

1 LEXINGTON LAW GROUP, LLC
Mark N. Todzo, State Bar No. 168389
2 Eric S. Somers, State Bar No. 139050
Howard Hirsch, State Bar No. 213209
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

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 COUNTY OF ALAMEDA

9
10 CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)

11 Plaintiff,)

12 v.)

13 PERFECT EQUIPMENT, INC.; HENNESSY)
14 INDUSTRIES, INC.; PLOMBCO INC.;)
15 CHRYSLER, LLC and Defendant DOES 1)
through 200, inclusive,)

16 Defendants.)
17

Case No. RG08388923

**[PROPOSED] CONSENT
JUDGMENT RE: PERFECT
EQUIPMENT, INC. AND HENNESSY
INDUSTRIES, INC.**

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 Perfect Equipment, Inc.
6 and Hennessy Industries, Inc. (together “Defendants”), and others, as defendants. In the CEH
7 Action, CEH seeks civil penalties and injunctive relief pursuant to the provisions of Cal. Health &
8 Safety Code §25249.5 *et seq.* (“Proposition 65”). CEH and Defendants may sometimes be
9 referred to collectively as the “Parties” or individually as a “Party.”

10 **1.2** Each 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 Defendants and the
13 appropriate public enforcement agencies with the requisite 60-day notice (the “Notice”), alleging
14 that Defendants were in violation of Proposition 65. CEH’s Notice and the Complaint in this
15 Action allege that Defendants discharge and release 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 Defendants’ wheel balancing weights made with Lead. For purposes of this
20 Consent Judgment only, “Defendants’ Lead Wheel Weights” are any wheel balancing weight
21 manufactured, distributed and/or sold by either Defendant, and which contain at least 0.1% Lead
22 by weight. Lead has been listed by the State of California as a reproductive toxin, and lead and
23 lead compounds have been listed by the State of California as carcinogenic. The Notice and
24 Complaint allege that Defendants’ conduct violates Health & Safety Code §25249.5, the
25 discharge prohibition of Proposition 65. Defendants dispute all such allegations, deny all material
26 allegations contained in the Notice and in the Complaint, and assert that all of their products are
27 safe and comply with all applicable federal, state and local laws and regulations.

28 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this

1 Court has jurisdiction over the subject matter of the violations alleged in CEH's Complaint and
2 personal jurisdiction over Defendants as to the acts alleged in CEH's Complaint, that venue is
3 proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce this
4 Consent Judgment as a full and final resolution of all claims which have or could have been
5 asserted or raised in the Complaint based on the facts alleged therein.

6 **1.5** The Parties enter into this Consent Judgment pursuant to a settlement of
7 disputed claims. Nothing in this Consent Judgment (including its execution by the Parties) shall
8 be construed as an admission by any Party of any allegation, fact, finding, issue of law, violation
9 of law, or conclusion of law, nor shall compliance with the Consent Judgment constitute or be
10 construed as such an admission by any Party. Nothing in this Consent Judgment shall prejudice,
11 waive, impair or affect any right, remedy, argument, claim or defense the Parties may have
12 against any other person or entity in this or any other or future legal proceedings (including,
13 without limitation, any claim CEH may have against Plombco Inc. and/or Chrysler LLC).

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, 2009 (the "Reformulation Deadline"), each Defendant
17 shall cease shipping Lead Wheel Weights into California.

18 **3. SETTLEMENT PAYMENTS**

19 **3.1 Total Payment.** Defendants shall jointly pay a combined total of Three
20 Hundred Thousand Dollars (\$300,000) (the "Total Payment"), in accordance with the instructions
21 set forth in sub-sections 3.2, 3.3 and 3.4 below. Defendants reserve the right to allocate this Total
22 Payment between themselves, with such allocation, once jointly communicated to CEH,
23 constituting a binding allocation such that neither Defendant shall be liable in any manner for the
24 other Defendant's failure to make the payments required by this Consent Judgment; provided,
25 however, that the allocation: (a) is communicated to CEH prior to the deadline for filing any
26 opposition to the motion for approval of this Consent Judgment; and (b) reasonably reflects each
27 Defendant's California market share for wheel balancing weights.

28 **3.2 Penalty.** Twenty Thousand Dollars (\$20,000) of the Total Payment shall

1 be paid as a penalty pursuant to Health and Safety Code §25249.7(b). This amount shall be made
2 payable to CEH, which shall divide the payment in accordance with Health and Safety Code
3 §25249.12.

4 **3.3 Payment in Lieu of Penalty.** One Hundred Thousand Dollars (\$100,000)
5 of the Total Payment shall be paid to CEH in lieu of any additional penalty pursuant to Health
6 and Safety Code §25249.7(b). CEH shall use such funds to continue its work protecting people
7 from alleged exposures to toxic chemicals. As part of this work, CEH may seek through
8 legislation or litigation to eliminate the sale or use of wheel balancing weights that contain Lead.
9 The payment required under this sub-section shall be made payable to CEH.

10 **3.4 Attorneys' Fees and Costs.** One Hundred Eighty Thousand Dollars
11 (\$180,000) of the Total Payment shall be used to reimburse CEH and its attorneys for their
12 reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of
13 investigating, bringing this matter to Defendants' attention, negotiating a settlement in the public
14 interest, and obtaining Court approval of the settlement. The payment required under this section
15 shall be made payable to Lexington Law Group, LLP.

16 **3.5 Timing and Delivery of Payments.** The payments required under sub-
17 sections 3.2, 3.3 and 3.4 above shall be delivered, no later than thirty (30) days after Court
18 approval and entry of this Consent Judgment, to the Lexington Law Group, LLP at the address set
19 forth in section 12.1.

20 **4. MODIFICATION OF CONSENT JUDGMENT**

21 **4.1** This Consent Judgment may be modified only by written agreement of
22 CEH and the Defendants, followed by Court approval, or upon noticed motion filed by CEH or
23 either Defendant, as provided by law.

24 **5. ENFORCEMENT OF CONSENT JUDGMENT**

25 **5.1** Any Party may, by noticed motion or application for an order to show
26 cause, enforce the terms and conditions of this Consent Judgment, but only after that Party has
27 given the other Parties written notice of the alleged breach and a reasonable opportunity to cure,
28 and the Parties have met and conferred in a good faith attempt to resolve the alleged breach. The

1 prevailing party on any motion or application under this section shall be entitled to its reasonable
2 attorneys' fees and costs associated with such motion or application.

3 **6. APPLICATION OF CONSENT JUDGMENT**

4 **6.1** This Consent Judgment shall apply to and be binding upon the each of the
5 Parties, and each of their respective divisions, subdivisions, subsidiaries, successors and assigns.

6 **6.2** The obligations of each Defendant under this Consent Judgment shall be
7 individual and several, such that neither Defendant shall be liable in any manner for the alleged
8 failure of the other Defendant to comply with any of its obligations hereunder.

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

10 **7.1 Release of Claims.** In further consideration of the promises and
11 agreements contained in this Consent Judgment, and for the payments required by Section 3
12 above, CEH, on behalf of itself, its officers, directors, employees, agents, representatives,
13 attorneys, successors and assigns, and on behalf of the general public, hereby waives, discharges
14 and releases the Defendants, and each of their respective officers, directors, shareholders,
15 partners, joint venturers, parent companies, subsidiaries, affiliates, employees, agents, successors,
16 assigns, and "Downstream Customers" (as defined in sub-section 7.3 below) (hereinafter,
17 collectively, "Defendant Releasees"), from and against any and all claims, causes of action, suits,
18 demands, obligations, liabilities, damages, costs, fines, penalties, losses and expenses (including,
19 without limitation, investigation fees, expert fees, and attorney fees) of any nature whatsoever, in
20 law and in equity, whether known or unknown, fixed or contingent, foreseen or unforeseen
21 (hereinafter, "Claims"), arising under Proposition 65 or any other statute, regulation or common
22 law theory, related to the alleged discharge or release of Lead into water or onto or into land
23 where such Lead passes or probably will pass into any source of drinking water, from
24 Defendants' Lead Wheel Weights shipped into California prior to the Reformulation Deadline.

25 **7.2 Binding Effect.** This Consent Judgment is a full, final and binding
26 resolution of any alleged violation of Proposition 65, or any other statute, regulation or common
27 law theory, that was or could have been asserted in the Notice or Complaint against Defendant
28 Releasees, based on the alleged discharge or release of Lead into water or onto or into land where

1 such Lead passes or probably will pass into any source of drinking water, from Defendants' Lead
2 Wheel Weights shipped into California prior to the Reformulation Deadline. Compliance with
3 the terms of this Consent Judgment shall constitute compliance with Proposition 65 for purposes
4 of discharges or releases of Lead from Defendants' Lead Wheel Weights shipped into California
5 prior to the Reformulation Deadline.

6 **7.3 Definition of "Downstream Customers."** For purposes of sub-sections
7 7.1 and 7.2 above, "Downstream Customers" shall mean and include all auto manufacturers,
8 distributors and retailers, auto parts distributors and retailers, tire manufacturers, distributors and
9 retailers, tire installers, auto and tire repair businesses, wheel balancing weight distributors and
10 retailers, and all other persons and entities, who use, install, sell or distribute any of Defendants'
11 Lead Wheel Weights prior to the Reformulation Deadline. The release and resolution of Claims
12 set forth in sub-sections 7.1 and 7.2 above shall not extend or apply to Chrysler LLC and/or any
13 Downstream Customer who, subsequent to the Reformulation Deadline, uses, installs, sells or
14 distributes in California any of Defendants' Lead Wheel Weights, or any wheel balancing weights
15 containing Lead that were manufactured by any other person or entity.

16 **8. SEVERABILITY**

17 **8.1** In the event that any provision of this Consent Judgment is held by a court
18 of competent jurisdiction to be unenforceable, the validity of the enforceable provisions shall not
19 be adversely affected.

20 **9. SPECIFIC PERFORMANCE**

21 **9.1** In the event that either Defendant is found to be in breach of this Consent
22 Judgment for failure to comply with the provisions of Section 2 above, the Parties agree that it
23 would be impracticable to measure the resulting damages and that such breach would cause
24 irreparable injury. Accordingly, CEH, in addition to any other available rights or remedies, may
25 file a motion for specific performance in this action, and Defendants expressly waive the defense
26 that a remedy in damages would be adequate.

27 **10. GOVERNING LAW**

28 **10.1** The terms of this Consent Judgment shall be governed by and enforced

1 under the laws of the State of California.

2 **11. RETENTION OF JURISDICTION**

3 **11.1** This Court shall retain jurisdiction of this matter to implement and enforce
4 the terms of this Consent Judgment.

5 **12. PROVISION OF NOTICE**

6 **12.1** All notices required pursuant to this Consent Judgment shall be in writing
7 and sent by first-class, registered, certified, or overnight mail, to the following:

8 For CEH:

9 Mark N. Todzo
10 Lexington Law Group, LLP
11 1627 Irving Street
12 San Francisco, CA 94122

12 For Perfect Equipment:

13 Thomas M. Donnelly
14 Jones Day
15 555 California Street, 26th Floor
16 San Francisco, CA 94104

16 For Hennessy:

17 Trenton H. Norris
18 Arnold & Porter LLP
19 90 New Montgomery Street, Suite 600
20 San Francisco, CA 94105

21 **13. COURT APPROVAL**

22 **13.1** CEH shall comply with the settlement notice provisions of Health and
23 Safety Code § 25249.7(f) and Title 11 of the California Code of Regulations, § 3003.

24 **13.2** If this Consent Judgment is not approved and entered by the Court, it shall
25 have no force or effect.

26 **14. EXECUTION AND COUNTERPARTS**

27 **14.1** The stipulations to this Consent Judgment may be executed in counterparts
28 and by means of facsimile, each of which shall be deemed an original, and which taken together
shall constitute one and the same document.

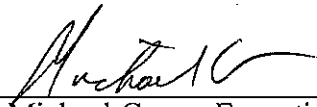
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

15. AUTHORIZATION

15.1 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: 5/23/08

PERFECT EQUIPMENT, INC.

Mike Astorino, President
Perfect Equipment, Inc.

Dated: _____

HENNESSY INDUSTRIES, INC.

Michael J. Schulte, President
Hennessy Industries, Inc.

Dated: _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

15. AUTHORIZATION

15.1 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: 5/23/08

PERFECT EQUIPMENT, INC.

Mike Astorino, President
Perfect Equipment, Inc.

Dated: _____

HENNESSY INDUSTRIES, INC.

Michael J. Schulte, President
Hennessy Industries, Inc.

Dated: _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

15. AUTHORIZATION

15.1 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.

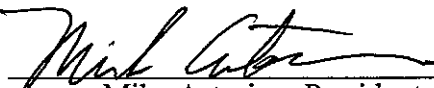
AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH

Michael Green, Executive Director
Center for Environmental Health

Dated: _____

PERFECT EQUIPMENT, INC.



Mike Astorino, President
Perfect Equipment, Inc.

Dated: May 28, 2008

HENNESSY INDUSTRIES, INC.

Michael J. Schulte, President
Hennessy Industries, Inc.

Dated: _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

15. AUTHORIZATION

15.1 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

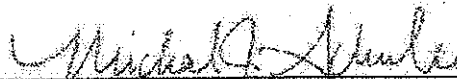
Dated: _____

PERFECT EQUIPMENT, INC.

Mike Astorino, President
Perfect Equipment, Inc.

Dated: _____

HENNESSY INDUSTRIES, INC.



Michael J. Schulte, President
Hennessy Industries, Inc.

Dated: 5/29/2008

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between CEH and Perfect Equipment, Inc. and Hennessy Industries, 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