

1 LEXINGTON LAW GROUP, LLP
Mark N. Todzo, State Bar No. 168389
2 Eric S. Somers, State Bar No. 139050
Lynne R. Saxton, State Bar No. 226210
3 1627 Irving Street
San Francisco, CA 94122
4 Telephone: (415) 759-4111
Facsimile: (415) 759-4112

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: BETESH HOLDING GROUP
CORPORATION**

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”). On November 30, 2005 CEH amended the CEH Action pursuant to
8 Cal. Code Civil Procedure §474 to add Betesh Holding Group Corporation as a defendant.

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

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

24 **1.4** Defendant contends that it does not presently manufacture, distribute or
25 sell the Products. Defendant further contends that it sold approximately 700 Products in
26 California. Defendant also contends that any lead contained in the vinyl of the Products did not
27 exceed the “safe harbor” Maximum Allowable Dose Level (“MADL”) for Lead as a reproductive
28 toxin or the No Significant Risk Level (“NSRL”) for Lead as a carcinogen pursuant to Title 22 of

1 the California Code of Regulations §12721.

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

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

17 **2. COMPLIANCE**

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

20 **3. SETTLEMENT PAYMENTS**

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

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

28 **3.3 Timing of payments.** The payments required under this section shall be

1 delivered to the address set forth in section 11 below within 30 days of mutual execution of this
2 Consent Judgment by the Parties. Any failure by Defendant to comply with the payment terms
3 herein shall be subject to a stipulated late fee in the amount of \$50 for each day after the delivery
4 date the payment is received.

5 **4. MODIFICATION OF CONSENT JUDGMENT**

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

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

14 **5. ENFORCEMENT OF CONSENT JUDGMENT**

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

18 **6. APPLICATION OF CONSENT JUDGMENT**

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

22 **7. CLAIMS COVERED**

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

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

9 **8. SEVERABILITY**

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

13 **9. GOVERNING LAW**

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

16 **10. RETENTION OF JURISDICTION**

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

19 **11. PROVISION OF NOTICE**

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

22 For CEH:

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

25 For Defendant:

26 Aaron Locker, Esq.
27 Locker Greenberg & Brainin, P.C.
420 Fifth Avenue
28 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: _____
Michael Green, Executive Director
Center for Environmental Health

BETESH HOLDING GROUP CORPORATION

_____ Dated: 12/14/05
Peggy Truong
PEGGY TRUONG
Printed Name

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between CEH and Betesh Holding Group Corporation, the settlement is approved and judgment is hereby entered according to the terms herein.

Dated: _____

Judge, Superior Court of the State of California