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14 Attorneys for Defendant
CENTURY SYSTEMS, INC.

15
16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 COUNTY OF ALAMEDA

18 ENVIRONMENTAL RESEARCH
19 CENTER, a non-profit California
corporation,

20 Plaintiff,

21 v.

22 CENTURY SYSTEMS, INC., a Georgia
23 Corporation,

24 Defendant.

CASE NO. RG14731268

**STIPULATED CONSENT
JUDGMENT; [PROPOSED] ORDER**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: July 1, 2014
Trial Date: None set

1 **1. INTRODUCTION**

2 **1.1** On July 1, 2014, Plaintiff Environmental Research Center (“ERC”), a non-profit
3 corporation, as a private enforcer, and in the public interest, initiated this action by filing a
4 Complaint for Injunctive Relief and Civil Penalties (the “Complaint”) pursuant to the
5 provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),
6 against Century Systems, Inc. (“Century Systems” or “Defendant”). Subsequently, on August
7 4, 2014, an Amended Complaint (the “Amended Complaint”) was filed.

8 **1.2** In this action, ERC alleges that a number of products manufactured, distributed
9 or sold by Century Systems contain lead, a chemical listed under Proposition 65 as a
10 carcinogen and reproductive toxin, and expose consumers to this chemical at a level requiring a
11 Proposition 65 warning. These products (referred to hereinafter individually as a “Covered
12 Product” or collectively as “Covered Products”) are: (1) Century Systems Vitarol with Years +
13 Male Longevity, (2) Century Systems Male Drive Maximum Strength, (3) Century Systems
14 Vitarol with Multi-Thin Female Energy, (4) Century Systems The Cleaner 7 Day Men’s Formula,
15 (5) Century Systems The Cleaner 7 Day Women’s Formula, (6) Century Systems The Cleaner 14
16 Day Women’s Formula, and (7) Century Systems The Cleaner 14 Day Men’s Formula.

17 **1.3** ERC and Century Systems are hereinafter referred to individually as a “Party” or
18 collectively as the “Parties.”

19 **1.4** ERC is a California non-profit corporation dedicated to, among other causes,
20 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
21 and toxic chemicals, facilitating a safe environment for consumers and employees, and
22 encouraging corporate responsibility.

23 **1.5** For purposes of this Consent Judgment, the Parties agree that Century Systems is a
24 Georgia Corporation that has or had employed ten or more persons at all times relevant to this
25 action, and qualifies as a “person in the course of business” within the meaning of Proposition 65.
26 Century Systems manufactures, distributes and sells the Covered Products.

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1 **1.6** The Amended Complaint is based on allegations contained in ERC’s Notice of
2 Violations dated April 4, 2014, that was served on the California Attorney General, other
3 public enforcers, and Century Systems (“Notice”). A true and correct copy of the Notice is
4 attached as Exhibit A and is hereby incorporated by reference.

5 **1.7** More than sixty (60) days have passed since service of the Notice and no
6 designated governmental agency has filed a complaint against Century Systems with regard to
7 the Covered Products or the alleged violations.

8 **1.8** ERC’s Notice and Amended Complaint allege that Century Systems
9 manufactured, distributed, and/or sold in California the Covered Products, which contain lead,
10 a chemical known to the State of California to cause cancer and/or reproductive toxicity, and
11 expose consumers at a level requiring a Proposition 65 warning. ERC further alleges that use of
12 the Covered Products exposes persons in California to lead without first providing clear and
13 reasonable warnings in violation of California Health and Safety Code section 25249.6.

14 **1.9** Century Systems denies all material allegations contained in the Notice and
15 Amended Complaint.

16 **1.10** The Parties have entered into this Consent Judgment in order to settle,
17 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.
18 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of
19 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
20 parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,
21 distributors, wholesalers, or retailers. Except for the representations made above, nothing in
22 this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of
23 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an
24 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any
25 purpose.

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1 **1.11** Except as expressly set forth herein, nothing in this Consent Judgment shall
2 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
3 other or future legal proceeding unrelated to these proceedings.

4 **1.12** The Effective Date of this Consent Judgment is the date on which it is entered as
5 a Judgment by this Court.

6 **2. JURISDICTION AND VENUE**

7 For purposes of this Consent Judgment and any further court action that may become
8 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
9 jurisdiction over this Action personal jurisdiction over the Parties, that venue is proper in this
10 Court, and that this Court has jurisdiction to enter this Consent Judgment pursuant to the terms set
11 forth herein.

12 **3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

13 **3.1** Beginning on the Effective Date, Century Systems shall be permanently
14 enjoined from manufacturing for sale in the State of California, “Distributing into the State of
15 California,” or directly selling in the State of California, any Covered Product which exposes a
16 person to a “Daily Exposure Level” of more than 0.5 micrograms per day when the maximum
17 suggested dose is taken as directed on the Covered Product’s label, unless it meets the warning
18 requirements under Section 3.2.

19 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
20 of California” shall mean to directly ship a Covered Product into California for sale in
21 California or to sell a Covered Product to a distributor that Century Systems knows will sell the
22 Covered Product in California. Century Systems is not responsible for products already
23 existing in the stream of commerce that may be sold by third parties. From the Effective Date
24 forward, Century Systems will only direct sell and Distribute into the State of California
25 products in compliance with this Consent Judgment.

26 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
27 Level” shall be measured in micrograms, and shall be calculated using the following formula:

1 micrograms of lead per gram of product, multiplied by grams of product per serving of the
2 product (using the largest serving size appearing on the product label), multiplied by servings
3 of the product per day (using the largest number of servings in a recommended dosage
4 appearing on the product label), which equals micrograms of lead exposure per day.

5 **3.2 Clear and Reasonable Warnings**

6 For those Covered Products that are subject to the warning requirement of Section 3.1,
7 Century Systems shall provide the following warning:

8 **WARNING: This product contains [lead,] a chemical known to the State of California**
9 **to cause [cancer and] birth defects or other reproductive harm.**

10 The text in the brackets in the warning above is optional, except that that the phrase “cancer and”
11 must be included only if the maximum daily dose recommended on the label contains more than
12 15 micrograms of lead as determined pursuant to the quality control methodology set forth in
13 Section 3.4.

14 The warning shall be prominently affixed to or printed upon the product’s label of the
15 Covered Product as to be clearly conspicuous, as compared with other statements or designs on the
16 label as to render it likely to be read and understood by an ordinary purchaser or user of the
17 product. If the warning is displayed on the product’s label, it shall be at least the same size as the
18 largest of any other health or safety warnings on the product and the word “**WARNING**” shall be
19 in all capital letters and in bold print, and at Century Systems’ election the word “**WARNING**”
20 may be preceded by the words “California Proposition 65” or other language informing the public
21 that the warning arises out of California.

22 For any products sold via a website, the warning shall appear on the checkout page on the
23 website for the Covered Products being shipped to a California address.

24 Defendant shall not provide any other statements to accompany the Warning, but may
25 refer customers to one or more of its company websites.

26 **3.3 Reformulated Covered Products**

27 A Reformulated Covered Product is one for which the Daily Exposure Level when the

1 maximum suggested dose is taken as directed on the Reformulated Covered Product’s label,
2 contains no more than 0.5 micrograms of lead per day as determined by the quality control
3 methodology described in Section 3.4.

4 **3.4 Testing and Quality Control Methodology**

5 **3.4.1** Beginning within one year of the Effective Date, Century Systems shall
6 arrange for lead testing of the Covered Products at least once a year for a minimum of five
7 consecutive years by arranging for testing of five randomly selected samples of each of the
8 Covered Products, in the form intended for sale to the end-user, which Century Systems intends
9 to sell or is manufacturing for sale in California, directly selling to a consumer in California or
10 “Distributing into California.” The testing requirement does not apply to any of the Covered
11 Products for which Century Systems has provided the warning specified in Section 3.2.

12 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level”, the highest
13 lead detection result of the five (5) randomly selected samples of the Covered Products will be
14 controlling.

15 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
16 laboratory method that complies with the performance and quality control factors appropriate
17 for the method used, including limit of detection, qualification, accuracy, and precision that
18 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)
19 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing
20 method of comparable accuracy and reliability that Defendant may select and as agreed upon
21 by the Parties.

22 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
23 independent third party laboratory certified by the California Environmental Laboratory
24 Accreditation Program or an independent third-party laboratory that is registered with the
25 United States Food & Drug Administration.

26 **3.4.5** Nothing in this Consent Judgment shall limit Century Systems’ ability to
27 conduct, or require that others conduct, additional testing of the Covered Products, including

1 the raw materials used in their manufacture.

2 **4. SETTLEMENT PAYMENT**

3 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil
4 penalties, attorney’s fees, and costs, Century Systems shall make a total payment of
5 \$105,000.00 (“Total Settlement Amount”) to ERC as described in Section 4.5 below. The Total
6 Settlement Amount shall be apportioned as follows:

7 **4.2 Civil Penalty Assessment.** \$39,216.00 shall be considered a civil penalty
8 pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit 75%
9 (\$29,412.00) of the civil penalty to the Office of Environmental Health Hazard Assessment
10 (“OEHHA”) for deposit in the Safe Drinking Water and Toxic Enforcement Fund in
11 accordance with California Health and Safety Code §25249.12(c). ERC will retain the
12 remaining 25% (\$9,804.00) of the civil penalty.

13 **4.3 Reimbursement of Plaintiff’s Fees and Costs.** \$20,556.00 shall be distributed
14 to Lozeau | Drury LLP as reimbursement of ERC’s attorney fees, while \$14,130.89 shall be
15 distributed to ERC for its in-house legal fees, and \$1,493.87 shall be distributed to ERC as
16 reimbursement to ERC for its costs.

17 **4.4** \$29,603.24 shall be distributed to ERC in lieu of further civil penalties, for the
18 day-to-day business activities such as (1) continued enforcement of Proposition 65, which
19 includes work, analyzing, researching and testing consumer products that may contain
20 Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are
21 the subject matter of the current action; (2) the continued monitoring of past consent judgments
22 and settlements to ensure companies are in compliance with Proposition 65; and (3) giving a
23 donation of \$1,480.00 to the Global Community Monitor to address reducing toxic chemical
24 exposures in California.

25 **4.5 Payment Schedule.** Within 5 days of the Effective Date, Defendant shall make
26 a lump sum payment to ERC of \$30,000.00. Defendant will make ten monthly consecutive
27 payments thereafter of \$7,500.00 each. Defendant agrees to remit payments to ERC by check

1 or wire transfer for which ERC will provide Defendant the relevant information.

2 **5. MODIFICATION OF CONSENT JUDGMENT**

3 **5.1** This Consent Judgment, after its entry by the Court, may be modified by the
4 Parties only as follows: 1) by written agreement of the Parties and upon entry of a modified
5 Consent Judgment by the Court based on the written agreement of the Parties or 2) should there
6 be an amendment to Proposition 65 or should the Office of Environmental Health Hazard
7 Assessment (“OEHHA”) promulgate regulations that establish a Maximum Allowable Dose
8 Level for lead that is more or less stringent than 0.5 micrograms per day, this Consent Judgment
9 shall be deemed modified by the Parties on the date the amendment becomes effective or the
10 regulations become effective to incorporate the new standard into this Consent Judgment.

11 **5.2** If either ERC or Century Systems seeks to modify this Consent Judgment under
12 Section 5.1, then the moving party must provide written notice to the non-moving party of its
13 intent (“Notice of Intent”). If the non-moving party seeks to meet and confer regarding the
14 proposed modification in the Notice of Intent, then that party must provide written notice
15 within thirty days of receiving the Notice of Intent. If the non-moving party provides notice,
16 then the Parties shall meet and confer in good faith as required in this Section. The Parties
17 shall meet in person or via telephone within thirty (30) days of the non-moving party’s
18 notification of the intent to meet and confer. Within thirty days of such meeting, if the non-
19 moving party disputes the proposed modification, that party shall provide a written basis for its
20 position. The Parties shall continue to meet and confer for an additional thirty (30) days in an
21 effort to resolve any remaining disputes. Should it become necessary, the Parties may agree in
22 writing to different deadlines for the meet-and-confer period.

23 **5.3** In the event that Century Systems initiates or otherwise requests a modification
24 under Section 5.1, primarily for its benefit only, and the meet and confer process leads to a joint
25 motion or application of the Consent Judgment, Century Systems shall reimburse ERC its costs
26 and reasonable attorney’s fees for the time spent in the meet-and-confer process and filing and
27 arguing the motion or application.

1 **5.4** Where the meet-and-confer process does not lead to a joint motion or
2 application in support of a modification of the Consent Judgment, then either Party may seek
3 judicial relief on its own. In such a situation, the prevailing Party may seek to recover costs
4 and reasonable attorney’s fees. As used in the preceding sentence, the term “prevailing party”
5 means a party who is successful in obtaining relief more favorable to it than the relief that the
6 other party was amenable to providing during the Parties’ good faith attempt to resolve the
7 dispute that is the subject of the modification.

8 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
9 **JUDGMENT**

10 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate
11 this Consent Judgment, pursuant to Code of Civil Procedure § 664.6 or any other valid
12 provision of law.

13 **6.2** If ERC alleges that any Covered Product has lead levels over 0.5 micrograms
14 per day and has failed to provide a Warning pursuant to Section 3.1, then ERC shall inform
15 Century Systems in a reasonably prompt manner of its test results, including information
16 sufficient to permit Century Systems to identify the Covered Products at issue. Century Systems
17 shall, within thirty days following such notice, provide ERC with information demonstrating
18 Century Systems’ compliance with the Consent Judgment, if warranted. The Parties shall first
19 attempt to resolve the matter prior to ERC taking any further legal action.

20 **7. APPLICATION OF CONSENT JUDGMENT**

21 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
22 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
23 divisions, affiliates, franchisees, licensees, customers (excluding private labelers), distributors,
24 wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
25 application to Covered Products which are distributed or sold exclusively outside the State of
26 California.

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1 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

2 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
3 behalf of itself and in the public interest, and Century Systems, of any alleged violation of
4 Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings of
5 exposure to lead from the handling, use, or consumption of the Covered Products and fully
6 resolves all claims that have been or could have been asserted in this action up to and including
7 the Effective Date for failure to provide Proposition 65 warnings for the Covered Products.
8 ERC, on behalf of itself and in the public interest, hereby discharges Century Systems and its
9 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
10 divisions, affiliates, suppliers, franchisees, licensees, customers (not including private label
11 customers of Century Systems), distributors, wholesalers, retailers, and all other upstream and
12 downstream entities in the distribution chain of any Covered Product, and the predecessors,
13 successors and assigns of any of them (collectively, “Released Parties”), from any and all
14 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs and
15 expenses asserted, or that could have been asserted, as to any alleged violation of Proposition
16 65 arising from the failure to provide Proposition 65 warnings on the Covered Products
17 regarding lead.

18 **8.2** ERC affirms that as of the date this Consent Judgment is executed it is not aware
19 of any actual or alleged violations of Proposition 65 by Defendant or by any other person
20 named in the Notice of Violations, other than those that are fully resolved by this Consent
21 Judgment, and that as of such date they are not presently investigating any potential Proposition
22 65 violations involving such persons.

23 **8.3** ERC on its own behalf only, on one hand, and Century Systems on its own
24 behalf only, on the other, further waive and release any and all claims they may have against
25 each other for all actions or statements made or undertaken in the course of seeking or opposing
26 enforcement of Proposition 65 in connection with the Notice or Amended Complaint up
27 through and including the Effective Date, provided, however, that nothing in Section 8 shall

1 affect or limit any Party's right to seek to enforce the terms of this Consent Judgment.

2 **8.4** It is possible that other claims not known to the Parties arising out of the facts
3 alleged in the Notice or the Amended Complaint and relating to the Covered Products will
4 develop or be discovered. ERC on behalf of itself only, on one hand, and Century Systems, on
5 the other hand, acknowledge that this Consent Judgment is expressly intended to cover and
6 include all such claims up through the Effective Date, including all rights of action therefore.
7 ERC and Century Systems acknowledge that the claims released in Sections 8.1 and 8.3 above
8 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to
9 any such unknown claims. California Civil Code section 1542 reads as follows:

10 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
11 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
12 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
13 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
14 OR HER SETTLEMENT WITH THE DEBTOR.

15 ERC on behalf of itself only, on the one hand, and Century Systems, on the other hand,
16 acknowledge and understand the significance and consequences of this specific waiver of
17 California Civil Code section 1542.

18 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to
19 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
20 in the Covered Products as set forth in the Notice and the Amended Complaint.

21 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or
22 environmental exposures, as those terms are defined in Cal. Code Regs., tit. 27, §§ 25602(c)
23 and (f), arising under Proposition 65, nor shall it apply to any of Century Systems' products
24 other than the Covered Products.

25 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

26 In the event that any of the provisions of this Consent Judgment are held by a court to be
27 unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

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1 **10. GOVERNING LAW**

2 The terms and conditions of this Consent Judgment shall be governed by and construed in
3 accordance with the laws of the State of California.

4 **11. PROVISION OF NOTICE**

5 All correspondence and notices required to be given to either Party to this Consent
6 Judgment by the other shall be in writing and sent to the following agents listed below by: (a) first-
7 class, registered, or certified mail; (b) overnight courier; or (c) personal delivery. Courtesy copies
8 via email may also be sent.

9 **FOR ENVIRONMENTAL RESEARCH CENTER:**

10 Chris Heptinstall, Executive Director, Environmental Research Center
11 3111 Camino Del Rio North, Suite 400
12 San Diego, CA 92108
13 Tel: (619) 500-3090
14 Email: chris_erc501c3@yahoo.com

15 With a copy to:
16 RICHARD T. DRURY
17 DOUGLAS J. CHERMAK
18 LOZEAU | DRURY LLP
19 410 12th Street, Suite 250
20 Oakland, CA 94607
21 Ph: 510-836-4200
22 Fax: 510-836-4205
23 Email: richard@lozeaudrury.com
24 doug@lozeaudrury.com

25 **CENTURY SYSTEMS, INC.**

26 Nathaniel Bronner, Jr.
27 President
28 Century Systems, Inc.
P.O. Box 43725
120 Selig Dr.
Atlanta, GA 30336
Tel: 404-696-2020 ext. 362

With a copy to:
PAUL S. ROSENLUND
JUSTIN J. FIELDS
DUANE MORRIS LLP
Spear Tower
One Market Plaza, Suite 2200
San Francisco, CA 94105

1 Ph: 415-957-3000
2 Fax: 415-957-3001
3 Email: psrosenlund@duanemorris.com
4 jfields@duanemorris.com

5 **12. COURT APPROVAL**

6 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
7 Motion for Approval and Entry of Consent Judgment in the Alameda County Superior Court,
8 pursuant to 11 California Code of Regulations §3000, *et seq.* This motion shall be served upon
9 all of the Parties to the Action and upon the California Attorney General. The Parties shall use
10 their best efforts to support entry of this Consent Judgment.

11 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
12 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
13 prior to the hearing on the motion.

14 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
15 void and have no force or effect.

16 **13. EXECUTION AND COUNTERPARTS**

17 This Consent Judgment may be executed in counterparts, which taken together shall be
18 deemed to constitute one document. A facsimile or .pdf signature shall be construed as valid as
19 the original signature.

20 **14. DRAFTING**

21 No inference, assumption or presumption shall be drawn, and no provision of this
22 Agreement shall be construed against any of the Parties, based upon the fact that one of the Parties
23 and/or one of the Parties' attorneys prepared and/or drafted all or any portion of this Agreement. It
24 is conclusively presumed all of the Parties participated equally in the preparation and drafting of
25 this Agreement, and in this regard, the Parties hereby waive California Civil Code § 1654 which
26 states, in pertinent part: "the language of a contract should be interpreted most strongly against the
27 party who caused the uncertainty to exists."

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1 matter has been diligently prosecuted, and that the public interest is served by such settlement; and

2 (2) Make the findings pursuant to California Health and Safety Code section
3 25249.7(1)(4), approve the Settlement, and approve this Consent Judgment.

4 **IT IS SO STIPULATED:**

5 Dated: 6/19/, 2015

ENVIRONMENTAL RESEARCH
CENTER

6 By: 
7 Chris Nepristal, Executive Director

8 Dated: 6/25, 2015

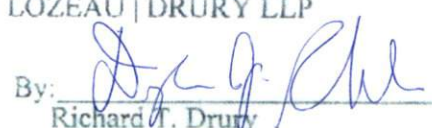
CENTURY SYSTEMS, INC.

9 
10 Nathaniel Bronner, President

11 **APPROVED AS TO FORM:**


12 Dated: 6/25, 2015

LOZEAU | DRURY LLP

13 By: 
14 Richard T. Drury
15 Douglas J. Chermak
16 Attorneys for Plaintiff Environmental
17 Research Center

18 Dated: 6/25, 2015

DUANE MORRIS LLP

19 By: 
20 Paul S. Rosenlund
21 Michael L. Reitzell
22 Justin J. Fields
23 Attorneys for Defendant Century Systems,
24 Inc.

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ORDER AND JUDGMENT

Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is approved and Judgment is hereby entered according to its terms.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____, 2015

Judge of the Superior Court