UNITED STATES OF AMERICA

CONSUMER PRODUCT SAFETY COMMISSION

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| In the Matter of<br><br>Graco Children's Products, Inc.<br>a corporation<br>and<br>Century Products, f/k/a<br>Century Products Company, | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | CPSC Docket No. 05-C0006 |

SETTLEMENT AGREEMENT AND ORDER

1. This Settlement Agreement is made by and between the staff ("the staff") of the United States Consumer Product Safety Commission ("the Commission") and Graco Children's Products, Inc. ("Graco") in accordance with 16 C.F.R. § 1118.20 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act ("CPSA"). This Settlement Agreement and the incorporated, attached Order resolve the staff's allegations set forth below.

## I. THE PARTIES

2. The United States Consumer Product Safety Commission is an independent federal regulatory agency responsible for the enforcement of the Consumer Product Safety Act, 15 U.S.C. §§ 2051-2084, the Federal Hazardous Substances Act, 15 U.S.C. §§ 1261-1278, and the other transferred Acts identified in 15 U.S.C. § 2079.

3. Graco Children's Products, Inc. is a corporation organized and existing under the

laws of the State of Pennsylvania. Graco is a wholly owned subsidiary of Newell Rubbermaid, Inc. Graco's principal offices are located at 150 Oaklands Boulevard, Exton, Pennsylvania 19341.

CORPORATE BACKGROUND AND THE SCOPE OF THIS AGREEMENT

4. In 1996, Rubbermaid Incorporated ("Rubbermaid,"), then an Ohio corporation, acquired Graco. Graco retained its separate corporate status. Until 1998, Century Products Company ("Century") was a separate corporation organized under the laws of the State of Delaware. In 1998 Rubbermaid acquired certain assets and liabilities of Century. In 1999, Newell Co., ("Newell," a Delaware corporation) merged with Rubbermaid. Rubbermaid became a wholly owned subsidiary of Newell and Newell Co. changed its corporate name to Newell Rubbermaid Inc.

5. By this Agreement, Graco is settling alleged reporting violations: by Century before Century's assets were acquired by Graco's parent company Rubbermaid; by Century during the period that straddled Century's status as an independent corporation and after it was acquired by Graco's parent, Rubbermaid; by Graco when it was a family owned and operated business, prior to 1997; by Graco after it was acquired by Rubbermaid but still operating independently; and by Graco prior to its management restructuring by its current corporate parent, Newell.

## II. STAFF ALLEGATIONS

### CENTURY INFANT SEAT/CARRIER

6. Between 1991 and 1997, Century manufactured and distributed in United States

commerce rear-facing infant seat/carriers, sometimes known as its "Assura" line. The infant seat/ carrier, when separated from its anchored base in a motor vehicle, became an infant carrier for use in the home, during shopping, in recreation or otherwise. Century was, therefore, a "manufacturer" of a "consumer product" "distributed in commerce" as those terms are defined in 15 U.S.C. §§ 2052 (a)(1), (4), (11) and (12).

7. While using the infant carrier, the carrying handle could crack and/or break and/or the handle could fail to lock the carrier seat securely into place. These flaws in the carrier handles and locking mechanisms are defects under section 15 of the CPSA, 15 U.S.C. § 2064. The babies being carried in the carrier seats could, and did, fall from defective carriers and suffered serious injuries. All injuries occurred while this product was being used as an infant carrier.

8. Century made several attempts to strengthen the Assura handle and redesigned the locking mechanism between 1993 and 1998. It replaced between 2,700 and 3,400 handles in response to consumer complaints.

9. Century never reported this information to the Commission staff. Indeed, in 1998, when the staff first investigated the Assura car seat/carriers, Century personnel failed to provide the staff with critically important information about incidents, injuries and engineering changes. This failure to provide a complete report impeded an effective analysis of the defects and hazard associated with these products and unduly delayed implementation of a safety recall.

10. Century obtained information that reasonably supported the conclusion that its rear facing car seat/carriers, described above, contained defects which could create a substantial product hazard and created an unreasonable risk of serious injury. Century failed to report such

information to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. §§ 2064(b)(2) and (3).

11. By failing to report to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. §§ 2064(b)(2) and (3), Century committed prohibited acts and violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

12. Century committed the prohibited acts set forth above "knowingly," as that term is defined in section 20(d) of the CPSA, 15 U.S.C. §2069(d), and thus subjected itself to civil penalties, as provided in section 20 of the CPSC, 15 U.S.C. § 2069.

CENTURY STROLLER/TRAVEL SYSTEMS

13. Between 1996 and 1999, Century and Graco/Century manufactured and distributed in United States commerce a series of multi-use product "travel systems" featuring the seat portion of a motor vehicle safety car seat. The seat could be removed and used as a baby carrier, a baby seat and, when placed in a stroller frame, a baby stroller. Five particular travel system models were known as the Century brand Travelite, Pioneer, ProSport, Travel Solutions and the Take Two Travel Solutions (hereinafter the "Car Seat Strollers" or "Travel Systems"). With respect to the non-car seat components of these travel system, Century and Graco/Century were "manufacturers" of "consumer products" "distributed in commerce" as those terms are defined in 15 U.S.C. §§ 2052 (a)(1), (4), (11) and (12).

14. When the baby carrier seat was used in the five Century stroller frames, the products' locking mechanism designs permitted the seat either to detach from the stroller frame or allowed the stroller frame to collapse, allowing the baby to fall forward, out of the stroller

frame and onto the ground. The five seat/stroller frame locking mechanism designs were defective under section 15 of the CPSA, 15 U.S.C. § 2064. These defects generated numerous consumer complaints alleging many injuries for the five models, from minor to serious in nature.

15. Neither Century nor Graco filed a section 15(b) report until the staff inquired about the Take 2 Strollers in 2000.

16. Century obtained information which reasonably supported the conclusion that the five travel systems named above, contained defects which could create a substantial product hazard. Century failed to report such information to the Commission as required by section 15(b)(2) of the CPSA, 15 U.S.C. § 2064(b)(2).

17. By failing to report to the Commission as required by section 15(b)(2) of the CPSA, 15 U.S.C. § 2064(b)(2), Century committed prohibited acts and violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

18. Century committed the prohibited acts set forth above "knowingly," as that term is defined in section 20(d) of the CPSA, 15 U.S.C. §2069(d), and thus subjected itself to civil penalties, as provided in section 20 of the CPSA, 15 U.S.C. § 2069.

GRACO HIGH CHAIR MODELS 3170,36051 and 74001

19. From January, 1996 through November, 1997 Graco manufactured and distributed in United States commerce children's High Chair Models 3170, 36051 and 74001 ("High Chairs"). Graco was, therefore, a "manufacturer" of a "consumer product" "distributed in commerce" as those terms are defined in 15 U.S.C. §§ 2052 (a)(1), (4), (11) and (12).

20. Graco designed the High Chairs with four metal supporting legs. Each of the two front legs is comprised of two metal tubes, one inserted into the open end of the other. The two-piece legs were designed to stay together, mated by friction and gravity. When the High Chair was in use, the front supporting leg pieces could, and did, come apart, causing the entire High Chair to fall forward to the ground. In July 1996, after receiving consumer complaints, Graco attempted to prevent the legs from separating by extending the leg socket rib length. Graco continued to receive High Chair leg separation complaints and, in November 1997, Graco ordered the use of a spring loaded push button on one section of each leg designed to fit into a corresponding hole in the other half of the leg connection. This design was intended to form a positive locking mechanism for the High Chair legs.

21. After the design change described in paragraph 20 above, Graco continued to receive consumer complaints of front leg separation and minor to serious child injuries associated with the friction fit design units made before November 1997. The friction fit designs used by Graco were defects under section 15 of the CPSA, 15 U.S.C. § 2064.

22. Graco did not report information about this product until requested to do so by CPSC in 2000.

23. Graco obtained information which reasonably supported the conclusion that its High Chairs contained defects which could create a substantial product hazard. Graco failed to report to the Commission as required by section 15(b)(2) of the CPSA, 15 U.S.C. § 2064(b)(2).

24. By failing to report to the Commission as required by section 15(b)(2) of the CPSA, 15 U.S.C. § 2064(b)(2), Graco committed a prohibited act. Graco thereby violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

25. Graco committed the prohibited act set forth above "knowingly," as that term is defined in section 20(d) of the CPSA, 15 U.S.C. §2069(d), and thus subjected itself to civil penalties, as provided in section 20 of the CPSC, 15 U.S.C. § 2069.

GRACO CARRIER/CRADLE SWINGS

26. From August 1993 through August 1997, Graco manufactured and distributed in United States commerce Infant Carriers that could also be used with a Graco Infant Swing assembly. These carrier/swings are known as models 1300, 1301, 1310, 1350, 1501, 1502, 1530, 1723, 2788, 5510, 8108 and 36264 and Graco distributed them nationwide. Graco was, therefore, a "manufacturer" of a "consumer product" "distributed in commerce" as those terms are defined in 15 U.S.C. §§ 2052 (a)(1),(4),(11) and (12).

27. The design of the plastic carrier seat handle, in connection with the plastic materials used to fabricate the seat, can give the consumer the false impression, through an audible "click" cue, that the carrier handle is in a safely locked position when it is not. These are product defects under section 15 of the CPSA, 15 U.S.C. § 2064. From 1993 to 1997, these defects resulted in Graco receiving consumer complaints citing injuries, from minor to serious in nature. The incidents occurred when the seats fell forward because the handle was not securely locked. Graco stopped making the products in 1997.

28. Graco first reported to the staff in 1997. Graco's original report failed to provide complete information.

29. Well before 1997, Graco Children's Products, Inc. obtained information which reasonably supported the conclusion that its Carriers and Carrier Swing Seats contained defects which could create a substantial product hazard and created an unreasonable risk of serious injury. Graco failed to report to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. §§ 2064(b)(2) and (3).

30. By failing to report to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. §§ 2064(b)(2) and (3), Graco committed prohibited acts and violated section19(a)(3) of the CPSA, 15 U.S.C. § 2068(a)(3).

31. Graco committed the prohibited acts, set forth above, "knowingly," as that term is defined in section 20(d) of the CPSA, 15 U.S.C. §2069(d), and thus subjected itself to civil penalties, as provided in section 20 of the CPSA, 15 U.S.C. § 2069.

GRACO INFANT SWINGS

32. From approximately 1988 through 1998, Graco manufactured and distributed in United States commerce certain infant swings. For the purposes of this Settlement Agreement, the swing designs will be designated as Designs "A," "B," and "C." Graco was, therefore, a "manufacturer" of "consumer products" "distributed in commerce" as those terms are defined in 15 U.S.C. §§ 2052 (a)(1), (4), (11) and (12).

33. Design A, made prior to 1988 through 1991, consisted of a cloth seat with leg holes. A waist belt sometimes accompanied the Design A swings. A plastic tray was also

available. The tray could help keep the child from falling out of the swing. As designed, Design A required the consumer to remove and reinstall a screw to hold the tray in place each time the swing was used. This design contributed to use of the swing without the tray screw, thereby making it easier for the tray to loosen or fall off the swing and a baby to fall out of the swing. These design characteristics are product defects under section 15 of the CPSA, 15 U.S.C. § 2064.

34. During the limited production period for which Graco incident data was available, the company had received reports of dozens of minor to serious injuries and one death. On or about November 1991, Graco made tray design changes that led to what is designated here as Graco Infant Swing "Design B."

35. From November 1991 through September 1995, the Graco Infant Swings, Design B, used a plastic shell with leg holes for the seat and a waist belt. Design B also used a tray tube that could slide into the swing hanger tube. The hanger tube was equipped with a spring loaded button on one side only to secure the restraining tray to the swing frame tube. The spring loaded button could pop out through a hole in the tray tube and, if operated successfully, better secure the restraining tray. The product could also be assembled with the hanger tube reversed, however, because the unassembled U-shaped hanger tube was symmetrical. In the reversed configuration, the swing would be completely operational and the function of the spring-loaded button (now on the wrong side), would be negated. The restraining tray (much like Design A, above) would be unsecured and could slide off during swing use. The product instructions did not address the potential for reverse assembly. The design and instructions were defects under section 15 of the CPSA, 15 U.S.C. § 2064.

36. Graco received numerous consumer complaints regarding the Design B Infant Swings. Most ***complaints*** reported that babies fell out of the swing. Graco modified Design B in November 1995 to incorporate asymmetrical hanger tubes intended to protect against reverse assembly.

37. From 1994 through July 1995, Graco manufactured and distributed Design C type Infant swings. This swing also used a molded plastic shell with leg holes and added a restraining tray with a T-bar attached. Graco made some Design C Infant Swings with a waist belt and a crotch strap, and some without the crotch strap. Like Design B, Design C had symmetrical, hanger tubes with a spring loaded button on one side of the tube only. Design C was also susceptible to reverse assembly. As a result, consumers could have an unsecured restraining tray. The Design C Infant Swings were defective under section 15 of the CPSA, 15 U.S.C. § 2064.

38. Graco received consumer reports of incidents and injuries and four reports of death involving the Design C Infant Swings. Most alleged that babies fell out of the swing. Four babies were found caught by the head and arms or by the neck. Graco modified Design C in November 1995.

39. Graco reported the information it possessed related to the Design A, B, and C Infant Swings to the Commission after the staff contacted Graco in 2000.

40. Graco Children's Products, Inc. obtained information which reasonably supported the conclusion that its Design A, B and C Infant Swings contained defects which could create a substantial product hazard and/or created an unreasonable risk of serious injury or death. Graco

failed to report to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. §§ 2064(b)(2) and (3).

41. By failing to report to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. §§ 2064(b)(2) and (3), Graco committed prohibited acts and violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

42. Graco committed the prohibited acts "knowingly," as defined in section 20(d) of the CPSA, 15 U.S.C. §2069(d), and thus subjected itself to civil penalties, as provided in section 20 of the CPSA, 15 U.S.C. § 2069.

GRACO TRAVEL LITE INFANT SWING

43. From May to December 2003, Graco manufactured, sold, and distributed in United States commerce the Travel Lite Infant Swing ("Travel Lite" or "Swing"), model numbers 1850JJP, 1850JGB and 185055P. Graco is, therefore, a "manufacturer" of "consumer products" "distributed in commerce" as those terms are defined in 15 U.S.C. §§ 2052 (a)(1), (4), (11) and (12).

44. Soon after introducing the Travel Lite into commerce, Graco began to receive several consumer complaints of infants falling forward out of the swing and infants' heads falling forward and to the side of the swing. The Swing's seat did not recline sufficiently – the seat propped infants up too much toward a vertical position, allowing babies to fall forward. Contributing to this problem was the Swing's restraint system: a single lap belt. The result of these design characteristics was that infants were both: (a) falling forward and striking the ground, head or face first, and/or (b) falling to one side and striking the edge of the molded

plastic seat shell and/or the bar of the Swing's A-frame structural support. Graco also received consumer complaints of the carrying handle falling down, hitting or nearly hitting infants in the head. The Travel Lite carrying handle design allowed it to fall or be pushed down from the carry position. These elements in the Travel Lite Swing are defects under section 15 of the CPSA, 15 U.S.C. § 2064.

45. Throughout the summer of 2003, Graco developed and implemented interim design changes to address some of the swing defects. Graco continued to receive complaints alleging minor to moderate injuries. In November and December 2003, Graco implemented two additional, permanent, prospective design changes to address remaining defects.

46. Graco reported information about the Travel Lite swing after staff contacted Graco in November 2003 to inquire about these Swings.

47. Graco Children's Products, Inc. obtained information which reasonably supported the conclusion that its Travel Lite Swings contained defects which could create a substantial product hazard. Graco failed to report to the Commission as required by section 15(b)(2) of the CPSA, 15 U.S.C. § 2064(b)(2).

48. By failing to report to the Commission as required by section 15(b)(2) of the CPSA, 15 U.S.C. § 2064(b)(2), Graco committed prohibited acts and violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

49. Graco committed the prohibited acts set forth above "knowingly," as that term is defined in section 20(d) of the CPSA, 15 U.S.C. §2069(d), and thus subjected itself to civil penalties, as provided in section 20 of the CPSC, 15 U.S.C. § 2069.

GRACO PACK 'N' PLAY PORTABLE PLAY YARDS

50. From 1988 to 2001, Graco manufactured, sold, and distributed in United States commerce the Pack 'N' Play portable crib/play yard ("Play Yard"). Graco is, therefore, a "manufacturer" of "consumer products" "distributed in commerce" as those terms are defined in 15 U.S.C. §§ 2052 (a)(1), (4), (11) and (12).

51. The subject Play Yards used an open corner design. Open-ended metal tubes formed the four top rails and were secured to four hard plastic top corner pieces. Babies inserted their fingers into the space between the metal tubes and the plastic corner pieces both during and after Play Yard set up. Their fingers were severed, lacerated and/or avulsed between the first joint and the end of the fingertip. Adults reported pinched and/or lacerated hands from the open corner design during Play Yard assembly. These are product defects under section 15 of the CPSA, 15 U.S.C. § 2064.

52. Graco stopped making the products with the open corner design in 2001 and first reported to the staff in 2004.

53. Well before 2004, Graco received consumer complaints that reported pinching, laceration, avulsion and amputation injuries to young children and pinching or cuts to adults. Before 1997, Graco Children's Products, Inc. obtained information which reasonably supported the conclusion that its Play Yards contained defects which could create a substantial product hazard and created an unreasonable risk of serious injury. Graco failed to report to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. §§ 2064(b)(2) and (3). By failing to report to the Commission as required by sections 15(b)(2) and (3) of the CPSA,

15 U.S.C. §§ 2064(b)(2) and (3), Graco committed prohibited acts and violated section 19(a)(3) of the CPSA, 15 U.S.C. § 2068(a)(3).

54. Graco committed the prohibited acts, set forth above, "knowingly," as that term is defined in section 20(d) of the CPSA, 15 U.S.C. §2069(d), and thus subjected itself to civil penalties, as provided in section 20 of the CPSA, 15 U.S.C. § 2069.

GRACO METROLITE STROLLERS

55. From 2000 through 2001, Graco manufactured, sold, and distributed in United States commerce a line of baby strollers know as the MetroLite line ("MetroLite"), model numbers 6110DW and 6113RV. Graco is, therefore, a "manufacturer" of "consumer products" "distributed in commerce" as those terms are defined in 15 U.S.C. §§ 2052 (a)(1), (4), (11) and (12).

56. The MetroLite strollers fold up to make transport easier. The strollers use two latches, one on each side, designed to lock the stroller in a rigid, secure position when in use. The latches are covered with molded plastic and are not visible or accessible to the user. When set up and in use, however, one or both of the MetroLite latches may not fully engage. The stroller may appear to be set up and secure when it is not. A bump or jostle during use may allow the MetroLite to collapse. This is a product defect under section 15 of the CPSA, 15 U.S.C. § 2064.

57. Graco first reported to the staff in 2004.

58. Beginning in 2001 through 2004, Graco received consumer complaints that reported numerous collapsing incidents and minor to moderate injuries. Graco Children's

Products, Inc. obtained information which reasonably supported the conclusion that its MetroLite contained a defect which could create a substantial product hazard. Graco failed to report to the Commission as required by section 15(b)(2) of the CPSA, 15 U.S.C. § 2064(b)(2).

59. By failing to report to the Commission as required by section 15(b)(2) of the CPSA, 15 U.S.C. § 2064(b)(2), Graco committed a prohibited act and violated section 19(a)(3) of the CPSA, 15 U.S.C. § 2068(a)(3).

60. Graco committed the prohibited act, set forth above, "knowingly," as that term is defined in section 20(d) of the CPSA, 15 U.S.C. §2069(d), and thus subjected itself to civil penalties, as provided in section 20 of the CPSA, 15 U.S.C. § 2069.

GRACO TODDLER BED

61. From 1994 through 2000, Graco manufactured, sold and distributed in United States commerce a Graco toddler bed ("Toddler Bed") for children making the transition from crib to twin size bed. Graco is, therefore, a "manufacturer" of "consumer products" "distributed in commerce" as those terms are defined in 15 U.S.C. §§ 2052 (a)(1), (4), (11) and (12).

62. The Toddler Bed has head and footboards and partial guardrails with vertical slats. The vertical slat openings are 2 3/8 inches in width. The size of the openings permits children's arms and legs to become caught. This is a product defect under section 15 of the CPSA, 15 U.S.C. § 2064.

63. Graco first reported to the staff in 2004. From 1995 through 2004, Graco received consumer complaints that reported numerous incidents and injuries, including several broken arms and legs when children twisted and/or fell while a limb was in a slat opening. Graco

Children's Products, Inc. obtained information which reasonably supported the conclusion that its Toddler Beds contained a defect which could create a substantial product hazard and created an unreasonable risk of serious injury. Graco failed to report to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. §§ 2064(b)(2) and (3).

64. By failing to report to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. §§ 2064(b)(2) and (3), Graco committed prohibited acts and violated section 19(a)(3) of the CPSA, 15 U.S.C. § 2068(a)(3).

65. Graco committed the prohibited acts, set forth above, "knowingly," as that term is defined in section 20(d) of the CPSA, 15 U.S.C. §2069(d), and thus subjected itself to civil penalties, as provided in section 20 of the CPSA, 15 U.S.C. § 2069.

GRACO DUO STROLLERS

66. From 1994 through 2000, Graco manufactured, sold and distributed in United States commerce a line of strollers that seat two children known as Graco Duo Strollers ("Duo"). Graco is, therefore, a "manufacturer" of "consumer products" "distributed in commerce" as those terms are defined in 15 U.S.C. §§ 2052 (a)(1), (4), (11) and (12).

67. The Duo latching mechanism design makes it difficult for the consumer to set up the stroller in a secure, fully locked position. Though not securely locked, the Duo can appear to be properly set up and ready for use. When not fully engaged, the Duo can collapse if bumped or jostled. This is a product defect under section 15 of the CPSA, 15 U.S.C. § 2064.

68. Graco first reported to the staff in 2004. From 1997 through 2004, Graco received consumer complaints that reported numerous collapsing incidents and moderate to severe

injuries. Graco Children's Products, Inc. obtained information which reasonably supported the conclusion that its Duo strollers contained a defect which could create a substantial product hazard and created an unreasonable risk of serious injury. Graco failed to report to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. §§ 2064(b)(2) and (3).

69. By failing to report to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. §§ 2064(b)(2) and (3), Graco committed prohibited acts and violated section 19(a)(3) of the CPSA, 15 U.S.C. § 2068(a)(3).

70. Graco committed the prohibited acts, set forth above, "knowingly," as that term is defined in section 20(d) of the CPSA, 15 U.S.C. §2069(d), and thus subjected itself to civil penalties, as provided in section 20 of the CPSA, 15 U.S.C. § 2069.

## III. RESPONSE OF GRACO CHILDREN'S PRODUCTS, INC.

71. On behalf of Century Company, and, in its own right, Graco denies the allegations of the staff, set forth in paragraphs 6-70 above; it denies that the products named herein, when assembled, maintained and used properly, contain any defect which could create a substantial product hazard or create a substantial risk of injury pursuant to section 15(a) of the CPSA, 15 U.S.C. § 2064(a). Graco also denies that the products, when assembled, maintained and used properly, create an unreasonable risk of serious injury or death pursuant to section 15(b) of the CPSA, 15 U.S.C. § 1064(b).

72. Graco further denies that it violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. § 2064(b), and denies that it violated the reporting requirements of section 19(a)(4) of the CPSA, 15 U.S.C. § 2064(a)(4). Graco denies that the information available to it and provided to the Commission reasonably supported the conclusion that the products contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death, and therefore, no report was required under section 15(b) of the CPSA, 15 U.S.C. § 2064(b).

73. In settling this matter, Graco does not admit any fault, liability, or statutory or regulatory violation.

74. Graco further asserts, as a general matter, that Century and Graco received a relatively small percentage of complaints concerning the above-mentioned products in relation to the number of products in distribution; that it developed product improvements to address the complaints on various products in question; that it considered the complaints and the reporting requirements of the CPSA and it did not "knowingly" violate any reporting requirements.

75. Graco further asserts that with respect to the Pack 'N Play, its corner design was common in the industry and, with respect to the Graco Toddler Bed, in the absence of an industry standard for toddler beds, the Graco product incorporated vertical slat openings of 2 3/8 inches in width, consistent with the federal crib standard in 16 C.F.R. Section 1508.

76. In cooperation with the staff, Graco agreed to undertake corrective action for each product identified in this Settlement Agreement for which such action was requested by CPSC.

77. Graco is entering into this Settlement Agreement for settlement purposes only, to resolve outstanding issues that primarily occurred prior to Newell's acquisition of Century and Graco and to avoid incurring additional legal costs and expenses. This settlement does not constitute, nor is it evidence of, an admission of any fault, liability, violation of law, or wrongdoing by Century or Graco.

## IV. AGREEMENT OF THE PARTIES

78. The Commission has jurisdiction over this matter and over Graco and Century pursuant to the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2051 et seq.

79. This Settlement Agreement and Order is a compromise resolution of the matters described above and the parties enter into this Agreement solely for the purpose of settlement.

80. Graco knowingly, voluntarily and completely waives any rights it may have (1) to the issuance of a Complaint in this matter, (2) to an administrative or judicial hearing with respect to the staff allegations cited herein, (3) to judicial review or other challenge or contest of the validity of the Commission's Order, (4) to a determination by the Commission as to whether violations of sections 15(b) and 19(a)(4) of the CPSA, 15 U.S.C. §§ 2064 (b) and 2068(a)(4), have occurred, (5) to a statement of findings of fact and conclusions of law with regard to the staff allegations, and (6) to any claims under the Equal Access to Justice Act.

81. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall

be published in the Federal Register in accordance with 16 C.F.R. § 1118.20. If the Commission does not receive any written objections within 15 days, the Agreement will be deemed finally accepted on the 16th day after the Federal Register publication date.

82. Graco shall pay a civil penalty in the amount of four million and no/dollars ($4,000,000.00) as set forth below and in the incorporated Order. The payment shall be made in four equal installments of one million and no/dollars ($1,000,000.00) each. The first payment shall be delivered to the Commission within ten (10) calendar days of final acceptance of the Settlement Agreement and Order. The second payment shall be delivered to the Commission on or before June 15, 2005, the third payment by September 15, 2005 and the fourth and final payment by December 15, 2005.

83. Upon the failure of Graco to deliver the first, or any, of its $1,000,000.00 payments in full to the Commission by the due dates set forth above, the entire amount of the civil penalty, $4,000,000.00, shall be due and payable and delivered to the Commission by the seventh calendar day following the original due date of the missed payment. Upon the failure by Graco to deliver any payment in full to the Commission in accordance with the terms of this paragraph, interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. §§ 1961(a) and (b).

84. Compliance, by this Settlement Agreement and the attached Order, resolves the allegations of violations of sections 15 (b) and 19(a)(4) of the CPSA, 15 U.S.C. §§ 2064(b) and 2068(a)(4), regarding the products named herein.

85. The Commission may publicize this Settlement Agreement and Order.

86. The Commission's Order in this matter is issued under the provisions of the CPSA, 15 U.S.C. § 2051 et seq. A violation of this Order may subject Graco to appropriate legal action.

87. Graco agrees to entry of the attached Order, which is incorporated herein by reference, and agrees to be bound by its terms.

88. This Settlement Agreement is binding upon Graco and its assigns and successors.

89. This Settlement Agreement may be used in interpreting the implementing Order. Agreements, understandings, representations, or interpretations apart from those contained in this Settlement Agreement and Order may not be used to vary or contradict the terms of this Settlement Agreement and Order.

GRACO CHILDREN'S PRODUCTS, INC.

Dated: March 14, 2005 By: D Matschullat

Dale Matschullat, Vice President, General Counsel and Corporate Secretary, Newell Rubbermaid, Inc.

The U. S. CONSUMER PRODUCT SAFETY COMMISSION

John Gibson Mullan, Associate Executive Director
Office of Compliance

Eric L. Stone, Director, Legal Division
Office of Compliance

Dated: March 15, 2005 By: Wm Moore

William J. Moore, Jr.
Trial Attorney, Legal Division
Office of Compliance

UNITED STATES OF AMERICA

CONSUMER PRODUCT SAFETY COMMISSION

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|---|---|---|
| In the Matter of<br><br>Graco Children's Products, Inc.<br>a corporation<br><br>and<br><br>Century Products, f/k/a<br>Century Products Company | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | CPSC Docket No. CO 05-C0006 |

ORDER

Upon consideration of the Settlement Agreement entered into between Graco Children's Products, Inc., (hereinafter, "Graco") a corporation, and the staff of the Consumer Product Safety Commission, and the U.S. Consumer Product Safety Commission, (hereinafter, "Commission") having jurisdiction over the subject matter and Graco, and it appearing that the Settlement Agreement and Order is in the public interest, it is

**ORDERED**, that the subject Settlement Agreement be, and hereby is, accepted; and it is further

**ORDERED**, that, upon final acceptance of the Settlement Agreement and Order, Graco shall pay the Commission a civil penalty in the amount of FOUR MILLION AND no/100 dollars,

($4,000,000.00), in four equal installments of one million dollars and no/100 ($1,000,000.00) each. The first installment shall be paid and delivered to the Commission within ten (10) calendar days of final acceptance of the Settlement Agreement and Order. The second payment of one million and 00/100 dollars ($1,000,000.00) shall be paid and delivered to the Commission on or before June 15, 2005, the third payment of one million and 00/100 dollars ($1,000,000.00) shall be paid and delivered to the Commission on or before September 15, 2005, and the fourth payment of one million and 00/100 dollars ($1,000,000.00) shall be paid and delivered to the Commission on or before December 15, 2005; and it is further

**ORDERED,** that, upon the failure of Graco to deliver the first, or any, of its $1,000,000.00 payments in full to the Commission by the due dates set forth in this Order, the entire amount of the civil penalty, $4,000,000.00, shall be due and payable and delivered to the Commission by the seventh calendar day following the original due date of the missed payment. Upon the failure by Graco to deliver any payment in full to the Commission in accordance with the terms of the subject Settlement Agreement and this Order, interest on the outstanding balance shall accrue and shall be paid by Graco to the Commission at the federal legal rate of interest under the provisions of 28 U.S.C. §§ 1961(a) and (b).

Provisionally accepted and Provisional Order issued on the 22ND day of March 2005.

BY ORDER OF THE COMMISSION

Todd Stevenson, Secretary
U.S. Consumer Product Safety Commission

Finally accepted and Final Order issued on the 22nd day of April, 2005.

BY ORDER OF THE COMMISSION

Todd Stevenson, Secretary
U.S. Consumer Product Safety Commission