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LEXINGTON LAW GROUP, LLP
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Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED
FILED
ALAMEDA COUNTY

AUG 20 2008

CLERK OF THE SUPERIOR COURT
By STACY OXSEN Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,
a non-profit corporation,

Plaintiff,

v.
PERFECT EQUIPMENT, INC.; HENNESSY
INDUSTRIES, INC.; PLOMBCO; CHRYSLER
LLC and Defendant DOES 1 through 200,
inclusive,

Defendants.

Case No. RG08388923

**[PROPOSED] CONSENT JUDGMENT
RE: CHRYSLER LLC**

1 **1. INTRODUCTION**

2 **1.1** On May 22, 2008 plaintiff the Center for Environmental Health
3 (“CEH”), a non-profit corporation acting in the public interest, filed a complaint naming
4 Chrysler LLC (“Defendant”) as a defendant in the San Francisco County Superior Court case
5 entitled *Center for Environmental Health v. Perfect Equipment, Inc., et al.*, San Francisco
6 County Superior Court Case Number RG08388923 (the “CEH Action”), for civil penalties and
7 injunctive relief pursuant to the provisions of Cal. Health & Safety Code §25249.5 *et seq.*
8 (“Proposition 65”).

9 **1.2** Defendant is a corporation that employs 10 or more persons and
10 manufactures automobiles for sale in the State of California.

11 **1.3** Beginning or about August 23, 2007, CEH served Defendant and the
12 appropriate public enforcement agencies with the requisite 60-day notice alleging that
13 Defendant was in violation of Proposition 65. CEH’s notice and the Complaint in this Action
14 allege that Defendant discharges and releases substantial quantities of lead and lead
15 compounds (collectively, “Lead”) into sources of drinking water and into land where the Lead
16 passes or probably will pass into sources of drinking water throughout the State of California.
17 CEH also alleges that such discharges have occurred, and continue to occur, through the
18 manufacture, distribution, sale and use of Defendants’ automobiles equipped with Lead Wheel
19 Weights. For purposes of this Consent Judgment only, Lead Wheel Weights are any wheel
20 weight with 0.1% or more lead by weight. Lead is a chemical known to the State of California
21 to cause cancer, birth defects and other reproductive harm. The notice and Complaint allege
22 that Defendant’s conduct violates Health & Safety Code §25249.5, the discharge prohibition of
23 Proposition 65. Defendant disputes such allegations and asserts its production of wheels with
24 lead wheel weights is safe and complies with all applicable laws.

25 **1.4** For purposes of this Consent Judgment only, the parties stipulate that
26 this Court has jurisdiction over the subject matter of the violations alleged in CEH’s Complaint
27 and personal jurisdiction over Defendant as to the acts alleged in CEH’s Complaint, that venue
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1 is proper in the County of San Francisco, and that this Court has jurisdiction to enter this
2 Consent Judgment as a full and final resolution of all claims which were or could have been
3 raised in the Complaint based on the facts alleged therein.

4 **1.5** The parties enter into this Consent Judgment pursuant to a settlement of
5 certain disputed claims between the parties as alleged in the Complaint. By executing this
6 Consent Judgment, the parties do not admit any facts or conclusions of law. It is the parties'
7 intent that nothing in this Consent Judgment shall be construed as an admission by the parties
8 of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the
9 Consent Judgment constitute or be construed as an admission by the parties of any fact,
10 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
11 prejudice, waive or impair any right, remedy, argument or defense the parties may have in this
12 or any other or future legal proceedings.

13 **2. COMPLIANCE - PHASE OUT OF LEAD WHEEL WEIGHTS**

14 **2.1 Deadlines for phase out.** Defendant shall phase out the use of Lead
15 Wheel Weights in California, in accordance with the following schedule.

16 **2.1.1 Initial phase out.** As of July 31, 2008 (the "Initial Phase Out
17 Date"), at least 55% of the automobiles manufactured for sale or distribution in California by
18 Defendant shall be manufactured without Lead Wheel Weights.

19 **2.1.2 Final phase out.** As of July 31, 2009 (the "Final Phase Out
20 Date"), 100% of the automobiles manufactured for sale or distribution in California by
21 Defendant shall be manufactured without Lead Wheel Weights.

22 **2.1.3 Reporting regarding compliance with phase outs.** Defendant
23 shall provide CEH with a written affidavit, signed under penalty of perjury, documenting its
24 compliance with each of the phase out deadlines (the "Affidavits"). The Affidavits must
25 include sufficient information and detail to enable CEH to determine whether Defendant has
26 complied with the phase out deadlines. At a minimum, each Affidavit shall include a
27 breakdown by automobile plant and automobile model, indicating which plants and models
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1 have stopped using Lead Wheel Weights as of the respective phase out deadlines. The
2 Affidavits shall be served on CEH at the address listed in Section 12 below within 30 days
3 following both the Initial Phase Date and the Final Phase Out Date. After receipt of the
4 Affidavit, should CEH reasonably determine it requires additional information to assess
5 Defendants' compliance with the phase out deadlines, CEH shall provide written notice to
6 Defendant. Defendant shall then have 15 days to either supplement the Affidavit or reject
7 CEH's request. Should Defendant reject CEH's request, CEH may bring a motion to enforce
8 this section pursuant to Section 5.1 of this Consent Judgment.

9 **2.2 Failure to meet phase out deadlines.** Should Defendant fail to meet
10 either of the deadlines set forth in Section 2.1, Defendant shall be liable for a stipulated
11 payment in lieu of penalty equal to \$10,000 for each percentage point below the required phase
12 out percentage. The payment in lieu of penalty shall be made in accordance with Section 3.1
13 below and shall be used for the purposes set forth in that section.

14 **2.3 Phase out in advance of deadlines.** Should defendant exceed the
15 requirements of Section 2.1 for either the initial or final phase out, it shall be entitled to a credit
16 of \$10,000 for each percentage point above the initial phase out requirement. Any credit
17 pursuant to this section shall be credited against future payments. Under no circumstance will
18 CEH be required to provide Defendant with a refund of payments previously made under this
19 Consent Judgment.

20 **3. SETTLEMENT PAYMENTS**

21 **3.1 Monetary Payment in Lieu of Penalty.** Defendant shall pay to CEH
22 \$5,150 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. The
24 parties acknowledge that the payment in lieu of penalty provided for in this section has been
25 greatly reduced due to Defendant's prompt agreement to eliminate the use of Lead Wheel
26 Weights. The payment required under this section shall be made payable to CEH.

1 **3.2 Attorneys' Fees and Costs.** Defendant shall pay \$27,500 to reimburse
2 CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any
3 other costs incurred as a result of investigating, bringing this matter to Defendant' attention,
4 negotiating a settlement in the public interest and obtaining Court approval of the settlement.
5 The payment required under this section shall be made payable to Lexington Law Group, LLP.

6 **3.3 Timing of payments.** The payments required under Sections 3.1 and
7 3.2 shall be made payable within ten (10) days of entry of judgment. All of the payments made
8 pursuant to this Section 3 shall be delivered to the Lexington Law Group, LLP at the address
9 set forth in section 12.1.

10 **4. MODIFICATION OF CONSENT JUDGMENT**

11 **4.1** This Consent Judgment may be modified by written agreement of
12 CEH and Defendant, or upon motion of CEH or Defendant as provided by law.

13 **5. ENFORCEMENT OF CONSENT JUDGMENT**

14 **5.1** Either party may, by motion or application for an order to show cause,
15 enforce the terms and conditions contained in this Consent Judgment.

16 **6. APPLICATION OF CONSENT JUDGMENT**

17 **6.1** This Consent Judgment shall apply to and be binding upon the
18 parties hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of
19 any of them.

20 **7. CLAIMS COVERED**

21 **7.1** This Consent Judgment is a full, final and binding resolution between
22 CEH and Defendant of any violation of Proposition 65 that was or could have been asserted in
23 the Notice of Complaint against Defendant or its parents, subsidiaries, directors, officers,
24 employees, agents, attorneys, distributors, or dealerships based on alleged discharge of Lead
25 from Lead Wheel Weights mounted on Defendant's automobiles into sources of drinking water
26 and onto land where it probably will pass into a source of drinking water on or prior to the date
27 of entry of this Consent Judgment. Compliance with the terms of this Consent Judgment
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1 constitutes compliance with Proposition 65 for purposes of Lead discharges from Lead Wheel
2 Weights mounted on Defendant's automobiles. This release does not in any way release or
3 otherwise affect the liability of any manufacturer or supplier of Lead Wheel Weights used on
4 Defendant's automobiles.

5 **8. SEVERABILITY**

6 **8.1** In the event that any of the provisions of this Consent Judgment are
7 held by a court to be unenforceable, the validity of the enforceable provisions shall not be
8 adversely affected.

9 **9. SPECIFIC PERFORMANCE**

10 **9.1** The parties expressly recognize that Defendant's obligations
11 under this Consent Judgment are unique. In the event that any Defendant is found to be in
12 breach of this Consent Judgment for failure to comply with the provisions of Section 2 hereof,
13 the parties agree that it would be extremely impracticable to measure the resulting damages.
14 Accordingly, CEH, in addition to any other available rights or remedies, may sue in equity for
15 specific performance, and Defendant expressly waives the defense that a remedy in damages
16 will be adequate.

17 **10. GOVERNING LAW**

18 **10.1** The terms of this Consent Judgment shall be governed by the laws of
19 the State of California.

20 **11. RETENTION OF JURISDICTION**

21 **11.1** This Court shall retain jurisdiction of this matter to implement and
22 enforce the terms this Consent Judgment.

23 **12. PROVISION OF NOTICE**

24 **12.1** All notices required pursuant to this Consent Judgment and
25 correspondence shall be sent to the following:
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1 For CEH:

2 Mark N. Todzo
3 Lexington Law Group, LLP
4 1627 Irving Street
5 San Francisco, CA 94122

6 For Defendant:

7 Joshua W. Gubkin, Esq.
8 Chrysler, LLC
9 1000 Chrysler Drive
10 CIMS 485-13-62
11 Auburn Hills, MI 48326

12 **13. COURT APPROVAL**

13 **13.1** CEH will comply with the settlement notice provisions of Health and
14 Safety Code § 25249.7(f) and Title 11 of the California Code of Regulations § 3003.

15 **13.2** If this Consent Judgment is not approved by the Court, it shall be of no
16 further force and effect.

17 **14. EXECUTION AND COUNTERPARTS**

18 **14.1** The stipulations to this Consent Judgment may be executed in
19 counterparts and by means of facsimile, which taken together shall be deemed to constitute one
20 document.

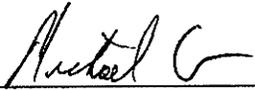
21 **15. AUTHORIZATION**

22 **15.1** Each signatory to this Consent Judgment certifies that he or she is
23 fully authorized by the party he or she represents to stipulate to this Consent Judgment and to
24 enter into and execute the Consent Judgment on behalf of the party represented and legally
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1 bind that party. The undersigned have read, understand and agree to all of the terms and
2 conditions of this Consent Judgment. Except as explicitly provided herein, each party is to
3 bear its own fees and costs.
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5

6 **AGREED TO:**

7 CENTER FOR ENVIRONMENTAL HEALTH
8

9 

Dated: 5/28/08

10 _____
11 Michael Green, Executive Director
12 Center for Environmental Health
13

14 CHRYSLER LLC
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16
17 Dated: _____

18 _____
19 Deborah L. Morrisette
20 Vice President, Regulatory Affairs
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2 conditions of this Consent Judgment. Except as explicitly provided herein, each party is to
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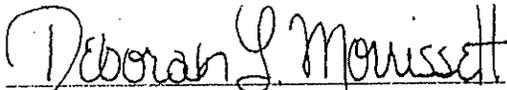
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AGREED TO:
CENTER FOR ENVIRONMENTAL HEALTH

Dated: _____

Michael Green, Executive Director
Center for Environmental Health

CHRYSLER LLC



Deborah L. Morrisett
Vice President, Regulatory Affairs

Dated: May 23, 2008

ORDER AND JUDGMENT

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Based upon the stipulated Consent Judgment between CEH and Chrysler LLC,
the settlement is approved and the clerk is hereby directed to enter judgment in accordance
with the terms herein.

AUG 20 2008
Dated: _____

Judge Barbara J. Miller

Judge, Superior Court of the State of California