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MATEEL ENVIRONMENTAL JUSTICE
10 FOUNDATION

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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SAN FRANCISCO**
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15 MATEEL ENVIRONMENTAL
JUSTICE FOUNDATION,,
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Plaintiff,
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v.
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COILHOSE PNEUMATICS, INC.; and
19 LOWES HIW, INC.,
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Defendants.

Case No. CGC-09-495332

CONSENT JUDGMENT

21
22 **1. INTRODUCTION**

23 1.1 On December 21, 2009, the MATEEL ENVIRONMENTAL JUSTICE
24 FOUNDATION (“Mateel”) acting on behalf of itself and the general public, filed a
25 Complaint for civil penalties and injunctive relief (“Complaint”) in San Francisco County
26 Superior Court, Case No. CGC-09-495332, against Defendants Coilhose Pneumatics,
27 (Coilhose Pneumatics and related entities Acme Automotive and Freelin-Wade Company
28 will be collectively referred to herein as “Coilhose” or “Defendant”). The Complaint

1 alleges, among other things, that Defendant violated provisions of the Safe Drinking
2 Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5,
3 *et seq.* (“Proposition 65”). In particular, Mateel alleges that Coilhose has knowingly and
4 intentionally exposed persons to nozzles and fittings made of brass containing lead and/or
5 lead compounds (hereinafter “leaded brass”), which are chemicals known to the State of
6 California to cause cancer and birth defects or other reproductive harm, without first
7 providing a clear and reasonable warning to such individuals.

8 1.2 On August 27, 2009, a 60-Day Notice letter (“Notice Letter”) was sent by
9 Mateel to Coilhose, the California Attorney General, all California District Attorneys, and
10 all City Attorneys of every California city with populations exceeding 750,000.

11 1.3 Coilhose is a business that employs ten or more persons and manufactures,
12 distributes, markets, and/or offers for sale nozzles and fittings, within the State of
13 California. Some of those products are alleged to contain lead and/or lead compounds.
14 Lead and lead compounds are chemicals known to the State of California to cause cancer,
15 and lead is a chemical known to the State of California to cause reproductive toxicity
16 pursuant to Health and Safety Code Section 25249.9. Under specified circumstances,
17 products containing lead and/or lead compounds that are sold or distributed in the State of
18 California are subject to the Proposition 65 warning requirement set forth in Health and
19 Safety Code Section 25249.6. Plaintiff Mateel alleges that leaded brass nozzles and
20 fittings manufactured, distributed, sold and/or marketed by Coilhose for use in California
21 require a warning under Proposition 65.

22 1.4 For purposes of this Consent Judgment, the term “Covered Products” shall
23 be defined as nozzles and fittings that utilize leaded brass, whether or not sold as
24 freestanding products or as components of other products to which they are attached, to
25 the extent such products are distributed and sold within the State of California, and that
26 are manufactured, distributed, marketed and/or sold by Coilhose, regardless of whether
27 they bear Coilhose labels.

1 1.5 For purposes of this Consent Judgment, the parties stipulate that this Court
2 has jurisdiction over the allegations of violations contained in the Complaint and personal
3 jurisdiction over Coilhose as to the acts alleged in the Complaint, that venue is proper in
4 the County of San Francisco and that this Court has jurisdiction to enter this Consent
5 Judgment as a full settlement and resolution of the allegations contained in the Complaint
6 and of all claims that were or could have been raised by any person or entity based in
7 whole or in part, directly or indirectly, on the facts alleged therein or arising therefrom or
8 related thereto.

9 1.6 This Consent Judgment resolves claims that are denied and disputed. The
10 parties enter into this Consent Judgment pursuant to a full and final settlement of any and
11 all claims between the parties for the purpose of avoiding prolonged litigation. This
12 Consent Judgment shall not constitute an admission with respect to any material allegation
13 of the Complaint, each and every allegation of which Coilhose denies; nor may this
14 Consent Judgment or compliance with it be used as evidence of any wrongdoing,
15 misconduct, culpability or liability on the part of Coilhose or any other person or entity
16 related to the Defendant.

17 **2. SETTLEMENT PAYMENT**

18 2.1 In settlement of all of the claims that are alleged, or could have been
19 alleged, in the Complaint concerning Covered Products, Coilhose shall pay \$20,000 to the
20 Klamath Environmental Law Center (“KELC”) to cover Plaintiff’s attorneys’ fees.
21 Additionally, Coilhose shall pay \$5,000 to the Ecological Rights Foundation for use
22 toward reducing exposures to toxic chemicals and other pollutants, and toward increasing
23 consumer, worker and community awareness of health hazards posed by lead and other
24 toxic chemicals. The parties agree and acknowledge that the charitable contributions
25 made pursuant to this section shall not be construed as a credit against the personal claims
26 of absent third parties for restitution against the defendant. The above described payment
27 shall be forwarded by Coilhose so that it is received at least 5 days prior to the hearing
28 date scheduled for approval of this Consent Judgment. If the Consent Judgment is not

1 approved with 120 days of the date scheduled for approval, the above described payments
2 shall be returned and the provisions of this Consent judgment shall become null and void.

3 2.1 2.2 Coilhose shall not be required to pay a civil penalty pursuant to
4 Health and Safety Code Section 25249.7(b).

5 **3. ENTRY OF CONSENT JUDGMENT**

6 3.1 The parties hereby request that the Court promptly enter this Consent
7 Judgment. Upon entry of the Consent Judgment, Coilhose and Mateel waive their
8 respective rights to a hearing or trial on the allegations of the Complaint.

9 **4. MATTERS COVERED BY THIS CONSENT JUDGMENT**

10 4.1 This Consent Judgment is a final and binding resolution between Mateel,
11 acting on behalf of itself and the public interest, and Coilhose of any violation of
12 Proposition 65 with respect to lead exposures allegedly arising from the Covered Products
13 whether based on actions committed by Coilhose, or by any other person or entity within
14 Coilhose's chain of distribution of the Covered Products, including, but not limited to,
15 manufacturers, distributors, wholesale or retail sellers, and any other person in the course
16 of doing business (and specifically including, among others, Acme Automotive and
17 Freelin-Wade Company, CARQUEST Products, Inc., Golden State Supply LLC, General
18 Parts, Inc. and ORS Nasco, Inc.). As to lead exposures allegedly arising from the Covered
19 Products, compliance with the terms of this Consent Judgment resolves any issue, now
20 and in the future, concerning compliance by Coilhose and its parents, subsidiaries or
21 affiliates, predecessors, officers, directors, employees, and all of their manufacturers,
22 customers, distributors, wholesalers, retailers, or any other person in the course of doing
23 business, and the successors and assigns of any of these who may manufacture, use,
24 maintain, distribute, market or sell Covered Products, with the requirements of
25 Proposition 65.

26 4.2 As to lead exposures allegedly arising from the Covered Products, Mateel,
27 acting on behalf of itself and its agents, successors and assigns, waives all rights to
28 institute any form of legal action, and releases all claims against Coilhose and its parents,

1 subsidiaries or affiliates, predecessors, officers, directors, employees, and all of its
2 customers, manufacturers, distributors, wholesalers, retailers or any other person in the
3 course of doing business, and the successors and assigns of any of them, who may
4 manufacture, use, maintain, distribute or sell the Covered Products, whether under
5 Proposition 65 or otherwise. In furtherance of the foregoing, Mateel, acting on behalf of
6 itself hereby waives any and all rights and benefits which it now has, or in the future may
7 have, conferred upon it with respect to the Covered Products by virtue of the provisions of
8 Section 1542 of the California Civil Code, which provides as follows:

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

15 Mateel understands and acknowledges that the significance and consequence of this
16 waiver of California Civil Code Section 1542 is that even if Mateel suffers future damages
17 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the
18 Covered Products, it will not be able to make any claim for those damages against
19 Coilhose, its parents, subsidiaries or affiliates, predecessors, officers, directors,
20 employees, and all of its customers, manufacturers, distributors, wholesalers, retailers or
21 any other person in the course of doing business, and the successors and assigns of any of
22 them, who may manufacture, use, maintain, distribute or sell the Covered Products.

23 Furthermore, Mateel acknowledges that it intends these consequences for any such claims
24 which may exist as of the date of this release but which Mateel does not know exist, and
25 which, if known, would materially affect its decision to enter into this Consent Judgment,
26 regardless of whether its lack of knowledge is the result of ignorance, oversight, error,
27 negligence, or any other cause.

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5. ENFORCEMENT OF JUDGMENT

5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties hereto. The parties may, by noticed motion or order to show cause before the Superior Court of San Francisco County, giving the notice required by law, enforce the terms and conditions contained herein.

6. MODIFICATION OF JUDGMENT

Except as provided for in Paragraph 7.2(c), this Consent Judgment may be modified only upon written agreement of the parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party as provided by law and upon entry of a modified Consent Judgment by the Court.

7. INJUNCTIVE RELIEF - CLEAR AND REASONABLE WARNING

7.1 Covered Products shall be deemed to comply with Proposition 65 and be exempt from any Proposition 65 warning requirements if the subject brass nozzles or fittings meet the following criteria: (a) the brass alloy from which the brass fittings are made shall have no lead as an intentionally added constituent; and (b) the brass alloy from which the brass fittings are made shall have a lead content by weight of no more than 0.03% (300 parts per million, or “300 ppm”). Coilhose may comply with the above requirements by relying on information obtained from its suppliers regarding the content of the brass alloy from which the brass fittings are made, provided such reliance is in good faith. Obtaining test results showing that the lead content is no more than 0.03%, using a method of sufficient sensitivity to establish a limit of quantification (as distinguished from detection) of less than 300 ppm shall be deemed to establish good faith reliance.

7.2 Covered Products that do not meet the warning exemption standard set forth in Section 7.1 of the Consent Judgment shall be accompanied by a warning as described in paragraph 7.3 below. The warning requirements set forth in paragraph 7.3 shall apply only to: (1) Covered Products that Coilhose ships for distribution after 90 days after entry of this Consent Judgment (“the Effective Date”); and (2) Covered Products manufactured, distributed, marketed, sold or shipped for sale or use inside the State of California.

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7.3 Coilhose shall provide Proposition 65 warnings as follows:

(a) Coilhose shall provide either of the following warning statements:

WARNING: This product contains lead, a chemical known to the State of California to cause birth defects or other reproductive harm. Do not place your hands in your mouth after handling the product. *Wash your hands after touching this product.*

or

WARNING: This product contains one or more chemicals known to the State of California to cause birth defects or other reproductive harm. *Wash hands after handling.*

The word “WARNING” shall be in bold. The words “Wash hands after handling” shall be in bold and italicized.

Coilhose shall provide such warning directly on or with the unit package of the Covered Products. Such warning shall be prominently affixed to or printed on each Covered Product or its label or package. If printed on the label itself, the warning shall be contained in the same section that states other safety warnings, if any, concerning the use of the Covered Product.

(b) The requirements for product labeling, set forth in subparagraph (a) above are imposed pursuant to the terms of this Consent Judgment. The parties recognize that product labeling is not the exclusive method of providing a warning under Proposition 65 and its implementing regulations.

(c) If Proposition 65 warnings for lead or lead compounds should no longer be required, Coilhose shall have no further warning obligations pursuant to this Consent Judgment. Except as provided in section 7.1 above, in the event that Coilhose ceases to implement or modifies the warnings required under this Consent Judgment (because of a change on the law or otherwise), Coilhose shall provide written notice to Mateel (through KELC) of its intent to do so, and of the basis for its intent, no less than thirty (30)

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days in advance. Mateel shall notify Coilhose in writing of any objection within thirty (30) days of its receipt of such notice, or such objection by Mateel shall be waived.

8. AUTHORITY TO STIPULATE

Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of the party represented and legally to bind that party.

9. RETENTION OF JURISDICTION

This Court shall retain jurisdiction of this matter to implement the Consent Judgment.

10. ENTIRE AGREEMENT

This Consent Judgment contains the sole and entire agreement and understanding of the parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

11. GOVERNING LAW

The validity, construction and performance of this Consent Judgment shall be governed by the laws of the State of California, without reference to any conflicts of law provisions of California law.

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12. COURT APPROVAL

If this Consent Judgment is not approved by the Court, it shall be of no force or effect, and cannot be used in any proceeding for any purpose.

IT IS SO STIPULATED:

DATED: 1/13/10

MATEEL ENVIRONMENTAL JUSTICE FOUNDATION



William Verick
CEO Mateel Environmental Justice Foundation,
Klamath Environmental Law Center

DATED:

COILHOSE, PNEUMATICS, ACME AUTOMOTIVE, AND FREELIN-WADE COMPANY

By: Marvin Aaron
Its:

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED:

JUDGE OF THE SUPERIOR COURT

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12. COURT APPROVAL

If this Consent Judgment is not approved by the Court, it shall be of no force or effect, and cannot be used in any proceeding for any purpose.

IT IS SO STIPULATED:

DATED:

**MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION**

William Verick
CEO Mateel Environmental Justice
Foundation,
Klamath Environmental Law Center

DATED:

9/22/2009

**COILHOSE, PNEUMATICS, ACME
AUTOMOTIVE AND FREELIN-WADE
COMPANY**

By: Marvin Aaron
Its:

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED:

JUDGE OF THE SUPERIOR COURT