OF CALIFORNIA**
13 **FOR THE COUNTY OF ALAMEDA**

<p>14 CENTER FOR ENVIRONMENTAL 15 HEALTH, a non-profit corporation, 16 17 Plaintiff, 18 19 v. 20 CUTTING EDGE CREATIONS, INC., et 21 al. 22 23 Defendants</p>	<p>24 Case No. RG 10-530300 25 26 27 28 CONSENT JUDGMENT RE: INFLATABLE GAMES, INC.</p>
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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 September 23, 2010, CEH issued a 60-day Notice of Violation (the “Notice”)
15 alleging that defendant Inflatable Games, Inc. (“Settling Defendant”) and others were violating
16 Proposition 65 by introducing the Products into the stream of commerce thereby exposing
17 individuals to Lead. On December 3, 2010, CEH amended its complaint to name Settling
18 Defendant as a defendant.

19 **1.3** Settling Defendant is a corporation that at times employs more than ten (10)
20 persons and employed ten or more persons during much of the time relevant to the allegations of
21 the Complaints, and manufactures, distributes and/or sells Products (as defined below) in the State
22 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 Products (as that term is defined below) arising from the
3 failure to warn regarding the presence of Lead in such Products. Nothing in this Consent
4 Judgment shall be construed as an admission by the Parties of any fact, conclusion of law, issue of
5 law or violation of law, nor shall compliance with the Consent Judgment constitute or be
6 construed as an admission by Parties of any fact, conclusion of law, issue of law or violation of
7 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 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** “Products” shall mean all inflatable structures made with vinyl such as bounce
19 houses, combos, obstacle courses and interactives manufactured, distributed or sold by Settling
20 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** “Plaintiff” shall mean CEH.

25 **2.6** “Old Products” means any Products, located in the state of California,
26 manufactured by Settling Defendant between April 18, 2007 and August 31, 2010, which is the
27 time period Settling Defendant is alleged to have sold Products with levels of Lead exceeding
28 1,000 parts per million (“ppm”).

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

2 **3.1 Immediate Product Reformulation.** Immediately upon the Effective Date of this
3 Consent Judgment, Settling Defendant shall reduce the level of Lead in the Products sold in
4 California from the current levels to a level no higher than 100 ppm (“Compliance Level”) as
5 determined pursuant to total Lead testing, EPA Method 3050B or CPSIA method CPSC-CH-
6 E1001-08 (the “Test Protocols”).

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

13 **3.3 Settling Defendant’s Independent Testing.** In order to ensure compliance with
14 Section 3.1, Settling Defendant shall conduct (or cause to be conducted) testing to confirm
15 Products sold in California comply with the Compliance Level. Defendant shall either conduct
16 the testing of the vinyl used in the Products using an X-Ray Fluorescence Analyzer testing for
17 total lead content expressed in ppm, or shall cause to have the testing performed by an
18 independent, CPSIA-approved laboratory in accordance with either of the Test Protocols. Settling
19 Defendant shall perform the testing described in this Section on a minimum of one roll of each
20 color of vinyl contained in each container purchased from its suppliers.

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

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

2 **4.1** Plaintiffs allege that warnings are necessary as to the Old Products because these
3 products purportedly cause continuing exposures to Lead. While expressly denying such
4 allegations, Settling Defendant agrees to implement the following programs to provide clear and
5 reasonable warnings to persons who come into contact with Old Products sold before the
6 Effective Date of this Consent Judgment:

7 (a) Informational Program. Within 45 days following the Effective Date,
8 Settling Defendant shall provide the mailed warnings and informational materials attached
9 hereto as Exhibit A, in English and Spanish, to all parties who purchased Old Products
10 within the State of California. The informational materials provided pursuant to this
11 Section shall include an offer to either perform testing on the Old Products or pay for
12 testing of such Products. The purchasers of Old Products referred to herein shall have six
13 (6) months from the date of mailing by Settling Defendant of the warnings and
14 informational materials attached hereto as Exhibit A to initiate the Testing referred to in
15 paragraph 5.1, and Replacement and credit, referred to in paragraph 5.2, or they will have
16 no rights under paragraph 5.1 and/or 5.2.

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

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

22 **5.1 Testing of Old Products**. Upon request by an individual or entity that purchased
23 any Old Products, Settling Defendant shall either perform or pay for testing for all Old Products.
24 The testing pursuant to this Section may be performed by X-Ray Fluorescence or pursuant to
25 either of the Test Protocols. This request for testing by an individual or entity that purchased any
26 Old Product which is located in the state of California must be initiated no later than six (6)
27 months from the date of mailing of the warning and informational materials referred to in
28

1 paragraph 4.1(a). In the event that testing is not initiated within said time period, said individuals
2 or entities shall have no further rights pursuant to this provision.

3 **5.2** Replacing Certain Old Products. If the testing described in Section 5.1 reveals
4 Lead levels in excess of 1,000 ppm Settling Defendant shall, at its own cost, either (1) provide the
5 present owner of any such Old Product manufactured between 2007 and 2010 with a credit equal
6 to 85% of the purchase price of the Old Product toward the purchase of a new product from
7 Inflatable Games on the condition that possession and title to the Old Product be turned over to
8 Inflatable Games, or (2) provide the present owner of any Old Product with a Notice in
9 compliance with Proposition 65 that the present owner must agree to place on the Old Product.
10 Assuming they otherwise qualify, the present owner of Old Products shall decide which of the
11 alternatives set forth in this Paragraph they wish to receive. A request for replacement or credit
12 hereunder is only valid to the extent it results from the testing and timing provisions set forth in
13 Section 5.1.

14 **5.3** Discounted Replacement of Products That Exceed CPSIA Levels. To the extent
15 that the testing described in Section 5.1 reveals Lead levels that exceed 300 ppm, but is less than
16 1,000 ppm, Settling Defendant shall provide the individual or entity with a discount amounting to
17 50% of the list price of a comparable Product to the one that tested between 300 ppm and 1,000
18 ppm.

19 **6. PAYMENTS**

20 **6.1** Payment Timing. All payments under the Consent Judgment shall be due within
21 thirty (30) days following the Effective Date.

22 **6.2** Civil Penalties. Settling Defendant shall pay a civil penalty of \$3,000 pursuant to
23 California Health & Safety Code §§ 25249.7(b) and 25249.12. Pursuant to § 25249.12, 75% of
24 these funds shall be remitted to the California Office of Environmental Health Hazard Assessment
25 (“OEHHA”), and the remaining 25% to CEH. The check required under this section shall be
26 made payable to CEH.

27 **6.3** Cy pres. Settling Defendant shall make the following payments in lieu of
28 additional civil penalties. Settling Defendant shall pay \$8,500 to CEH to be used exclusively for

1 testing of inflatable structures made with vinyl such as bounce houses, combos, obstacle courses
2 and interactives. The payment required under this section shall be made payable to CEH.

3 **6.4** Attorneys' Fees and Costs. Settling Defendant shall pay \$18,500 to reimburse
4 CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any
5 other costs incurred as a result of investigating, bringing this matter to the attention of Settling
6 Defendant and the People, litigating and negotiating a settlement in the public interest. The
7 payment required under this Section shall be made payable to Lexington Law Group.

8 **6.5** Each payment required by this Consent Judgment shall be made through the
9 delivery of separate checks payable to the applicable person, as follows:

10 (a) CEH/Lexington Law Group. The payments due to CEH and the Lexington
11 Law Group shall be made payable as set forth above and sent to: Mark N. Todzo, Lexington Law
12 Group, 1627 Irving Street, San Francisco, CA 94122.

13 **7. MODIFICATION OF CONSENT JUDGMENT**

14 **7.1** This Consent Judgment may only be modified by express written agreement of the
15 Parties with the approval of the Court; by an order of this Court on noticed motion from the
16 People, CEH or Settling Defendant in accordance with law; or by the Court in accordance with its
17 inherent authority to modify its own judgments.

18 **7.2** Before filing an application with the Court for a modification to this Consent
19 Judgment, the Party seeking modification shall meet and confer with the other parties to determine
20 whether the modification may be achieved by consent. If a proposed modification is agreed upon,
21 then the Parties will present the modification to the Court by means of a stipulated modification to
22 the Consent Judgment.

23 **8. ENFORCEMENT**

24 **8.1** Enforcement by Plaintiff. Plaintiff may, by motion or application for an order to
25 show cause before this Court, enforce the terms and conditions contained in this Consent
26 Judgment or seek resolution of any dispute arising under this Consent Judgment. In any
27 proceeding to enforce the terms of this Consent Judgment, Plaintiff may seek whatever fines,
28 costs, penalties, or remedies are provided by law for failure to comply with the Consent Judgment.

1 However, Plaintiff may not seek any fees or costs if Settling Defendant agrees to take the action
2 demanded by Plaintiff during the meet and confer process described in Section 8.3, below, and
3 implements such action in a prompt manner.

4 **8.2 Enforcement by Separate Action.** Where violations of this Consent Judgment
5 constitute subsequent violations of Proposition 65 or other laws independent of the Consent
6 Judgment and/or those alleged in the Complaint, CEH is not limited to enforcement of the
7 Consent Judgment, but may instead elect to seek, in another action, whatever fines, costs,
8 penalties, or remedies are provided for by law for failure to comply with Proposition 65 or other
9 laws. In any action brought by CEH or another enforcer alleging subsequent violations of
10 Proposition 65 or other laws, Settling Defendant may assert any and all defenses that are
11 available, including the *res judicata* or collateral estoppel effect of this Consent Judgment.
12 Plaintiff must elect whether (a) to use the enforcement provisions of Section 8.1 of this Consent
13 Judgment or (b) to bring a new action pursuant to this Subsection 8.2.

14 **8.3 Meet and Confer Required.** Before any party institutes any proceeding or separate
15 action based on an alleged violation of the Consent Judgment, the moving or enforcing party
16 (Moving Party) shall meet and confer with the other party (Other Party) in good faith in an
17 attempt to informally resolve the alleged violation.

18 **8.4** The terms of this Consent Judgment shall be enforced exclusively by the Parties
19 hereto.

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

21 **9.1** Each signatory to this Consent Judgment certifies that he or she is fully authorized
22 to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on
23 behalf of the party he or she represents.

24 **10. CLAIMS COVERED**

25 **10.1 Full and Binding Resolution.** This Consent Judgment is a full, final, and binding
26 resolution between the CEH and Settling Defendant, of any violation of Proposition 65, Business
27 and Professions Code sections 17200, *et seq.*, and 17500, *et seq.*, or any other statutory or
28 common law claims that have been or could have been asserted in the Notice or Complaints

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

14 **11. PROVISION OF NOTICE**

15 **11.1** Notices sent pursuant to this Consent Judgment shall be sent to the person(s) and
16 addresses set forth in this Section 11. Any Party may modify the person and address to whom the
17 notice is to be sent by sending each other Party notice by certified mail, return receipt requested.
18 Said change shall take effect for any notice mailed at least five days after the date the return
19 receipt is signed by the Party receiving the change.

20 **11.2** Notices shall be sent by overnight delivery, or by concurrent e-mail and by First
21 Class Mail, to the following when required:

22 For the Center for Environmental Health

23 Mark N. Todzo
24 Lexington Law Group
25 1627 Irving Street
26 San Francisco, CA 94122
27 mtodzo@lexlawgroup.com
28

1 For the Settling Defendant:

2 Serge
3 Inflatable Games, Inc.
4 731 North Market Blvd. Suite W
5 Sacramento, CA 95834
6 order@inflatablegamesinc.com

7 **11.3** Written Notification. Within 15 days of completing the actions required by
8 Sections 3.1 (Immediate Product Reformulation) and 4.1 (b) (Web Notice), and also on Plaintiffs'
9 written request with respect to any other action required by this Consent Judgment, Settling
10 Defendant shall provide Plaintiffs with written notification that the required action has been
11 completed.

12 **12. COURT APPROVAL**

13 **12.1** This Consent Judgment shall be submitted to the Court for entry by noticed motion
14 or as otherwise may be required or permitted by the Court. If this Consent Judgment is not
15 approved by the Court, it shall be of no force or effect and may not be used by the Plaintiffs or
16 Settling Defendant for any purpose.

17 **13. ENTIRE AGREEMENT**

18 **13.1** This Consent Judgment contains the sole and entire agreement and understanding
19 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
20 negotiations, commitments and understandings related hereto. No representations, oral or
21 otherwise, express or implied, other than those contained herein have been made by any Party
22 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
23 to exist or to bind any of the Parties.

24 **14. RETENTION OF JURISDICTION**

25 **14.1** This Court shall retain jurisdiction of this matter to implement and enforce the
26 Consent Judgment, and to resolve any disputes that may arise as to the implementation of this
27 Judgment.
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1 **15. EXECUTION IN COUNTERPARTS**

2 **15.1** The stipulations to this Consent Judgment may be executed in counterparts and by
3 means of facsimile, which taken together shall be deemed to constitute one document.

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

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7 DATED: _____

JUDGE OF THE SUPERIOR COURT

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IT IS SO STIPULATED:

DATED: April 7, 2011

CENTER FOR ENVIRONMENTAL HEALTH

By: 
CHARLIE PIZARRO
Associate Director

DATED: _____

INFLATABLE GAMES, INC.

By: _____
Its: _____

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IT IS SO STIPULATED:

DATED: _____

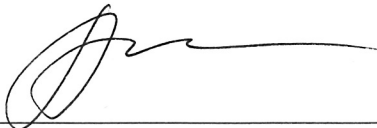
CENTER FOR ENVIRONMENTAL HEALTH

By: _____

CHARLIE PIZARRO
Associate Director

DATED: _____

INFLATABLE GAMES, INC.

By:  _____

Its: SERGE GEREN
OWNER

1 Exhibit A
2 Letter to Customers of Old Products

3 Dear Customer:

4 Our records show that you purchased products from us during the period April 18, 2007 –
5 August 31, 2010. This letter is written to inform you that some of the products manufactured by
6 Inflatable Games during those time periods may contain lead.

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

9 All of our products have now been formulated to reduce the amount of lead to levels
10 below those of concern. However, some of our older products manufactured during the time
11 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 high levels of lead.
14 If you purchased a product or products from us that was manufactured during the period from
15 April 18, 2007 to August 31, 2010 that are still in use and in good condition, please contact
16 [Name] at [telephone number] to arrange for testing of those products. Inflatable Games will
17 conduct or pay for all testing of the products.

18 If the testing of any of the products reveals lead levels in excess of 1,000 parts per million,
19 Inflatable Games will provide you with a credit toward the purchase of a new product from
20 Inflatable Games equal to 85% of the original purchase price of your existing product, if your
21 product was manufactured between 2007 and 2010, on the condition that you turn over possession
22 and title of your existing product to Inflatable Games. If the testing of any of the products reveals
23 lead levels less than 1000 parts per million, but in excess of 300 parts per million, Inflatable
24 Games will provide 50% off the regular price of any similar replacement product purchased from
25 Inflatable Games, upon return of the old product. If you do not want to have your existing product
26 tested Inflatable Games will provide you with a Notice in Compliance with Proposition 65 that
27 you will be required to place on your existing product. Inflatable Games allows you up to 6
28 months to initiate testing in order to qualify for a credit towards the purchase of a new product
from Inflatable Games.

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

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

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

26 Sincerely,

27 Name