

1 EDMUND G. BROWN JR.
Attorney General of California
2 MATT RODRIQUEZ
Chief Assistant Attorney General
3 KEN ALEX
Senior Assistant Attorney General
4 JAMIE JEFFERSON, State Bar No. 197142
Deputy Attorney General
5 1515 Clay Street, 20th Floor
P.O. Box 70550
6 Oakland, CA 94612-0550
Telephone: (510) 622-2254
7 Fax: (510) 622-2270
E-mail: Jamie.Jefferson@doj.ca.gov
8 *Attorneys for People of the State of California*

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA
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13 **PEOPLE OF THE STATE OF
CALIFORNIA, EX REL. EDMUND G.
14 BROWN JR. ATTORNEY GENERAL,**

15 Plaintiff,

16 v.

17 **BAY AREA JUMP; CUTTING EDGE
18 CREATIONS, INC., FUNTASTIC
FACTORY, INC. DBA
19 EINFLATABLES.COM, THE
INFLATABLE STORE, INC., JUMP FOR
20 FUN, INC., JUMP FOR FUN NATIONAL,
INC., LEISURE ACTIVITIES CO., LTD.
21 MAGIC JUMP, INC., THRILLWORKS,
INC., AND DOES 1 THROUGH 50.**

22 Defendants.
23

Case No.

**COMPLAINT FOR CIVIL PENALTY
AND INJUNCTIVE RELIEF**

**(Health and Safety Code § 25249.5 et seq.
and Business and Professions Code §
17200)**

24 Plaintiff, the People of the State of California, by and through Edmund G. Brown Jr.,
25 Attorney General, hereby alleges:

26 **I. INTRODUCTION**

27 1. This complaint seeks to remedy Defendants' failure to warn persons about exposure
28 to lead and lead compounds present in Defendants' vinyl inflatable structures used for recreation,

such as bounce houses, combos, obstacle courses and interactives (the “Products”). Lead and lead compounds (“lead”) are chemicals known to the State of California to cause birth defects and other reproductive harm and cancer. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.5 *et seq.*, also known as “Proposition 65,” businesses must provide persons with a “clear and reasonable warning” before exposing individuals to chemicals known to the state to cause cancer or reproductive harm. In this case, exposures to lead and lead compounds occur through the manufacture, distribution, sale and/or use of Defendants’ Products. Individuals, including children and workers, are exposed to the lead when they handle or come into contact with the Products. This Complaint also seeks to remedy Defendants’ unlawful business acts and practices related to illegal amounts of lead their Products.

II. PARTIES

2. Plaintiff is the People of the State of California, by and through Attorney General Edmund G. Brown Jr. Health and Safety Code § 25249.7, subdivision (c), provides that actions to enforce Proposition 65 may be brought by the Attorney General in the name of the People of the State of California. Business and Professions Code § 17200 *et seq.* provides that actions to enforce that statute may be brought by the Attorney General in the name of the People of the State of California. Plaintiff brings this action under the authority granted by Proposition 65 and the California “Unfair Competition Law” (Bus. & Prof. Code, § 17200, *et seq.*).

3. Defendant BAY AREA JUMP is a business entity with ten or more employees that manufactures, distributes and/or sells the Products containing lead or lead compounds within the State of California.

4. Defendant CUTTING EDGE CREATIONS, INC. is a business entity with ten or more employees that manufactures, distributes and/or sells the Products containing lead or lead compounds within the State of California.

5. Defendant FUNTASTIC FACTORY, INC. DBA EINFLATABLES.COM is a business entity with ten or more employees that manufactures, distributes and/or sells the Products containing lead or lead compounds within the State of California.

1 6. Defendant THE INFLATABLE STORE, INC. is a business entity with ten or more
2 employees that manufactures, distributes and/or sells the Products containing lead or lead
3 compounds within the State of California.

4 7. Defendant JUMP FOR FUN, INC. is a business entity with ten or more employees
5 that manufactures, distributes and/or sells the Products containing lead or lead compounds within
6 the State of California.

7 8. Defendant JUMP FOR FUN NATIONAL, INC. is a business entity with ten or more
8 employees that manufactures, distributes and/or sells the Products containing lead or lead
9 compounds within the State of California.

10 9. Defendant LEISURE ACTIVITIES CO., LTD. is a business entity with ten or more
11 employees that manufactures, distributes and/or sells the Products containing lead or lead
12 compounds within the State of California.

13 10. Defendant MAGIC JUMP, INC. is a business entity with ten or more employees that
14 manufactures, distributes and/or sells the Products containing lead or lead compounds within the
15 State of California.

16 11. Defendant THRILLWORKS, INC. is a business entity with ten or more employees
17 that manufactures, distributes and/or sells the Products containing lead or lead compounds for
18 sale or use within the State of California.

19 12. Defendants DOES 1 through 50 are business entities engaged in the manufacture,
20 distribution and/or sale of the Products. As part of their business activities, Does 1 through 50,
21 and each of them, cause persons in California to be exposed to lead that is present in their
22 Products, and Does 1 through 50 have failed to provide a clear and reasonable warning as to such
23 exposures. The names and identities of defendants DOES 1 through 50 are unknown to Plaintiffs,
24 and when they are known, this complaint will be amended to state their names and identities.

25 13. The Defendants identified in paragraphs 3 through 11 and DOES 1 through 50 are
26 collectively referred to herein as "Defendants."
27
28

1 **III. JURISDICTION AND VENUE**

2 14. This Court has jurisdiction pursuant to Health and Safety Code § 25249.7, which
3 allows enforcement in any court of competent jurisdiction, and pursuant to California
4 Constitution Article VI, section 10, because this case is a cause not given by statute to other trial
5 courts.

6 15. This Court has jurisdiction over the Defendants and each of them, because each
7 defendant is a business entity that does sufficient business, has sufficient minimum contacts in
8 California, or otherwise intentionally avails itself of the California market, through the sale,
9 marketing, and use of its products in California, so as to render the exercise of jurisdiction over it
10 by the California courts consistent with traditional notions of fair play and substantial justice.

11 16. Venue is proper in the Alameda County Superior Court because one or more of the
12 violations arise in the County of Alameda in that Defendants' products are sold and used in this
13 county.

14 **IV. STATUTORY BACKGROUND**

15 **A. Proposition 65**

16 17. The Safe Drinking Water and Toxic Enforcement Act of 1986, passed as "Proposition
17 65" by the electorate in November of 1986, declares the right of the people to "be informed about
18 exposures to chemicals that cause cancer, birth defects, or other reproductive harm." (Health &
19 Saf. Code (2010 ed.) § 25249.5.)

20 18. The warning requirement of Proposition 65 is contained in Health and Safety Code
21 section 25249.6, which provides:

22 No person in the course of doing business shall knowingly and intentionally expose
23 any individual to a chemical known to the state to cause cancer or reproductive
toxicity without first giving clear and reasonable warning to such individual...

24 19. Proposition 65 establishes a procedure for the State to develop a list of chemicals
25 "known to the State to cause cancer or reproductive toxicity." (Health & Saf. Code, § 25249.8.)
26 No warning need be given concerning a listed chemical until one year after the chemical first
27 appears on the list. (*Id.*, § 25249.10, subd. (b).)
28

1 20. Any person “violating or threatening to violate” the Proposition 65 may be enjoined
2 in any court of competent jurisdiction. (Health & Saf. Code, § 25249.7, subd. (a).) To “threaten
3 to violate” is defined as “to create a condition in which there is a substantial probability that a
4 violation will occur.” (*Id.*, § 25249.11, subd. (e).) In addition, violators are liable for civil
5 penalties of up to \$2,500 per day for each violation, recoverable in a civil action. (*Id.*, § 25249.7,
6 subd. (b)(1).)

7 21. Actions to enforce the law “may be brought by the Attorney General in the name of
8 the People of the State of California [or] by any district attorney [or] by any City Attorney of a
9 City having a population in excess of 750,000 . . .” (*Id.*, § 25249.7, subd. (c).) Private parties are
10 given authority to enforce Proposition 65 “in the public interest” if the private party first provides
11 written notice of a violation to the alleged violator, the Attorney General, and every District
12 Attorney in whose jurisdiction the alleged violation occurs. If no public prosecutors commence
13 enforcement within sixty days, then the private party may sue. (Health & Saf. Code, § 25249.7,
14 subd. (d).)

15 22. In an action brought by the Attorney General, the Attorney General may “seek and
16 recover costs and attorney’s fees on behalf of any party who provides a notice pursuant to
17 subdivision (d) and who renders assistance in that action.” (*Id.*, § 25249.7, subd. (j).)

18 **B. The Consumer Product Safety Improvement Act of 2008**

19 23. In 2008, the Consumer Product Safety Improvement Act of 2008 (“CPSIA”) was
20 signed into law. (CPSIA, Pub.L. No. 110-314 (Aug. 14, 2008) 122 Stat. 3016.) It reauthorized
21 and modernized the Consumer Product Safety Commission. The CPSIA also limits the amount
22 of lead that can be contained in children’s products. (CPSIA, Pub.L. No. 110-314, § 101 (Aug.
23 14, 2008) 122 Stat. 3016; 15 U.S.C. § 1278a(a).) Children’s products that exceed the lead limit
24 are considered to be “banned hazardous substance[s]” under the Federal Hazardous Substances
25 Act (“FHSA”). (15 U.S.C. § 1278a(a)(1).) Pursuant to the Consumer Product Safety Act
26 (“CPSA”), it is “unlawful for any person to . . . sell, offer for sale, manufacture for sale, distribute
27 in commerce, or import into the United States any consumer product . . . that is . . . a banned
28 hazardous substance within the meaning of section 2(q)(1) of the Federal Hazardous Substances

1 Act (15 U.S.C. 1261(q)(1)).” (15 U.S.C. § 2068(a)(2)(D).) The CPSIA deems its ban on
2 children’s products exceeding lead limits to be a regulation promulgated under section 2(q) of the
3 FHSA (15 U.S.C. § 1261(q)). (CPSIA, Pub.L. No. 110-314, § 101(g) (Aug. 14, 2008) 122 Stat.
4 3016.)

5 24. Under the CPSIA, the limits on the amount of lead in children’s products are phased
6 in over the course of three years. (15 U.S.C. §1278a(a)(2)(A)-(E).) The initial limit starting on
7 February 10, 2009, was 600 parts per million (“ppm”). (15 U.S.C. 1278a(a)(2)(A).) On August
8 14, 2009, the limit became 300 ppm. (CPSIA, Pub.L. No. 110-314, § 101(a)(2) (Aug. 14, 2008)
9 122 Stat. 3016; 15 U.S.C. § 1278a(a)(2)(B).) The current limit for lead in children’s products
10 remains 300 ppm. (*Id.*) However, the CPSIA provides that three years after the enactment of the
11 Act, in approximately August, 2011, the limit for lead in children’s products will become
12 100ppm. (CPSIA, Pub.L.No 110-314, § 101(a)(2)(c); 15 U.S.C. § 1278a(a)(2)(c).)

13 **C. The Unfair Competition Act**

14 25. California Business and Professions Code section 17200 provides that “unfair
15 competition shall mean and include any unlawful, unfair or fraudulent business act or practice.”
16 Section 17203 of the Business and Professions Code provides that “(a)ny person performing or
17 proposing to perform an act of unfair competition within this state may be enjoined in any court
18 of competent jurisdiction.”

19 26. Unlawful acts under the statute include any act that is “unlawful, unfair, or
20 fraudulent” and that is conducted as part of business activity. (Bus. & Prof. Code, § 17200.)
21 Unlawful acts therefore include violations of Proposition 65 and violations of federal law,
22 including the CPSA.

23 27. A person violating section 17200 “shall be liable for a civil penalty not to exceed two
24 thousand five hundred dollars (\$2,500) for each violation, which shall be assessed and recovered
25 in a civil action brought in the name of the people of the State of California by the Attorney
26 General ...” (Bus. & Prof. Code, § 17206, subd. (a).) Under Business and Professions Code
27 section 17205, these penalties are “cumulative to each other and to the remedies or penalties
28 available under all other laws of this state.”

D. Background Facts Related to Proposition 65 Violations

28. "Lead" was placed on the Governor's list of chemicals known to the State of California to cause reproductive toxicity on February 27, 1987. (Cal. Code Regs., tit. 27 § 27001(c).) Lead is specifically identified under three subcategories: "developmental reproductive toxicity," which means harm to the developing fetus, "female reproductive toxicity," which means harm to the female reproductive system, and "male reproductive toxicity," which means harm to the male reproductive system. (Cal. Code Regs., tit. 27 § 27001(c.), § 12000, subd. (c).) On February 27, 1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead became subject to the clear and reasonable warning requirement regarding reproductive toxicants under Proposition 65. (Health & Saf. Code, § 25249.10, subd. (b).)

29. "Lead and lead compounds" were placed in the Governor's list of chemicals known to the State of California to cause cancer on October 1, 1992. (Cal. Code Regs., tit. 27, § 27001(b).) On October 1, 1993, one year after they were listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear and reasonable warning requirement regarding carcinogens under Proposition 65. (Health & Saf. Code, § 25249.10, subd. (b).)

30. Defendants' Products contain lead. Lead is found in the polyvinyl chloride ("PVC") fabric and/or material from which many of the Products are made.

31. Individuals, including children and workers, who purchase, use and/or come into contact with these products are exposed to lead. The pathways of exposure include: (1) contact between the Products and the skin leading to absorption of lead through the skin, and (2) transfer of lead from Products to the skin or clothing, and then to the mouth, both by transfer of lead directly from the hand to mouth and by transfer of lead from the skin to objects that are put in the mouth, such as food.

32. Young children are particularly susceptible to the toxic effects of lead and adverse health impacts in children occur at lower blood lead levels than in adults. At still lower levels of exposure, lead can affect a child's mental and physical growth. Fetuses exposed to lead in the womb, because their mothers had a lot of lead in their bodies, may be born prematurely and have lower weights at birth. Exposure in the womb, in infancy, or in early childhood also may slow

1 mental development and cause lower intelligence later in childhood. Studies have consistently
2 found an association between blood lead levels and IQ among different age cohorts. (See
3 Prioritization of Toxic Air Contaminants - Children's Environmental Health Protection Act
4 October, 2001 Lead – 1 Lead and Compounds, CAS Registry Number: 7439-92-1, available at
5 http://www.oehha.ca.gov/air/toxic_contaminants/pdf_zip/lead_Final.pdf [last visited August 2,
6 2010])

7 33. Each Defendant has failed to provide clear and reasonable warnings that use of the
8 Products results in exposure to a chemical known to the State of California to cause cancer or
9 birth defects or other reproductive harm. (Health & Saf. Code, § 25249.6.)

10 **Background Facts Related to CPSA Violations**

11 34. Defendants' Products are "children's products" under the Consumer Product Safety
12 Act. Under the Act, a "children's product" is defined as a "consumer product designed or
13 intended primarily for children 12 years of age or younger." (15 U.S.C. § 2052(a)(2).)
14 Defendants' Products are designed or intended primarily for children 12 years of age or younger.
15 To determine whether a product is intended for children 12 years of age or younger, the
16 Consumer Product Safety Act uses several factors, including: the manufacturer's statement of
17 intended use, its packaging, whether it is commonly recognized as a children's product, and its
18 age determination guidelines. (15 U.S.C. § 2052(a)(2)(A)-(D).) In this case, the Commission's
19 Age Determination Guidelines issued by the Consumer Product Safety Commission specifically
20 name inflatable bouncers as an example of a product for children beginning at three years of age.
21 (15 U.S.C. § 2052(a)(2)(D); see Consumer Products Safety Commission, *Age Determination*
22 *Guidelines: Relating Children's Ages to Toy Characteristics and Play Behavior (2002)*, at 179 &
23 189, available at www.cpsc.gov/businfo/adg.pdf (2002) [as of 7/21/10].)

24 35. Defendants' Products contain more lead than the current limit of 300 ppm established
25 by the CPSIA, and thus they are "banned hazardous products" under the FHSA. Parts of
26 Defendants' Products containing more than 300 ppm lead are accessible to a child through normal
27 and foreseeable use and abuse of the Products. (15 U.S.C. § 1278a(b)(2).) Defendants have sold,
28 offered for sale, manufactured for sale, imported into the United States or distributed in

1 commerce such banned hazardous products, which is a violation of the CPSA. (15 U.S.C. §
2 2068(a)(2)(D).)

3 **FIRST CAUSE OF ACTION**

4 (Against Defendants for Violation of Proposition 65)

5 36. Paragraphs 1 through 35 are realleged as if fully set forth herein.

6 37. By committing the acts alleged above, Defendants, and each of them, have, in the
7 course of doing business, knowingly and intentionally exposed individuals in California to
8 chemicals known to the State of California to cause cancer and reproductive toxicity without first
9 giving clear and reasonable warning to such individuals, within the meaning of Health and Safety
10 Code section 25249.6.

11 38. Said violations render each Defendant liable to plaintiffs for civil penalties not to
12 exceed \$2,500 per day for each violation, as well as other remedies.

13 **SECOND CAUSE OF ACTION**

14 (Violations of Business and Professions Code sections 17200, *et seq.*)

15 39. Plaintiff incorporates by this reference each and every allegation of paragraphs 1
16 through 38 above as though each was repeated herein.

17 40. Within the four years preceding the filing of this action, Defendants violated
18 California Business and Professions Code section 17200 by engaging in the following unlawful
19 business acts and practices: (1) Defendants knowingly and intentionally exposed individuals in
20 California to lead, without clear and reasonable warning, in violation of Proposition 65, Health
21 and Safety Code sections 25249.5, *et seq.*, and (2) Defendants sold, offered for sale,
22 manufactured for sale, imported into the United States or distributed in commerce Products
23 intended for use by children that contain lead over the limits set by the CPSIA in violation of the
24 CPSA.

25 41. As of the date of the filing of this action, Defendants continue to engage in, and are
26 proposing to engage in, violations of Business and Professions Code section 17200.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court:

1. Pursuant to Health and Safety Code section 25249.7, subdivision (b), and Business and Professions Code section 17206, grant civil penalties according to proof;

2. Pursuant to Health and Safety Code section 25249.7, subdivision (a), and Business and Professions Code section 17203, enter such temporary restraining orders, preliminary injunctions, permanent injunctions, or other orders prohibiting Defendant from exposing persons within the State of California to lead, caused by the use of their products, without first providing clear and reasonable warnings, and prohibiting Defendants from violating Business and Professions Code section 17200, as Plaintiff shall specify in further application to the court;

3. Enter such orders as “may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of” these unlawful acts, as provided in Business and Professions Code section 17203 and other applicable California laws;


4. Award Plaintiff’s their attorneys’ fees and costs of suit;

5. Grant such other and further relief as the court deems just and proper.

Dated: August 11, 2010

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California


JAMIE JEFFERSON
Deputy Attorney General
Attorneys for People of the State of California

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