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9 Attorneys for Plaintiff
10 CENTER FOR ENVIRONMENTAL HEALTH

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA

13 CENTER FOR ENVIRONMENTAL HEALTH,)
14 a non-profit corporation,)

15 Plaintiff,)

16 v.)

17 PERFECT EQUIPMENT, INC.; HENNESSY)
18 INDUSTRIES, INC.; PLOMBCO INC.;)
19 CHRYSLER, LLC and Defendant DOES 1)
20 through 200, inclusive,)

21 Defendants.)

Case No. RG08388923

**[PROPOSED] CONSENT
JUDGMENT RE: PLOMBCO INC.**

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1 **1. INTRODUCTION**

2 **1.1** On May 22, 2008, plaintiff the Center for Environmental Health (“CEH”),
3 a non-profit corporation acting in the public interest, initiated this action, entitled *Center for*
4 *Environmental Health v. Perfect Equipment, Inc., et al.*, Alameda County Superior Court, Case
5 Number RG08388923 (the “CEH Action”), by filing a complaint naming Plombco Inc.
6 (“Defendant”), and others, as defendants. In the CEH Action, CEH seeks civil penalties and
7 injunctive relief pursuant to the provisions of Cal. Health & Safety Code §25249.5 *et seq.*
8 (“Proposition 65”). CEH and Defendant may sometimes be referred to collectively as the
9 “Parties” or individually as a “Party.”

10 **1.2** Defendant is a corporation that employs 10 or more persons, and
11 manufactures and/or distributes wheel balancing weights for sale in the State of California.

12 **1.3** Beginning or about August 23, 2007, CEH served Defendant and the
13 appropriate public enforcement agencies with the requisite 60-day notice (the “Notice”), alleging
14 that Defendant was in violation of Proposition 65. CEH’s Notice and the Complaint in this
15 Action allege that Defendant discharges and releases lead and lead compounds (collectively,
16 “Lead”) into sources of drinking water, and onto land where the Lead passes or probably will pass
17 into sources of drinking water, throughout the State of California. CEH also alleges that such
18 discharges have occurred, and continue to occur, as a result of the manufacture, distribution, sale
19 and/or use of Defendant’s wheel balancing weights made with Lead. For purposes of this
20 Consent Judgment only, “Defendant’s Lead Wheel Weights” are any wheel balancing weight
21 manufactured, distributed and/or sold by Defendant, and which contain at least 0.1% Lead by
22 weight. Lead has been listed by the State of California as a reproductive toxin, and lead and lead
23 compounds have been listed by the State of California as carcinogenic. The Notice and
24 Complaint allege that Defendant’s conduct violates Health & Safety Code §25249.5, the
25 discharge prohibition of Proposition 65. Defendant disputes all such allegations, denies all
26 material allegations contained in the Notice and in the Complaint, and asserts that all of its
27 products are safe and comply with all applicable United States federal, state and local laws and
28 regulations.

1 **1.4** 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 Alameda, and that this Court has jurisdiction to enter and enforce this
5 Consent Judgment as a full and final resolution of all claims which have or could have been
6 asserted or raised in the Complaint based on the facts alleged therein.

7 **1.5** The Parties enter into this Consent Judgment pursuant to a settlement of
8 disputed claims. Nothing in this Consent Judgment (including its execution by the Parties) shall
9 be construed as an admission by any Party of any allegation, fact, finding, issue of law, violation
10 of law, or conclusion of law, nor shall compliance with the Consent Judgment constitute or be
11 construed as an admission by any Party. Nothing in this Consent Judgment shall prejudice,
12 waive, impair or affect any right, remedy, argument, claim or defense the Parties may have
13 against any other person or entity in this or any other or future legal proceedings.

14 **2. COMPLIANCE - REMOVAL OF LEAD WHEEL WEIGHTS**

15 **2.1 Deadline for Removal.** No later than the close of business (Central
16 Daylight Savings Time) on December 31, 2008 (the "Reformulation Deadline"), Defendant shall
17 cease shipping Lead Wheel Weights into California.

18 **3. SETTLEMENT PAYMENTS**

19 **3.1 Total Payment.** Defendant shall pay a total of thirty five thousand dollars
20 (\$35,000) (the "Total Payment"), in accordance with the instructions set forth in sub-sections 3.2,
21 3.3 and 3.4 below.

22 **3.2 Payment in Lieu of Penalty.** Twelve thousand dollars (\$12,000) of the
23 Total Payment shall be paid to CEH in lieu of any additional penalty pursuant to Health and
24 Safety Code §25249.7(b). CEH shall use such funds to continue its work protecting people from
25 alleged exposures to toxic chemicals. As part of this work, CEH may seek through legislation or
26 litigation to eliminate the sale or use of wheel balancing weights that contain Lead. The payment
27 required under this sub-section shall be made payable to CEH.

28 **3.3 Attorneys' Fees and Costs.** Twenty three thousand dollars (\$23,000) of

1 the Total Payment shall be used to reimburse CEH and its attorneys for their reasonable
2 investigation fees and costs, attorneys' fees, and any other costs incurred as a result of
3 investigating, bringing this matter to Defendant's attention, negotiating a settlement in the public
4 interest, and obtaining Court approval of the settlement. The payment required under this section
5 shall be made payable to Lexington Law Group, LLP.

6 **3.4 Timing and Delivery of Payments.** The payments required under sub-
7 sections 3.1, 3.2 and 3.3 above shall be delivered, no later than ten (10) days after Court approval
8 and entry of this Consent Judgment, to the Lexington Law Group, LLP at the address set forth in
9 section 11.1.

10 **4. MODIFICATION OF CONSENT JUDGMENT**

11 **4.1** This Consent Judgment may be modified only by written agreement of
12 CEH and Defendant, followed by Court approval, or upon noticed motion filed by CEH or
13 Defendant, as provided by law.

14 **5. ENFORCEMENT OF CONSENT JUDGMENT**

15 **5.1** Any Party may, by noticed motion or application for an order to show
16 cause, enforce the terms and conditions of this Consent Judgment, but only after that Party has
17 given the other Party written notice of the alleged breach and a reasonable opportunity to cure,
18 and the Parties have met and conferred in a good faith attempt to resolve the alleged breach. The
19 prevailing party on any motion or application under this section shall be entitled to its reasonable
20 attorneys' fees and costs associated with such motion or application.

21 **6. APPLICATION OF CONSENT JUDGMENT**

22 **6.1** This Consent Judgment shall apply to and be binding upon each of the
23 Parties, and each of their respective divisions, subdivisions, subsidiaries, successors and assigns.

24 **7. RELEASE OF CLAIMS AND BINDING EFFECT**

25 **7.1 Release of Claims.** In further consideration of the promises and
26 agreements contained in this Consent Judgment, and for the payments required by Section 3
27 above, CEH, on behalf of itself, its officers, directors, employees, agents, representatives,
28 attorneys, successor and assigns, and on behalf of the general public, hereby waives, discharges

1 and releases Defendant, and its officers, directors, shareholders, partners, joint venturers, parent
2 companies, subsidiaries, affiliates, employees, agents, successors, assigns, and "Downstream
3 Customers" (as defined in sub-section 7.3 below) (hereinafter, collectively, "Defendant
4 Releasees"), from and against any and all claims, causes of action, suits, demands, obligations,
5 liabilities, damages, costs, fines, penalties, losses and expenses (including, without limitation,
6 investigation fees, expert fees, and attorney fees) of any nature whatsoever, in law and in equity,
7 whether known or unknown, fixed or contingent, foreseen or unforeseen (hereinafter, "Claims"),
8 arising under Proposition 65 or any other statute, regulation or common law theory, related to the
9 alleged discharge or release of Lead into water or onto or into land where such Lead passes or
10 probably will pass into any source of drinking water, from Defendant's Lead Wheel Weights
11 shipped to California prior to the Reformulation Deadline.

12 **7.2 Binding Effect.** This Consent Judgment is a full, final and binding
13 resolution of any alleged violation of Proposition 65, or any other statute, regulation or common
14 law theory, that was or could have been asserted in the Notice or Complaint against Defendant
15 Releasees, based on the alleged discharge or release of Lead into water or onto or into land where
16 such Lead passes or probably will pass into any source of drinking water, from Defendant's Lead
17 Wheel Weights shipped to California prior to the Reformulation Deadline. Compliance with the
18 terms of this Consent Judgment shall constitute compliance with Proposition 65 for purposes of
19 discharges or releases of Lead from Defendant's Lead Wheel Weights shipped to California prior
20 to the Reformulation Deadline.

21 **7.3 Definition of "Downstream Customers."** For purposes of sub-sections
22 7.1 and 7.2 above, "Downstream Customers" shall mean and include all auto manufacturers,
23 distributors and retailers, auto parts distributors and retailers, tire manufacturers, distributors and
24 retailers, tire installers, auto and tire repair businesses, wheel balancing weight distributors and
25 retailers, and all other persons and entities, who use, install, sell or distribute Defendant's Lead
26 Wheel Weights prior to the Reformulation Deadline. The release and resolution of Claims set
27 forth in sub-sections 7.1 and 7.2 above shall not extend or apply to Chrysler LLC and any
28 Downstream Customer who, subsequent to the Reformulation Deadline, uses, installs, sells or

1 distributes any of Defendant's Lead Wheel Weights, or any wheel balancing weights containing
2 lead that were manufactured by any other person or entity.

3 **8. SEVERABILITY**

4 **8.1** In the event that any provision of this Consent Judgment is held by a court
5 of competent jurisdiction to be unenforceable, the validity of the enforceable provisions shall not
6 be adversely affected.

7 **9. GOVERNING LAW**

8 **9.1** The terms of this Consent Judgment shall be governed by and enforced
9 under the laws of the State of California.

10 **10. RETENTION OF JURISDICTION**

11 **10.1** This Court shall retain jurisdiction of this matter to implement and enforce
12 the terms of this Consent Judgment.

13 **11. PROVISION OF NOTICE**

14 **11.1** All notices required pursuant to this Consent Judgment shall be in writing
15 and sent by first-class, registered, certified, or overnight mail, to the following:

16 For CEH:

17 Mark N. Todzo
18 Lexington Law Group, LLP
19 1627 Irving Street
San Francisco, CA 94122

20 For Plombco:

21 Roderick A. McLeod
22 Jones Day
23 555 California Street, 26th Floor
San Francisco, CA 94104

24 **12. COURT APPROVAL**

25 **12.1** CEH shall comply with the settlement notice provisions of Health and
26 Safety Code § 25249.7(f) and Title 11 of the California Code of Regulations, § 3003.

27 **12.2** If this Consent Judgment is not approved and entered by the Court, it shall
28 have no force or effect.

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13. EXECUTION AND COUNTERPARTS

13.1 The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile, each of which shall be deemed an original, and which taken together shall constitute one and the same 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, to enter into and execute the Consent Judgment on behalf of the Party represented, and to 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 shall bear its own fees and costs.

AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH



Michael Green, Executive Director
Center for Environmental Health

Dated: 5/28/08

PLOMBCO INC.

Dated: _____

[Name]

[Title]

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AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH

Michael Green, Executive Director
Center for Environmental Health

Dated: _____

PLOMBCO INC.

Claude Lussier

Dated: May 22, 2008

Claude Lussier
[Name]

President
[Title]

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ORDER AND JUDGMENT

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

Dated: _____

Judge, Superior Court of the State of California

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