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ENDORSED
FILED
San Francisco County Superior Court

FEB 15 2006

GORDON PARK-LI, Clerk
BY: MARJORIE SCHWARTZ-SCOTT
Deputy Clerk

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

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13 CENTER FOR ENVIRONMENTAL HEALTH,)
14 a non-profit corporation,)

15 Plaintiff,)

16 v.)

17 JACLYN, INC., and Defendant DOES 1 through)
18 200, inclusive,)

19 Defendants.)
20

Case No. CGC-05-446642

~~[PROPOSED]~~ CONSENT JUDGMENT
RE: JACLYN, INC.

1 **1. INTRODUCTION**

2 **1.1** On November 10, 2005, plaintiff the Center for Environmental Health
3 (“CEH”), a non-profit corporation acting in the public interest, filed a complaint in San Francisco
4 County Superior Court, entitled *Center for Environmental Health v. Jaclyn, Inc., et al.*, San
5 Francisco County Superior Court Case Number CGC-05-446642 (the “CEH Action”), for civil
6 penalties and injunctive relief pursuant to the provisions of Cal. Health & Safety Code §25249.5
7 *et seq.* (“Proposition 65”).

8 **1.2** Defendant Jaclyn, Inc. (“Defendant”), as alleged in the Complaint, is a
9 corporation that employs 10 or more persons and manufactured, distributed and/or sold
10 children’s lunchboxes made of vinyl containing lead and/or lead compounds in violation of
11 Proposition 65 (the “Products”) in the State of California. CEH and Defendant are together
12 referred to herein as the “Parties.”

13 **1.3** Beginning or about July 26, 2005, CEH served Defendant and the
14 appropriate public enforcement agencies with the requisite 60-day notice that Defendant was in
15 violation of Proposition 65. CEH’s notice and the Complaint in this Action allege that
16 Defendant exposes individuals who use or otherwise handle the Products to lead and/or lead
17 compounds (referred to interchangeably herein as “Lead”), chemicals known to the State of
18 California to cause cancer, birth defects and other reproductive harm, without first providing
19 clear and reasonable warning to such persons regarding the carcinogenicity and reproductive
20 toxicity of Lead. The notice and Complaint allege that Defendant’s conduct violates Health &
21 Safety Code §25249.6, the warning provision of Proposition 65. Defendant denies these
22 allegations.

23 **1.4** Defendant contends that it does not presently manufacture, distribute or
24 sell the Products. Defendant further contends that it sold less than 800 Products total and that
25 none were sold directly into California. Defendant also contends that any lead contained in the
26 vinyl of the Products did not exceed the “safe harbor” Maximum Allowable Dose Level
27 (“MADL”) for Lead as a reproductive toxin or the No Significant Risk Level (“NSRL”) for Lead
28 as a carcinogen pursuant to Title 22 of the California Code of Regulations §12721.

1 **1.5** For purposes of this Consent Judgment only, the Parties stipulate that this
2 Court has jurisdiction over the subject matter of the violations alleged in CEH's Complaint and
3 personal jurisdiction over Defendant as to the acts alleged in CEH's Complaint, that venue is
4 proper in the County of San Francisco, and that this Court has jurisdiction to enter this Consent
5 Judgment as a full and final resolution of all claims which were or could have been raised in the
6 Complaint based on the facts alleged therein.

7 **1.6** The Parties enter into this Consent Judgment pursuant to a settlement of
8 certain disputed claims between the Parties as alleged in the Complaint. By executing this
9 Consent Judgment, the Parties do not admit any facts or conclusions of law. It is the Parties'
10 intent that nothing in this Consent Judgment shall be construed as an admission by the Parties of
11 any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the
12 Consent Judgment constitute or be construed as an admission by the Parties of any fact,
13 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
14 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or
15 any other or future legal proceedings.

16 **2. COMPLIANCE**

17 **2.1** Defendant will not manufacture, distribute and/or sell the Products on or
18 after the date of entry of this Consent Judgment.

19 **3. SETTLEMENT PAYMENTS**

20 **3.1 Monetary Payment in Lieu of Penalty:** Defendant shall pay \$8,000 to
21 CEH in lieu of any penalty pursuant to Health and Safety Code § 25249.7(b). CEH shall use
22 such funds to continue its work protecting people from exposures to toxic chemicals.

23 **3.2 Attorneys' Fees and Costs:** Defendant shall pay \$10,000 to reimburse
24 CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any
25 other costs incurred as a result of investigating, bringing this matter to Defendant' attention,
26 litigating and negotiating a settlement in the public interest.

27 **3.3 Timing of payments.** The payments required under this section shall be
28 delivered to the address set forth in section 11 below within 30 days of mutual execution of this

1 Consent Judgment by the Parties. Any failure by Defendant to comply with the payment terms
2 herein shall be subject to a stipulated late fee in the amount of \$50 for each day after the delivery
3 date the payment is received.

4 4. MODIFICATION OF CONSENT JUDGMENT

5 4.1 This Consent Judgment may be modified by written agreement of CEH
6 and Defendant, or upon motion of CEH or Defendant as provided by law.

7 4.2 CEH intends to enter into agreements with other entities that manufacture,
8 distribute and/or sell Products. Should Defendant decide to begin selling Products again,
9 Defendant will contact CEH and CEH will make available copies of other agreements it has
10 entered into concerning Products. Defendant may then choose to comply with the injunctive
11 provisions of one of the other agreements, and the Parties will modify this Consent Judgment to
12 reflect such injunctive provisions.

13 5. ENFORCEMENT OF CONSENT JUDGMENT

14 5.1 CEH may, by motion or application for an order to show cause before the
15 Superior Court of the County of San Francisco, enforce the terms and conditions contained in
16 this Consent Judgment.

17 6. APPLICATION OF CONSENT JUDGMENT

18 6.1 This Consent Judgment shall apply to and be binding upon the Parties
19 hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of
20 them.

21 7. CLAIMS COVERED

22 7.1 This Consent Judgment is a full, final and binding resolution between
23 CEH and Defendant of any violation of Proposition 65 or any other statutory or common law
24 claim that was or could have been asserted in the public interest or on behalf of the general
25 public against Defendant, its parents, shareholders, divisions, subdivisions, subsidiaries, partners,
26 sister companies, affiliates, franchisees, cooperative members, licensors, licensees, distributors,
27 wholesalers, customers, and retailers ("Defendant Releasees") regarding exposure to Lead
28 contained in the Products, with respect to any Products manufactured, distributed or sold by

1 Defendant on or prior to the date of entry of this Consent Judgment, whether based on actions
2 committed by Defendant or by Defendant Releasees. Compliance with the terms of this Consent
3 Judgment resolves any issue now, in the past, and in the future concerning compliance by
4 Defendant and Defendant Releasees, regarding exposure to lead arising in connection with the
5 use of Products manufactured, sold, or distributed, by Defendant prior to or after entry of this
6 Consent Judgment. This release does not limit or affect the obligations of any party created
7 under this Consent Judgment.

8 **8. SEVERABILITY**

9 **8.1** In the event that any of the provisions of this Consent Judgment are held
10 by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
11 affected.

12 **9. GOVERNING LAW**

13 **9.1** The terms of this Consent Judgment shall be governed by the laws of the
14 State of California.

15 **10. RETENTION OF JURISDICTION**

16 **10.1** This Court shall retain jurisdiction of this matter to implement and enforce
17 the terms this Consent Judgment.

18 **11. PROVISION OF NOTICE**

19 **11.1** All notices required pursuant to this Consent Judgment and
20 correspondence shall be sent to the following:

21 For CEH:

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23 Lexington Law Group, LLP
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24 For Defendant:

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