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5 Attorneys for Plaintiff  
6 CENTER FOR ENVIRONMENTAL HEALTH

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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:

22 Mark N. Todzo  
23 Lexington Law Group, LLP  
1627 Irving Street  
San Francisco, CA 94122

24 For Defendant:

25 Aaron Locker, Esq.  
26 Locker Greenberg & Brainin, P.C.  
420 Fifth Avenue  
27 New York, NY 10018

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**12. NOTICE TO THE ATTORNEY GENERAL AND COURT APPROVAL**

**12.1** CEH will comply with the settlement notice provisions of Health and Safety Code §25249.7(f) and Title 11 of the California Code of Regulations §3003.

**12.2** If this Consent Judgment is not approved by the Court, it shall be of no further force or effect.

**13. EXECUTION AND COUNTERPARTS**

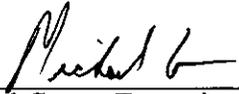
**13.1** The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile, which taken together shall be deemed to constitute one document.

**14. AUTHORIZATION**

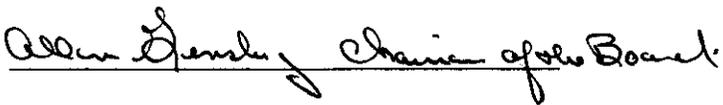
**14.1** Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party he or she represents to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on behalf of the party represented and legally bind that party. The undersigned have read, understand and agree to all of the terms and conditions of this Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and costs.

**AGREED TO:**

CENTER FOR ENVIRONMENTAL HEALTH

 Dated: 12/20/05  
\_\_\_\_\_  
Michael Green, Executive Director  
Center for Environmental Health

JACLYN, INC.

 Dated: 12/12/05  
\_\_\_\_\_  
ALLEN GINSBERG  
Printed Name

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**ORDER AND JUDGMENT**

Based upon the stipulated Consent Judgment between CEH and Jaclyn, Inc., the settlement is approved and judgment is hereby entered according to the terms herein.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge, Superior Court of the State of California

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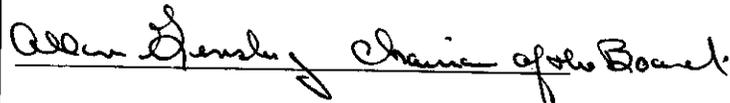
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17 CENTER FOR ENVIRONMENTAL HEALTH

18  
19  Dated: 12/20/05  
20 Michael Green, Executive Director  
21 Center for Environmental Health

22  
23 JACLYN, INC.

24  Dated: 12/12/05  
25  
26 ALLAW GINSBORG  
27 Printed Name  
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