

1 **SETTELEMENT AGREEMENT**

2 This Settlement Agreement (the “Agreement”) is between Center for Environmental
3 Health (“CEH”) and Neoprene Distributors, Inc. (“NDI”) (together, the “Parties”).

4 **1. INTRODUCTION**

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

17 **1.2** On October 13, 2010, CEH issued a 60-day Notice of Violation of Proposition 65
18 (the “Notice”) to the requisite public enforcers and to NDI as well as CSN Stores, Inc. and CSN
19 Stores LLC (the CSN entities are together hereinafter referred to as “CSN”), the distributors of
20 NDI’s Products (as defined below). The Notice alleges that NDI, CSN and others were violating
21 Proposition 65 by introducing Products (as defined below) into the stream of commerce thereby
22 exposing individuals to Lead.

23 **1.3** NDI is a company that manufactures the Products (as that term is defined below)
24 and sells them into California using CSN and other distribution channels.

25 **1.4** CEH and NDI enter into this Agreement as a full and final settlement of all claims
26 relating to the Products (as that term is defined below) arising from the failure to warn regarding
27 the presence of Lead in such Products. Nothing in this Agreement shall be construed as an
28 admission by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall

1 compliance with the Agreement constitute or be construed as an admission by Parties of any fact,
2 conclusion of law, issue of law or violation of law. Nothing in this Agreement shall prejudice,
3 waive or impair any right, remedy argument or defense the Parties may have in this or any other
4 future legal proceedings. By execution of this Agreement and agreeing to provide the relief and
5 remedies specified herein, NDI does not admit any violations of Proposition 65 or any other law
6 or legal duty. NDI expressly asserts that its Products do not require a warning under Proposition
7 65 and deny any liability whatsoever. NDI further asserts that it is not a “Person in the course of
8 doing business” as defined by Health & Safety Code §25249.11(b) and is exempt from liability
9 under Proposition 65. By entering into this agreement NDI does not waive this exemption.

10 **2. DEFINITIONS**

11 **2.1** “Products” shall mean all inflatable structures made with vinyl or nylon such as
12 bounce houses, combos, obstacle courses and interactives manufactured by NDI.

13 **2.2** The “Effective Date” of this Agreement shall be the date on which this Agreement
14 is executed by the parties.

15 **2.3** “Parties” shall mean the following entities: the CEH and NDI.

16 **2.4** “Plaintiff” shall mean CEH.

17 **2.5** “Old Products” shall mean any Products that were sold through CSN’s websites
18 between October 13, 2009 and November 30, 2010.

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

20 **3.1 Immediate Product Reformulation.** Immediately upon the Effective Date of this
21 Settlement, NDI shall reduce the level of Lead in the Products sold in California from the current
22 levels to a level no higher than 100 ppm for vinyl and 300 ppm for nylon (together, the 100 ppm
23 level for Lead in vinyl and 300 ppm level for Lead in nylon are referred to as the “Compliance
24 Levels”) as determined pursuant to total Lead testing, EPA Method 3050B or CPSIA method
25 CPSC-CH-E1002-08 (the “Test Protocols”). The Compliance Level of 300 ppm for Lead in nylon
26 shall be reduced to 100 ppm at such time as required under the CPSIA.

27 **3.2 Specification and Certification of Vinyl and Nylon.** For so long as NDI
28 manufactures, distributes, or ships the Products for sale in California, NDI shall issue

1 specifications to its suppliers requiring that the vinyl and nylon used in the Products shall not
2 contain Lead in excess of the Compliance Levels. Defendant shall obtain and maintain written
3 certification from its suppliers of the vinyl and nylon certifying that the vinyl and/or nylon used in
4 the Products does not contain Lead in excess of the Compliance Levels.

5 **3.3 Independent Testing.** In order to ensure compliance with Section 3.1, NDI shall
6 conduct (or cause to be conducted) testing to confirm Products sold in California comply with the
7 Compliance Levels. Defendant shall either conduct the testing of the nylon and vinyl used in the
8 Products using an X-Ray Fluorescence Analyzer testing for total lead content expressed in ppm,
9 or shall cause to have the testing performed by an independent, CPSIA-approved laboratory in
10 accordance with either of the Test Protocols. Defendant may meet this obligation by randomly
11 selecting and testing each color of the vinyl and nylon portions of a Product from each container
12 received from its manufacturers.

13 (a) **Vinyl or Nylon That Exceeds the Compliance Level.** If the results of the
14 testing required pursuant to Section 3.3 show Lead levels in excess of 600 ppm for either
15 the vinyl or nylon, Settling Defendant shall: (1) return all the vinyl or nylon that tested
16 above the applicable Compliance Level; and (2) send a notice to the supplier explaining
17 that such vinyl or nylon does not comply with either Settling Defendant's specifications
18 for Lead or the supplier's certification. If the results of the testing required pursuant to
19 Section 3.3 show Lead levels in excess of the Compliance Levels for either the vinyl or
20 nylon, NDI shall not sell any of the Products from the particular shipment in California.

21 **3.4 Informational Program.** NDI shall provide the mailed warnings and informational
22 materials attached hereto as Exhibit A, in English and Spanish, to all parties who purchased Old
23 Products within the State of California. The informational materials provided pursuant to this
24 Section shall include an offer to either perform testing on the Old Products or pay for testing of
25 such Products.

26 **4. ADDITIONAL ACTIONS BY SETTLING DEFENDANTS**

27 **4.1 Testing of Old Products.** Upon request by an individual or entity that purchased
28 any Old Products, Settling Defendants shall either perform or pay for testing for all Old Products.

1 The testing pursuant to this Section may be performed by an X-Ray Fluorescence Analyzer or
2 pursuant to either of the Test Protocols.

3 **4.2** Replacing Old Products. Settling Defendants shall, at their own cost, replace any
4 Old Products still in use as of the Effective Date if the testing described in Section 4.1 reveals
5 Lead levels in excess of either of the Compliance Levels.

6 **5. PAYMENTS**

7 **5.1** Payment Timing. All payments under the Agreement shall be due on or before
8 June 30, 2011.

9 **5.2** Civil Penalties. Settling Defendants shall pay a civil penalty of \$2,000 pursuant to
10 California Health & Safety Code §§ 25249.7(b) and 25249.12. Pursuant to § 25249.12, 75% of
11 these funds shall be remitted to the California Office of Environmental Health Hazard Assessment
12 (“OEHHA”), and the remaining 25% shall be apportioned to CEH. The payment required under
13 this Section shall be made payable to CEH.

14 **5.3** Cy pres. Settling Defendants shall make the following payments in lieu of
15 additional civil penalties. Settling Defendants shall pay \$5,500 to CEH to be used exclusively for
16 testing of inflatable structures made with vinyl such as bounce houses, combos, obstacle courses
17 and interactives. The payment required under this Section shall be made payable to CEH.

18 **5.4** CEH’s Attorneys’ Fees. Settling Defendants shall pay \$12,500 to reimburse CEH
19 and its attorneys for their reasonable investigation fees and costs, attorneys’ fees, and any other
20 costs incurred as a result of investigating, bringing this matter to the attention of Settling
21 Defendants, litigating and negotiating a settlement in the public interest. The payment required
22 under this Section shall be made payable to Lexington Law Group.

23 **5.5** Each payment required by this Agreement shall be made through the delivery of
24 separate checks made payable as set forth above and sent to: Mark N. Todzo, Lexington Law
25 Group, 1627 Irving Street, San Francisco, CA 94122.

26 **6. MODIFICATION OF AGREEMENT**

27 **6.1** This Agreement may only be modified by express written agreement of the Parties.
28

1 **7. ENFORCEMENT**

2 **7.1 Enforcement by Plaintiff.** Any action based on an alleged breach of this
3 Agreement shall only allege contract related claims, and may be filed in the Superior Court of
4 California in Alameda County. For purposes of this Agreement alone, the Parties agree that the
5 Superior Court of California in Alameda County has subject matter jurisdiction over any disputes
6 arising from this Agreement and personal jurisdiction over each of the Parties, and that venue is
7 proper in the County of Alameda. In any action to enforce the terms of this Agreement, the
8 prevailing party shall be entitled to recover its reasonable attorneys’ fees and costs associated with
9 such action provided such party has complied with Section 7.3 below.

10 **7.2 Enforcement by Separate Action.** Where violations of this Agreement constitute
11 subsequent violations of Proposition 65 or other laws independent of the Agreement, CEH is not
12 limited to enforcement of the Agreement, but may instead elect to seek, whatever fines, costs,
13 penalties, or remedies are provided for by law for failure to comply with Proposition 65 or other
14 laws. In any action brought by CEH or another enforcer alleging subsequent violations of
15 Proposition 65 or other laws, Settling Defendant may assert any and all defenses that are
16 available, including that NDI is not a “Person in the course of doing business,” the *res judicata* or
17 collateral estoppel effect of this Agreement.

18 **7.3 Meet and Confer Required.** Before any party institutes any proceeding or action
19 based on an alleged violation of the Agreement, the moving or enforcing party (Moving Party)
20 shall meet and confer with the other party (Other Party) in good faith in an attempt to informally
21 resolve the alleged violation. If, following the meet and confer process required under this
22 section, it is determined that NDI has violated the Agreement, NDI may avoid further
23 enforcement action pursuant to Section 7.1 by making the following payments, which shall be
24 used for the purposes set forth in Sections 5.3 and 5.4:

25 First Violation: \$100
26 Second Occurrence: \$1,000
27 Thereafter: \$2,500

28 **7.4** The terms of this Agreement shall be enforced exclusively by the Parties hereto.

1 **8. AUTHORITY TO SIGN AGREEMENT**

2 **8.1** Each signatory to this Agreement certifies that he or she is fully authorized to
3 stipulate to this Agreement and to enter into and execute the Agreement on behalf of the party he
4 or she represents.

5 **9. CLAIMS COVERED**

6 **9.1 Full and Binding Resolution.** This Agreement is a full, final, and binding
7 resolution between the CEH and Settling Defendants of any violation of Proposition 65 or any
8 other statutory or common law claims that have been or could have been asserted in a complaint
9 based on the Notice against NDI and CSN for failure to provide clear and reasonable warnings of
10 exposure to Lead from the use of the Old Products, or any other claim based on the facts or
11 conduct alleged in the Notice, whether based on actions committed by NDI or by CSN.
12 Compliance with the terms of this Agreement constitutes compliance with the Proposition 65 with
13 regard to Lead exposures arising from or relating to exposures to Lead in or from the Products.
14 This Agreement does not resolve any claims that Plaintiff may assert with respect to (i) products
15 other than the Products or (ii) chemicals other than Lead.

16 **10. PROVISION OF NOTICE**

17 **10.1** Notices sent pursuant to this Agreement shall be sent to the person(s) and addresses
18 set forth in Section 10.2. Any Party may modify the person and address to whom the notice is to
19 be sent by sending each other Party notice by certified mail, return receipt requested. Said change
20 shall take effect for any notice mailed at least five days after the date the return receipt is signed
21 by the Party receiving the change.

22 **10.2** 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 Center for Environmental Health:

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

1 For Settling Defendants:

2 George Dowell
3 Willoughby, Stuart & Bening Inc.
4 50 West San Fernando, Suite 400
5 San Jose, CA 95113
6 gwd@wsblaw.net

7 **10.3 Written Notification.** Within 15 days of completing the actions required by
8 Sections 3.1 (Immediate Product Reformulation) Settling Defendants shall provide Plaintiff with
9 written notification that the required action has been completed.

10 **11. ENTIRE AGREEMENT**

11 **11.1** This Agreement contains the sole and entire agreement and understanding of the
12 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
13 negotiations, commitments and understandings related hereto. No representations, oral or
14 otherwise, express or implied, other than those contained herein have been made by any Party
15 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
16 to exist or to bind any of the Parties.

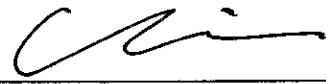
17 **12. EXECUTION IN COUNTERPARTS**

18 **12.1** The stipulations to this Agreement may be executed in counterparts and by means
19 of facsimile, which taken together shall be deemed to constitute one document.

20 **AGREED TO:**

21 DATED: 6/20/2011

CENTER FOR ENVIRONMENTAL HEALTH

22 By: 
23 CHARLIE PIZARRO
24 Associate Director

25 DATED: _____

NEOPRENE DISTRIBUTORS, INC.

26 By: _____
27 Name:
28 Its: President

1 For Settling Defendants:

2 George Dowell
3 Willoughby, Stuart & Bening Inc.
4 50 West San Fernando, Suite 400
5 San Jose, CA 95113
6 gwd@wsblaw.net

7 **10.3** Written Notification. Within 15 days of completing the actions required by
8 Sections 3.1 (Immediate Product Reformulation) Settling Defendants shall provide Plaintiff with
9 written notification that the required action has been completed.

10 **11. ENTIRE AGREEMENT**

11 **11.1** This Agreement contains the sole and entire agreement and understanding of the
12 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
13 negotiations, commitments and understandings related hereto. No representations, oral or
14 otherwise, express or implied, other than those contained herein have been made by any Party
15 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
16 to exist or to bind any of the Parties.

17 **12. EXECUTION IN COUNTERPARTS**

18 **12.1** The stipulations to this Agreement may be executed in counterparts and by means
19 of facsimile, which taken together shall be deemed to constitute one document.

20 **AGREED TO:**

21 DATED: _____ CENTER FOR ENVIRONMENTAL HEALTH

22 By: _____
23 CHARLIE PIZARRO
24 Associate Director

25 DATED: May 23, 2011 NEOPRENE DISTRIBUTORS, INC.

26 By: Paul L Brown
27 Name: Paul L Brown
28 Its: President

1 Exhibit A

2 Letter to Customers of Unreformulated Products

3 Dear Customer:

4 Our records show that you purchased Island Hopper inflatable structures made with vinyl
5 such as bounce houses, combos, obstacle courses and interactives containing lead and lead
6 compounds ("Products") from us between October 13, 2009 and November 30, 2010. This letter
7 is written to inform you that some of the Products sold during this time period may contain lead.
Our company, Neoprene Distributors, Inc. (NDI) is the company that distributed the Product you
purchased.

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

10 We have since worked with our manufactures and received assurances the Products have
11 now been formulated to ensure that the amount of lead is in compliance with state and Federal
12 law. However, some of the older Products manufactured during the time period identified above
may have lead levels that exceed those currently allowed by law.

13 We would like to provide you with the opportunity to have the Products you purchased
14 from us during that time period tested to determine if such products contain non-conforming
15 levels of lead. If you purchased a Product or Products from us that was manufactured during the
16 period from **October 13, 2009** to **November 30, 2010** that are still in use, please contact NDI at
(530) 268-7300 to arrange for testing of those products. NDI will conduct or pay for all testing of
the products.

17 If the testing of any of the products reveals lead levels in excess of 100 parts per million in
18 the vinyl sections of the Product or 300 parts per million in the nylon sections of the Product, NDI
will replace the product.

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 NDI at (530) 268-7300.

26 Sincerely,

27 Name
28