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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 al. 21 22 Defendants</p>	<p>Case No. RG 10-530300  <b>CONSENT JUDGMENT AS TO DEFENDANT TWIN PEAK INDUSTRIES, INC. DBA JUNGLE JUMPS</b></p>
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1 **1. INTRODUCTION**

2 **1.1** On August 11, 2010, the Center for Environmental Health (“CEH”), filed a  
3 complaint for civil penalties and injunctive relief for violations of Proposition 65. CEH’s  
4 Complaint alleges that the named defendants failed to provide clear and reasonable warnings that  
5 their inflatable structures made with vinyl such as bounce houses, combos, obstacle courses and  
6 interactives (the “Products”) contain lead and lead compounds (together “Lead”), and that use of,  
7 and contact with, those Products results in exposure to Lead, a chemical known to the State of  
8 California to cause cancer and reproductive harm. The Complaint further alleges that under the  
9 Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code section 25249.6,  
10 also known as “Proposition 65,” businesses must provide persons with a “clear and reasonable  
11 warning” before exposing individuals to these chemicals, and that the defendants failed to do so.

12 **1.2** In accordance with the notice requirements of Proposition 65, CEH first brought  
13 the issue of Lead exposures from the Products to the attention of the Attorney General by issuing  
14 its first 60-Day Notice of Violation on February 19, 2010. On July 2, 2010, CEH issued another  
15 60-day Notice of Violation (the “Notice”) alleging that defendant Jungle Jumps and others were  
16 violating Proposition 65 by introducing the Products into the stream of commerce thereby  
17 exposing individuals to Lead. CEH filed its case, *Center for Environmental Health v. Cutting*  
18 *Edge Creations, Inc., et al.*, Alameda County Superior Court, Case No. RG 19-530300 (the  
19 “Action”), on August 11, 2010. CEH seeks civil penalties and injunctive relief for alleged  
20 violations of Proposition 65. CEH subsequently learned that Jungle Jumps is a subsidiary of Twin  
21 Peak Industries, Inc. On March 25, 2011, CEH issued another 60-day Notice of Violation, this  
22 one to Twin Peak Industries, Inc. (“Settling Defendant”). On June 24, 2011, CEH amended its  
23 complaint to name Settling Defendant as a defendant in the Action.

24 **1.3** Settling Defendant is a corporation that employs more than ten (10) persons and  
25 employed ten or more persons during much of the time relevant to the allegations of the  
26 Complaints, and manufactures, distributes and/or sells Products (as defined below) in the State of  
27 California and/or has done so in the past four years.

28 **1.4** For purposes of this Consent Judgment only CEH and Settling Defendant stipulate

1 that this Court has jurisdiction over the allegations of violations contained in the Notice and  
2 Complaints and personal jurisdiction over Settling Defendant as to the acts alleged in the Notice  
3 and Complaints, that venue is proper in Alameda County, and that this Court has jurisdiction to  
4 enter this Consent Judgment as a full and final resolution of all claims which were or could have  
5 been raised in the Complaints based on the facts alleged therein.

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

19 **2. DEFINITIONS**

20       **2.1** The “Action” shall mean the *Center for Environmental Health v. Cutting Edge*  
21 *Creations, Inc., et al.*, Case No. RG 10-530300, Alameda County Superior Court (filed August 11,  
22 2010).

23       **2.2** “Products” shall mean all inflatable structures made with vinyl such as but not  
24 limited to bounce houses, combos, obstacle courses and interactives manufactured, distributed or  
25 sold by Settling Defendant.

26       **2.3** The “Effective Date” of this Consent Judgment shall be the date on which this  
27 Consent Judgment is entered as a judgment by the trial court.

28       **2.4** “Parties” shall mean the following entities: CEH and Settling Defendant.

1           2.5     “Old Products” means any Products that were manufactured between October 17,  
2 2008, and January 31, 2011, which are the time periods during which Settling Defendant sold  
3 Products with levels of Lead exceeding 1,000 parts per million (“ppm”).

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

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

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

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

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

1 certification.

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

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

8 (a) Informational Program. Settling Defendant shall provide the mailed  
9 warnings and informational materials attached hereto as Exhibit A, in English and  
10 Spanish, to all parties who purchased Old Products within the State of California. The  
11 informational materials provided pursuant to this Section shall include an offer to perform  
12 testing on the Old Products or pay for testing of such Products.

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

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

18 **5.1** Testing of Old Products. Upon request by an individual or entity located in  
19 California that purchased any Old Products, Settling Defendant shall either perform or pay for  
20 testing for all Old Products purchased by the requesting individual or entity located in California.  
21 The testing pursuant to this Section may be performed by X-Ray Fluorescence or pursuant to  
22 either of the Test Protocols. Any request for testing made pursuant to this section must be  
23 initiated within six (6) months from the date of mailing of the warning and informational materials  
24 referenced in section 4.1(a) above. Any request for testing pursuant to this section that is initiated  
25 more than 6 months after the mailing of the warning and informational materials shall be invalid  
26 and individuals or entities shall have no further right pursuant to this provision.

27 **5.2** Replacing Certain Old Products. If the testing described in Section 5.1 reveals  
28 Lead levels in excess of 1,000 ppm, for a Product that is still in use and good condition, Settling

1 Defendant shall, at its own cost, provide the present owner of any such Old Product with a credit  
2 of 85% of the purchase price toward the purchase of a compatible unit at the published retail price  
3 from Twin Peak Industries, on the condition that possession and title to the Old Product be turned  
4 over to Twin Peak Industries. A request for replacement or credit hereunder is only valid to the  
5 extent it results from the procedures set forth in Section 5.1.

6 **5.3 Discounted Replacement of Products That Exceed CPSIA Levels.** To the extent  
7 that the testing described in Section 5.1 reveals Lead levels that exceed 300 ppm, but are less than  
8 1,000 ppm for an Old Product that is still in use and in good condition, Settling Defendant shall  
9 provide the individual or entity with a credit amounting to 50% of the purchase price toward the  
10 purchase of a compatible unit at the published retail price from Twin Peak Industries, on the  
11 condition that possession and title to the Old Product be turned over to Twin Peak Industries. A  
12 request for replacement or credit hereunder is only valid to the extent it results from the  
13 procedures set forth in Section 5.1.

14 **6. PAYMENTS**

15 **6.1 Payment Timing.** The payments under the Consent Judgment shall be due as  
16 follows: Five Thousand dollars (\$5,000) within thirty (30) days following the Effective Date and  
17 the balance of Eight Thousand (\$8,000) within one hundred twenty (120) days following the  
18 Effective Date.

19 **6.2 Civil Penalties.** Settling Defendant shall pay a civil penalty of \$2,000 pursuant to  
20 California Health & Safety Code §§ 25249.7(b) and 25249.12. Pursuant to § 25249.12, 75% of  
21 these funds shall be remitted to the California Office of Environmental Health Hazard Assessment  
22 (“OEHHA”), and the remaining 25% apportioned evenly among the Attorney General and CEH.

23 **6.3 Cy pres.** Settling Defendant shall make the following payments in lieu of  
24 additional civil penalties. Settling Defendant shall pay \$3,250 to CEH to be used exclusively for  
25 testing of inflatable structures made with vinyl such as bounce houses, combos, obstacle courses  
26 and interactives. The payment required under this section shall be made payable to CEH.

27 **6.4 CEH’s Attorneys’ Fees.** Settling Defendant shall pay \$7,750 to reimburse CEH  
28 and its attorneys for their reasonable investigation fees and costs, attorneys’ fees, and any other

1 costs incurred as a result of investigating, bringing this matter to the attention of Settling  
2 Defendant, litigating and negotiating a settlement in the public interest. The payment required  
3 under this Section shall be made payable to Lexington Law Group.

4       **6.5**     The payments due to CEH and the Lexington Law Group shall be made payable as  
5 set forth above and sent to: Mark N. Todzo, Lexington Law Group, 503 Divisadero Street, San  
6 Francisco, CA 94117.

7       **7.     MODIFICATION OF CONSENT JUDGMENT**

8       **7.1**     This Consent Judgment may only be modified by express written agreement of the  
9 Parties with the approval of the Court; by an order of this Court on noticed motion from CEH or  
10 Settling Defendant in accordance with law; or by the Court in accordance with its inherent  
11 authority to modify its own judgments.

12       **7.2**     Before filing an application with the Court for a modification to this Consent  
13 Judgment, the Party seeking modification shall meet and confer with the other parties to determine  
14 whether the modification may be achieved by consent. If a proposed modification is agreed upon,  
15 then the Parties will present the modification to the Court by means of a stipulated modification to  
16 the Consent Judgment.

17       **8.     ENFORCEMENT**

18       **8.1**     Enforcement by CEH. CEH may, by motion or application for an order to show  
19 cause before this Court, enforce the terms and conditions contained in this Consent Judgment or  
20 seek resolution of any dispute arising under this Consent Judgment. In any proceeding to enforce  
21 the terms of this Consent Judgment, CEH may seek whatever fines, costs, penalties, or remedies  
22 are provided by law for failure to comply with the Consent Judgment. However, CEH may not  
23 seek any fees or costs if Settling Defendant agrees to take the action demanded by CEH during the  
24 meet and confer process described in Section 8.3, below, and implements such action in a prompt  
25 manner.

26       **8.2**     Enforcement by Separate Action. Where violations of this Consent Judgment  
27 constitute subsequent violations of Proposition 65 or other laws independent of the Consent  
28 Judgment and/or those alleged in the Complaint, CEH is not limited to enforcement of the

1 Consent Judgment, but may instead elect to seek, in another action, whatever fines, costs,  
2 penalties, or remedies are provided for by law for failure to comply with Proposition 65 or other  
3 laws. In any action brought by the CEH and/or another enforcer alleging subsequent violations of  
4 Proposition 65 or other laws, Settling Defendant may assert any and all defenses that are  
5 available, including the *res judicata* or collateral estoppel effect of this Consent Judgment. CEH  
6 must elect whether (a) to use the enforcement provisions of Section 8.1 of this Consent Judgment  
7 or (b) to bring a new action pursuant to this Subsection 8.2.

8 **8.3 Meet and Confer Required.** Before any party institutes any proceeding or separate  
9 action based on an alleged violation of the Consent Judgment, the moving or enforcing party  
10 (Moving Party) shall meet and confer with the other party (Other Party) in good faith in an  
11 attempt to informally resolve the alleged violation.

12 **8.4** The terms of this Consent Judgment shall be enforced exclusively by the Parties  
13 hereto.

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

15 **9.1** Each signatory to this Consent Judgment certifies that he or she is fully authorized  
16 to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on  
17 behalf of the party he or she represents.

18 **10. CLAIMS COVERED**

19 **10.1 Full and Binding Resolution.** This Consent Judgment is a full, final, and binding  
20 resolution between CEH and Settling Defendant of any violations of Proposition 65 that have  
21 been or could have been asserted in the Notice or Complaint against Settling Defendant and its  
22 downstream distributors, wholesalers and retailers for failure to provide clear and reasonable  
23 warnings of exposure to Lead from the use of the Products, or any other claim based on the facts  
24 or conduct alleged in the Notice or Complaints, whether based on actions committed by Settling  
25 Defendant or by any entity to whom Settling Defendant distributes or sells Products, or any entity  
26 that sells the Products to consumers. Compliance with the terms of this Consent Judgment  
27 resolves any issue now and in the future, concerning compliance by Settling Defendant, its  
28 divisions, subdivisions, subsidiaries, sister companies, affiliates, cooperative members, licensors



1 and licensees; its distributors, wholesalers, and retailers who sell Products; and the shareholders,  
2 officers, predecessors, successors, and assigns of any of them, with the requirements of  
3 Proposition 65 arising from or relating to exposures to Lead in or from the Products. This  
4 Consent Judgment does not resolve any claims that CEH may assert with respect to (i) products  
5 other than the Products or (ii) chemicals other than Lead.

6 **11. PROVISION OF NOTICE**

7 **11.1** Notices sent pursuant to this Consent Judgment shall be sent to the person(s) and  
8 addresses set forth in this Section 11. Any Party may modify the person and address to whom the  
9 notice is to be sent by sending each other Party notice by certified mail, return receipt requested.  
10 Said change shall take effect for any notice mailed at least five days after the date the return  
11 receipt is signed by the Party receiving the change.

12 **11.2** Notices shall be sent by overnight delivery, or by concurrent e-mail and by First  
13 Class Mail, to the following when required:

14 For the Center for Environmental Health

15 Mark N. Todzo  
16 Lexington Law Group  
17 503 Divisadero Street  
18 San Francisco, CA 94117  
19 mtodzo@lexlawgroup.com

18 For Settling Defendant:

19 Talin Keshishian  
20 Ezra Brutzkus Gubner LLP  
21 21650 Oxnard Street, Suite 500  
22 Woodland Hills, CA 91367  
23 tkeshishian@ebg-law.com

24 **11.3 Written Notification.** Within 15 days of completing the actions required by  
25 Sections 3.1 (Immediate Product Reformulation) and 4.1(b) (Web Notice), and also on CEH's  
26 written request with respect to any other action required by this Consent Judgment, Settling  
27 Defendant shall provide CEH with written notification that the required action has been  
28 completed.

27 **12. COURT APPROVAL**

28 **12.1** This Consent Judgment shall be submitted to the Court for entry by noticed motion

1 or as otherwise may be required or permitted by the Court. If this Consent Judgment is not  
2 approved by the Court, it shall be of no force or effect and may not be used by the CEH or  
3 Settling Defendant for any purpose.

4 **13. ENTIRE AGREEMENT**

5 **13.1** This Consent Judgment contains the sole and entire agreement and understanding  
6 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
7 negotiations, commitments and understandings related hereto. No representations, oral or  
8 otherwise, express or implied, other than those contained herein have been made by any Party  
9 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed  
10 to exist or to bind any of the Parties.

11 **14. RETENTION OF JURISDICTION**

12 **14.1** This Court shall retain jurisdiction of this matter to implement and enforce the  
13 Consent Judgment, and to resolve any disputes that may arise as to the implementation of this  
14 Judgment.

15 **15. EXECUTION IN COUNTERPARTS**

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

18  
19 **IT IS SO STIPULATED:**

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21 DATED: Aug 31, 2011

CENTER FOR ENVIRONMENTAL HEALTH

22  
23  
24 By:   
25 CHARLIE PIZARRO  
26 Associate Director  
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1 DATED: 8/31/11

TWIN PEAK INDUSTRIES, INC. DBA JUNGLE  
JUMPS

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4 By: Ed Kash Keshishian  
5 Its: \_\_\_\_\_  
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8 **IT IS SO ORDERED and ADJUDGED:**  
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11 DATED: \_\_\_\_\_

\_\_\_\_\_  
12 JUDGE OF THE SUPERIOR COURT  
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1 Exhibit A

2 Letter to Customers of Unreformulated Products

3 Dear Customer:

4 Our records show that you purchased products from us between October 17, 2008, and  
5 January 31, 2011. This letter is written to inform you that some of the products manufactured by  
6 Twin Peaks Industries, Inc. during those time periods may contain levels of lead which require a  
warning notice under Proposition 65.

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.

11 We would like to provide you with the opportunity to have the products you purchased  
12 directly from us during those time periods tested to determine if such products contain high levels  
13 of lead. If you purchased a product or products from us that was manufactured during the period  
14 from October 17, 2008, to January 31, 2011, that are still in use and in good condition, please  
15 contact [Name] at [telephone number] to arrange for testing of those products. Twin Peaks  
16 Industries, Inc. will conduct or pay for testing of the products.

17 If the testing of any of the products reveals lead levels in excess of 1,000 parts per million,  
18 Twin Peak Industries, Inc. will provide the present owner of the product with 85% credit of the  
19 original purchase price. Credit can be used toward the purchase of a new similar product from  
20 Twin Peak Industries, Inc. at the published retail price of the product, on the condition that  
21 possession and title to the old product is turned over to Twin Peak Industries, Inc.

22 If the testing of any product that is in good condition reveals lead levels less than 1,000  
23 parts per million, but in excess of 300 parts per million, Twin Peak Industries, Inc. will provide  
24 the current owner of the product a 50% credit of the original purchase price. This credit can be  
25 used toward the purchase of a new similar product from Twin Peak Industries, Inc. at the  
26 published retail price of the product, on the condition that possession and title to the old product is  
27 turned over to Twin Peak Industries, Inc.

28 **You must request the testing within 6 months after the date of this letter in order to  
qualify for the testing and replacement discussed in this letter.**

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

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

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

Sincerely,

Name