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11 Consumer Advocacy Group, Inc.

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF LOS ANGELES**

14 CONSUMER ADVOCACY GROUP,

15 Plaintiff,

16 v.

17 PILOT AUTOMOTIVE, INC., a California  
18 Corporation; VEHICLE PERFORMANCE  
19 SYSTEMS, INC., Georgia Corporation;  
20 WANG'S INTERNATIONAL, INC., a  
21 California Corporation; PEP BOYS-  
22 MANNY, MOE & JACK OF DELAWARE,  
INC., a Delaware Corporation; PEP BOYS-  
MANNY, MOE & JACK OF CA, INC., a  
California Corporation; PEP BOYS, INC.-  
MANNY, MOE & JACK., a Philadelphia  
Corporation; AUTOZONE, INC., a Nevada  
Corporation; AUTOZONE PARTS, INC., a  
Nevada Corporation, and DOES 1-20; and  
DOES 1-20;

23 Defendants.

CASE NO. BC526856 (Consol. with  
BC554364)

**CONSENT JUDGMENT [PROPOSED]**

Health & Safety Code § 25249.5 *et seq.*

Dept.: 54

Judge: Hon. Ernest M. Hiroshige

Complaint filed: November 6, 2013

First Amended Complaint filed: January  
24, 2017

24 **1. INTRODUCTION**

25 1.1 This Consent Judgment is entered into by and between plaintiff, Consumer  
26 Advocacy Group, Inc., (referred to as "CAG") acting on behalf of itself and in the interest of the  
27 public, and defendant Pilot Automotive, Inc., also known as Pilot, Inc. ("Pilot"), each a Party to

1 the action and collectively referred to as "Parties." This Consent Judgment is intended to fully  
2 resolve all claims, demands, and allegations related to this action and the Notices of Violation  
3 referred to herein.

4 CAG initiated the instant action as to multiple parties with respect to steering wheels and  
5 steering wheel covers for which they claim multiple routes of exposure to lead and/or DEHP.  
6 CAG continued to add claims in terms of additional products and parties as the litigation  
7 continued. The matter spanned more than 4 years. CAG filed dozens of discovery motions to  
8 obtain information regarding sales figures and test results. Discovery involved multiple  
9 depositions on both sides and significant motion practice related to written discovery,  
10 depositions and procedural aspects of the consolidated matter including an Amended Complaint  
11 and bifurcation of the matter. Pilot's new counsel, who currently represents Pilot, and CAG's  
12 counsel were ultimately able to collaborate on resolving the issues and develop injunctive relief  
13 consistent with the purpose and intent of Prop 65. The current settlement was reached as a result  
14 of the entry of Pilot's current counsel, in maintaining viable defenses, and working directly with  
15 CAG's counsel in arms-length negotiations to reach settlement.

## 16 1.2 Pilot and Products

17 1.2.1 Defendant Pilot is a California corporation which CAG alleges employs  
18 ten or more persons. For purposes of this Consent Judgment only, Pilot is deemed a person in  
19 the course of doing business in California and is subject to the provisions of the Safe Drinking  
20 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq.  
21 ("Proposition 65").  
22

23 1.2.2 CAG alleges that Pilot manufactured, caused to be manufactured, sold,  
24 and/or distributed Steering Wheel Covers, Steering Wheels, Mounted Cameras, Shift Knobs, and  
25 Vehicle Lights as defined in the Notices in California.

## 26 1.3 Chemicals of Concern

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1 Di(2-ethylhexyl) phthalate ("DEHP"), and Lead are known to the State of California to  
2 cause cancer, birth defects, and other reproductive harm. Di Isononyl Phthalate ("DINP"), also  
3 known as diisononyl phthalate is known to the State of California to cause cancer.

4 **1.4 Notices of Violation.**

5 1.4.1 On or about July 3, 2013, CAG served Pilot, and various public  
6 enforcement agencies with a document entitled "60-Day Notice of Intent to Sue for Violation of  
7 the Safe Drinking Water and Toxic Enforcement Act of 1986" ("July 3, 2013 Notice") that  
8 provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for  
9 failing to warn individuals in California of alleged exposures to lead alleged to be contained in  
10 steering wheel covers. No public enforcer has commenced or diligently prosecuted the  
11 allegations set forth in the July 3, 2013 Notice.

12 1.4.2 On February 9, 2014, CAG served Pilot, and various public enforcement  
13 agencies with a document entitled "60-Day Notice of Intent to Sue for Violation of the Safe  
14 Drinking Water and Toxic Enforcement Act of 1986" ("February 9, 2014 Notice") that provided  
15 the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to  
16 warn individuals in California of alleged exposures to DEHP in Steering Wheel Covers. No  
17 public enforcer has commenced or diligently prosecuted the allegations set forth in the February  
18 9, 2014 Notice.

19 1.4.3 On February 9, 2014, CAG served Pilot, and various public enforcement  
20 agencies with a document entitled "60-Day Notice of Intent to Sue for Violation of the Safe  
21 Drinking Water and Toxic Enforcement Act of 1986" ("Second February 9, 2014 Notice") that  
22 provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for  
23 failing to warn individuals in California of alleged exposures to DEHP in steering wheels. No  
24 public enforcer has commenced or diligently prosecuted the allegations set forth in the Second  
25 February 9, 2014 Notice.

1 1.4.4 On April 28, 2014, CAG served Pilot, and various public enforcement  
2 agencies with a document entitled "60-Day Notice of Intent to Sue for Violation of the Safe  
3 Drinking Water and Toxic Enforcement Act of 1986" ("April 28, 2014 Notice") that provided  
4 the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to  
5 warn individuals in California of alleged exposures to DEHP and Lead in steering wheel covers.  
6 No public enforcer has commenced or diligently prosecuted the allegations set forth in the April  
7 28, 2014 Notice.

8 1.4.5 On May 13, 2016, CAG served National Stores, Inc. and various public  
9 enforcement agencies with a document entitled "60-Day Notice of Intent to Sue for Violation of  
10 the Safe Drinking Water and Toxic Enforcement Act of 1986" ("May 13, 2016 Notice") that  
11 provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for  
12 failing to warn individuals in California of alleged exposures to DEHP and Lead in Pilot steering  
13 wheel covers. No public enforcer has commenced or diligently prosecuted the allegations set  
14 forth in the May 13, 2016 Notice.

15 1.4.6 On June 13, 2016, CAG served Pilot, and various public enforcement  
16 agencies with a document entitled "60-Day Notice of Intent to Sue for Violation of the Safe  
17 Drinking Water and Toxic Enforcement Act of 1986" ("June 13, 2016 Notice") that provided the  
18 recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to  
19 warn individuals in California of alleged exposures to DEHP in steering wheel covers. No public  
20 enforcer has commenced or diligently prosecuted the allegations set forth in the June 13, 2016  
21 Notice.

22 1.4.7 On February 10, 2017 CAG served Pilot, and various public enforcement  
23 agencies with a document entitled "60-Day Notice of Intent to Sue for Violation of the Safe  
24 Drinking Water and Toxic Enforcement Act of 1986" ("February 10, 2017 Notice") that  
25 provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for  
26 failing to warn individuals in California of alleged exposures to DEHP in Mounted Cameras. No  
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1 public enforcer has commenced or diligently prosecuted the allegations set forth in the February  
2 10, 2017 Notice.

3 1.4.8 On April 26, 2017, CAG served Pilot, and various public enforcement  
4 agencies with a document entitled “60-Day Notice of Intent to Sue for Violation of the Safe  
5 Drinking Water and Toxic Enforcement Act of 1986” (“April 26, 2017 Notice”) that provided  
6 the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to  
7 warn individuals in California of alleged exposures to DEHP in Mounted Cameras. No public  
8 enforcer has commenced or diligently prosecuted the allegations set forth in the April 26, 2017  
9 Notice.

10 1.4.9 On June 23, 2017, CAG served Pilot, and various public enforcement  
11 agencies with a document entitled “60-Day Notice of Intent to Sue for Violation of the Safe  
12 Drinking Water and Toxic Enforcement Act of 1986” (“June 23, 2017 Notice”) that provided the  
13 recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to  
14 warn individuals in California of alleged exposures to DEHP in Shift Knobs. No public enforcer  
15 has commenced or diligently prosecuted the allegations set forth in the June 23, 2017 Notice.

16 1.4.10 On February 8, 2018, CAG served Pilot, and various public enforcement  
17 agencies with a document entitled “60-Day Notice of Intent to Sue for Violation of the Safe  
18 Drinking Water and Toxic Enforcement Act of 1986” (“February 8, 2018 Notice”) that provided  
19 the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to  
20 warn individuals in California of alleged exposures to DINP and DEHP in steering wheel covers.  
21 No public enforcer has commenced or diligently prosecuted the allegations set forth in the  
22 February 8, 2018 Notice. [This Notice is included herein solely for injunctive relief and is not  
23 being included in any calculation for civil penalties. Plaintiff and Defendant agreed to include  
24 the Notice Re: DINP to provide the broadest protection possible to the public, while alleviating  
25 the need to file a separate lawsuit.]  
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1 1.4.11 On May 7, 2018, CAG served Pilot, and various public enforcement  
2 agencies with a document entitled “60-Day Notice of Intent to Sue for Violation of the Safe  
3 Drinking Water and Toxic Enforcement Act of 1986” (“May 7, 2018 Notice”) that provided the  
4 recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to  
5 warn individuals in California of alleged exposures to DEHP in vehicle lights. No public  
6 enforcer has commenced or diligently prosecuted the allegations set forth in the May 7, 2018  
7 Notice .

8 Collectively, the 60-day notices described in paragraphs 1.4.1-1.4.11 above are  
9 hereafter referred to as the “Notices.”

#### 10 **1.5 Complaint and Answer.**

11 On November 6, 2013, CAG filed a Complaint for civil penalties and injunctive relief  
12 (“Complaint”) in Superior Court of California County of Los Angeles, Case No. BC526856  
13 against Pilot Automotive, Inc., Wang’s International, Inc., Pep Boys Manny Moe & Jack, Pep  
14 Boys Manny Moe & Jack of CA, Inc., and Pep Boys—Manny Moe & Jack, Delaware, Inc.  
15 (collectively “Defendants”). The Complaint alleges that the Defendants violated Proposition 65  
16 by failing to give clear and reasonable warnings of alleged exposure to lead in certain steering  
17 wheel covers.

18 On August 12, 2014, CAG filed a Complaint for civil penalties and injunctive relief  
19 (“Complaint”) in Superior Court of California County of Los Angeles, Case No. BC554364  
20 against Pilot Automotive, Inc., Wang’s International, Inc., Pep Boys Manny Moe & Jack, Pep  
21 Boys Manny Moe & Jack of CA, Inc., and Pep Boys—Manny Moe & Jack, Delaware, Inc.,  
22 Autozone, Inc., and Autozone Parts, Inc. (collectively “Defendants”). The Complaint alleges  
23 that the Defendants violated Proposition 65 by failing to give clear and reasonable warnings of  
24 alleged exposure to lead and/or DEHP in certain steering wheels and wheel covers.

25 On January 24, 2017, CAG filed a First Amended Complaint for civil penalties and  
26 injunctive relief (“Complaint”) in Superior Court of California County of Los Angeles, Case No.  
27

1 B526856, (consolidated with BC554364) which included additional claims against Autozone,  
2 Inc., and Autozone Parts, Inc. (collectively “Autozone Defendants”). The First Amended  
3 Complaint alleges that the Autozone Defendants violated Proposition 65 by failing to give clear  
4 and reasonable warnings of alleged exposure to DEHP in certain steering wheel covers.

5 On February 3, 2017, CAG filed a Complaint for civil penalties and injunctive relief  
6 (“February 3, 2017 Complaint”) in Superior Court of California County of Los Angeles, Case  
7 No. BC 649358, which included claims against National Stores, Inc. dba Fallas Paredes, Factory  
8 2-U, and Fallas Discount Stores, and Factory 2-U #0633 (collectively “National Stores  
9 Defendants”). The February 3, 2017 Complaint alleges that the National Stores Defendants  
10 violated Proposition 65 by failing to give clear and reasonable warnings of alleged exposure to  
11 DEHP in certain Pilot steering wheel covers.

12 On September 11, 2017 CAG filed a Complaint for civil penalties and injunctive relief  
13 (“Complaint”) in Superior Court of California County of Los Angeles, Case No. BC675292  
14 against Pilot Automotive, Inc. (nee’ Pilot, Inc.), Wang’s International, Inc., Pep Boys Manny  
15 Moe & Jack, Pep Boys Manny Moe & Jack of CA, Inc., and Pep Boys—Manny Moe & Jack,,  
16 (collectively “Defendants”). The Complaint alleges that the Defendants violated Proposition 65  
17 by failing to give clear and reasonable warnings of alleged exposure to lead and/or DEHP in  
18 certain mounted cameras and shift knobs.

19 Defendants, and each of them answered the respective complaints, and specifically deny  
20 all allegations that they violated Proposition 65.

#### 21 1.6 Consent to Jurisdiction

22 For purposes of this Consent Judgment, the Parties stipulate that this Court has  
23 jurisdiction over the allegations of violations contained in the Complaint and personal  
24 jurisdiction over Pilot as to the acts alleged in the Complaint, that venue is proper in the County  
25 of Los Angeles, and that this Court has jurisdiction to enter this Consent Judgment as a full  
26 settlement and resolution of the allegations contained in the Complaint and of all claims which  
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1 were, or could have been raised by any person or entity based in whole or in part, directly or  
2 indirectly, on the facts alleged therein or arising therefrom or related thereto.

3 **1.7 No Admission**

4 This Consent Judgment resolves claims that are denied and disputed. The Parties enter  
5 into this Consent Judgment pursuant to a full and final settlement of any and all claims between  
6 the Parties for the purpose of avoiding prolonged litigation. Nothing in this Consent Judgment  
7 shall be construed as an admission by the Parties of any material allegation of the Complaints  
8 (each and every allegation of which Pilot denies), any fact, conclusion of law, issue of law or  
9 violation of law, including without limitation, any admission concerning any violation of  
10 Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine, or any  
11 admission as to the meaning of the terms “knowingly and intentionally expose” or “clear and  
12 reasonable warning” as used in Health and Safety Code section 25249.6. Nothing in this  
13 Consent Judgment, nor compliance with its terms, shall constitute or be construed as an  
14 admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, or of  
15 fault, wrongdoing, or liability by Pilot, its officers, directors, employees, or parent, subsidiary or  
16 affiliated corporations, or be offered or admitted as evidence in any administrative or judicial  
17 proceeding or litigation in any court, agency, or forum. Furthermore, nothing in this Consent  
18 Judgment shall prejudice, waive or impair any right, remedy, argument, or defense the Parties  
19 may have in any other or future legal proceeding, except as expressly provided in this Consent  
20 Judgment.  
21

22 **2. DEFINITIONS**

23 2.1 “Covered Products” means Pilot imitation leather, vinyl or pvc steering wheels or  
24 steering wheel covers, including but not limited to the exemplars: 1) SW-217, 2) SW-68-B, 3)  
25 SW-68-G, 4) SW-68 R, 5) SW-68-T, 6) SW-222-E, 7) SW-800, 8) WCC-1201E as well as  
26 Mounted Cameras, including but not limited to: 8) Item No. CL-3005-WK, 9), Item No. CL-  
27 3003WK, 10) CL-3016WK, Shift Knobs, including but not limited to 11) Pilot Item No.  
28



1 PM170CE, and Vehicle Light Pilot Item No. IP-036BG. The Covered Products are limited to  
2 those sold or supplied by Pilot.

3 2.2 "Effective Date" means the date that the Court approves this Consent Judgment.

4 2.3 "DEHP" means Di(2-ethylhexyl) phthalate;

5 "DINP" means Di Isononyl Phthalate, also known as diisononyl phthalate; and

6 "Lead" includes lead and lead compounds.

7 2.4 "Notices" refers to Plaintiff's July 3, 2013 Notice, February 9, 2014 Notices,  
8 April 28, 2014 Notice, May 13, 2016 Notice, June 13, 2016 Notice, February 10, 2017 Notice,  
9 April 26, 2017 Notice, the June 23, 2017 Notice, the February 8, 2018 Notice, and May 7, 2018  
10 Notice.

11 **3. INJUNCTIVE RELIEF / REFORMULATION / CLEAR AND REASONABLE**  
12 **WARNINGS ON EXISTING INVENTORY**

13 3.1 After the Effective Date, Pilot shall recall and destroy, all noticed exemplars of  
14 Pilot imitation leather, vinyl or pvc steering wheel covers and steering wheels, specifically Pilot  
15 model numbers SW-217, SW-68B, SW-68G, SW68-R, and SW-68-T, SW-222E, WCC-1201E,  
16 and SW-800, offered for sale in California. If Pilot does resume selling Pilot imitation leather,  
17 vinyl or pvc steering wheels or steering wheel covers in the United States of America in the  
18 future, Pilot will comply with the following Reformulation Standard: Pilot shall not sell or  
19 distribute those products, unless they are reformulated to contain less than 0.1% by weight  
20 (1,000 parts per million) of DEHP, and/or DINP, and 100 ppm of lead.

21 3.2 As of the Effective Date, any existing inventory of Pilot imitation leather, vinyl or  
22 pvc steering wheel covers and steering wheels, except the exemplars indicated above in section  
23 3.1, Pilot shall place a Proposition 65 compliant warning on them. Any warning provided  
24 pursuant to this section shall be affixed to the packaging of, or directly on, the Covered Products,  
25 and be prominently placed with such conspicuousness as compared with other words, statements,  
26 designs, or devices as to render it likely to be read and understood by an ordinary individual  
27 under customary conditions before purchase or use. The warning shall state one of the following:  
28

**PROPOSITION 65 WARNING:** This product contains chemicals known to the State of California to cause cancer, births defects or other reproductive harm

a)

**⚠ WARNING:** This product can expose you to chemicals including lead, DEHP, and/or DINP which are known to the State of California to cause cancer and/or birth defects or other productive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

b)

**⚠ WARNING:** Cancer and Reproductive Harm — [www.p65Warnings.ca.gov](http://www.p65Warnings.ca.gov).

c)

3.3 For future sales of any dashcams, gear knobs, and Vehicle Light Pilot Item No. IP-036BG distributed by Pilot, and for future order sales, after the Effective Date, Pilot will comply with the following Reformulation Standard: Pilot shall not sell or distribute those products, unless they are reformulated to contain less than 0.1% by weight (1,000 parts per million) of DEHP.

3.4 As of the effective date, for any existing inventory of dashcams, shift knobs, and Vehicle Light Pilot Item No. IP-036BG distributed by Pilot in California, Pilot shall place a Proposition 65 compliant warning on them. Any warning provided pursuant to this section shall be affixed to the packaging of, or directly on, the Covered Products, and be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. The warning shall state one of the following:

**PROPOSITION 65 WARNING:** This product contains chemicals known to the State of California to cause cancer, births defects or other reproductive harm

a)

**⚠ WARNING:** This product can expose you to chemicals including DEHP which is known to the State of California to cause cancer and birth defects or other productive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

b)

**⚠ WARNING:** Cancer and Reproductive Harm — [www.p65Warnings.ca.gov](http://www.p65Warnings.ca.gov).

c)

1     **4. SETTLEMENT PAYMENT**

2             **4.1 Payment:** Within fifteen (15) days of the Effective Date, Pilot shall pay a total  
3 of one million, five hundred eighty thousand dollars and zero cents (\$1,580,000.00), in full and  
4 complete settlement of any and all monetary claims by CAG related to the Notices in this action.  
5 The amounts indicated below exclude any payment or assessment of civil penalty for the  
6 February 8, 2018 Notice, regarding steering wheel covers with DINP. The products noticed,  
7 containing DINP are included in this Consent Judgment by agreement of the parties and solely to  
8 include injunctive relief as to these products. These products do not form the basis for any  
9 monetary relief hereunder. Subject to that exclusion, the funds from the settlement payment  
10 shall be divided as follows:

11                     **4.1.1 Civil Penalty:** Pilot shall issue two separate checks totaling fifty-seven  
12 thousand one hundred fifty dollars (\$57,150.00) as penalties pursuant to Health & Safety Code §  
13 25249.12:

14                     (a) Pilot will issue one check made payable to the State of California's Office of  
15 Environmental Health Hazard Assessment ("OEHHA") in the amount of forty-two thousand  
16 eight hundred sixty-two dollars and fifty cents (\$42,862.50) representing 75% of the total penalty  
17 and Pilot will issue a second check to CAG in the amount of fourteen thousand two hundred  
18 eighty-seven dollars and fifty cents (\$14,287.50) representing 25% of the total penalty. Separate  
19 1099s shall be issued as follows: Pilot will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento,  
20 CA 95184 (EIN: 68-0284486) in the amount of \$42,862.50. Pilot will also issue a 1099 to CAG  
21 in the amount of \$14,287.50 and deliver it to CAG c/o Yeroushalmi & Yeroushalmi, 9100  
22 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

23                     **4.1.2 Additional Settlement Payments:** Pilot shall pay forty-two thousand  
24 eight hundred fifty dollars and zero cents (\$42,850.00) as an additional settlement payment to  
25 "Consumer Advocacy Group, Inc.," pursuant to Health & Safety Code § 25249.7(b), and  
26 California Code of Regulations, Title 11 § 3202(d). CAG will use this total payment as follows,  
27 seventy percent (70%) for fees of investigation, purchasing and testing for Proposition 65 listed  
28

1 chemicals in various products, and for expert fees for evaluating exposures through various  
2 mediums, including but not limited to consumer product, occupational, and environmental  
3 exposures to Proposition 65 listed chemicals, and the cost of hiring consulting and retained  
4 experts who assist with the extensive scientific analysis necessary for those files in litigation;  
5 twenty percent (20%) for administrative costs incurred during the investigation and litigation to  
6 reduce the public's exposure to Proposition 65 listed chemicals by notifying those persons and/or  
7 entities believed to be responsible for such exposures and attempting to persuade those persons  
8 and/or entities to reformulate their products or the source of exposure to completely eliminate or  
9 lower the level of Proposition 65 listed chemicals including but not limited to costs of  
10 documentation and tracking of products investigated, storage of products, website enhancement  
11 and maintenance, computer and software maintenance, investigative equipment, CAG's  
12 member's time for work done on investigations, office supplies, mailing supplies and postage;  
13 and ten percent (10%) to offset the costs of future litigation enforcing Proposition 65 but  
14 excluding attorney fees, thereby addressing the same public harm as allegedly in the instant  
15 Action. Within 30 days of a request from the Attorney General, CAG shall provide to the  
16 Attorney General copies of documentation demonstrating how the above funds have been spent.

17  
18 **4.1.3 Reimbursement of Attorney's Fees and Costs:** Pilot shall pay a total  
19 amount of one million, four hundred eighty thousand dollars and zero cents (\$1,480,000.00), to  
20 "Yeroushalmi & Yeroushalmi" as reimbursement for reasonable investigation fees and costs,  
21 attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter to  
22 Pilot's attention, litigating, and negotiating a settlement in the public interest.

23 **4.2 Delivery of Payments:**

24 **4.2.1** All payments to OEHHA shall be delivered to: Office of Environmental  
25 Health Hazard Assessment, Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento,  
26 California 95812. Pilot shall provide written confirmation to CAG upon payment to OEHHA.

1 4.2.2 All payments to CAG and Yeroushalmi & Yeroushalmi, shall be delivered  
2 to: Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W,  
3 Beverly Hills, CA 90212.

#### 4 **5. MATTERS COVERED BY THIS CONSENT JUDGMENT**

5 5.1 This Consent Judgment is a full, final, and binding resolution between CAG, on  
6 behalf of itself and in the public interest, and Pilot and its officers, directors, insurers, employees,  
7 parents, owners, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister  
8 companies, agents, and their successors and assigns ("Pilot's Releasees"), and all entities to  
9 whom Pilot directly or indirectly distributes or sells Covered Products, including, but not limited  
10 to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members,  
11 licensees, and the successors and assigns of any of them, including but not limited to Vehicle  
12 Performance Systems, Inc., Wang's International, Inc., Pep Boys-Manny, Moe & Jack of  
13 Delaware, Inc., Pep Boys-Manny, Moe & Jack of CA, Inc., Pep Boys, Inc.-Manny, Moe & Jack,  
14 Autozone, Inc., Autozone Parts, Inc., West Coast Customs, Inc., National Stores, Inc., Factory 2-  
15 U #0633, Wal-Mart Stores, Inc., Wal-Mart.com USA, LLC, UnbeatableSale.com, Inc., and Zone  
16 Compra who may use, maintain, distribute or sell Covered Products, ("Downstream Releasees"),  
17 for all claims for violations of Proposition 65 through the Effective Date based on alleged  
18 exposure to DEHP, lead and/or DINP, from Covered Products, as set forth in the Notices. In  
19 addition, the "Downstream Releasees" shall include Pep Boys, Autozone, Walmart, Unbeatable  
20 Sale, and National Stores, Inc., and their respective affiliates, successors, and assigns. Pilot and  
21 Pilot's Releasees' compliance with this Consent Judgment shall constitute compliance with  
22 Proposition 65 for the Covered Products with respect to exposure to DEHP, lead and/or DINP  
23 from Covered Products. Nothing in this Section affects CAG's right to commence or prosecute  
24 an action under Proposition 65 against any person other than Pilot, Pilot Releasees, Pep Boys  
25 Manny Moe & Jack of California, Inc. Pep Boys, Inc-- Manny, Moe & Jack, Autozone, Wal-  
26 Mart Stores, Inc., Wal-Mart.com USA, LLC, and Unbeatable Sale.com, Inc., or other Pilot  
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1 Downstream Releasees. Nothing in Section 5 affects CAG's right to prosecute the action  
2 entitled Vehicle Performance Systems, Inc. v. Consumer Advocacy Group, Inc. et al, Los  
3 Angeles Superior Court Case No. BC582894. Pilot, Pilot Releasees, and Pilot Downstream  
4 Releasees are hereafter collectively referred to as the "Released Parties."

5       5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,  
6 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or  
7 indirectly, any form of legal action and releases all claims, including, without limitation, all  
8 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,  
9 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation  
10 fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown,  
11 fixed or contingent (collectively "Claims"), against the Released Parties arising from any  
12 violation of Proposition 65 or any other statutory or common law regarding the failure to warn  
13 about exposure to DEHP, Lead and/or DINP from the Covered Products. In furtherance of the  
14 foregoing, as to alleged exposures to DEHP, Lead and/or DINP from the Covered Products,  
15 CAG on behalf of itself only, hereby waives any and all rights and benefits which it now has, or  
16 in the future may have, conferred upon it with respect to Claims arising from any violation of  
17 Proposition 65 or any other statutory or common law regarding the failure to warn about alleged  
18 exposure to DEHP, Lead, and/or DINP from the Covered Products, by virtue of the provisions of  
19 section 1542 of the California Civil Code, which provides as follows:  
20

21       A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
22       CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
23       FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF  
24       KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS  
25       OR HER SETTLEMENT WITH THE DEBTOR.

26 CAG understands and acknowledges that the significance and consequence of this waiver of  
27 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or  
28 resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any  
violation of Proposition 65 or any other statutory or common law regarding the failure to warn

1 about alleged exposure to DEHP, Lead and/or DINP from the Covered Products, including but  
2 not limited to any exposure to, or failure to warn with respect to exposure to DEHP, Lead, and/or  
3 DINP from the Covered Products, CAG will not be able to make any claim for those damages or  
4 injunctive relief against the Released Parties. Furthermore, CAG acknowledges that it intends  
5 these consequences for any such Claims arising from any violation of Proposition 65 or any  
6 other statutory or common law regarding the failure to warn about alleged exposure to DEHP,  
7 Lead, and/or DINP from Covered Products as may exist as of the date of this release but which  
8 CAG does not know exist, and which, if known, would materially affect their decision to enter  
9 into this Consent Judgment, regardless of whether their lack of knowledge is the result of  
10 ignorance, oversight, error, negligence, or any other cause.

## 11 **6. ENFORCEMENT OF JUDGMENT**

12 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties  
13 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of  
14 California, County of Los Angeles, giving the notice required by law, enforce the terms and  
15 conditions contained herein. A Party may enforce any of the terms and conditions of this  
16 Consent Judgment only after that Party first provides 60 days' notice to the Party allegedly  
17 failing to comply with the terms and conditions of this Consent Judgment and attempts to resolve  
18 such Party's failure to comply in an open and good faith manner.

19 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other  
20 proceeding to enforce the terms of this Consent Judgment, the Party alleging a violation shall  
21 provide written notice ("NOV") to the other Party. The NOV shall include information  
22 sufficient for the Party alleged to be in violation to be able to understand and correct the  
23 violation. With respect to NOV's from CAG relating to the Covered Products, for each of the  
24 Covered Products: Any notice to Pilot must contain (a) the name of the product, (b) specific  
25 dates when the product was sold in California, (c) the store or other place at which the product  
26 was available for sale to consumers, (d) analytical sampling results, from a California certified  
27

1 laboratory, of Covered Products that show a concentration of DEHP, DINP, and/or Lead that  
2 exceeds the levels set forth in Sections 3.1 and 3.3; (e) evidence establishing the warning  
3 required in Sections 3.2 and 3.4 was not provided; and (f) any other evidence or support for the  
4 allegations in the NOV.

5       **6.2.1 Non-Contested NOV.** For NOVs from CAG relating to the Covered Products,  
6 CAG shall take no further action regarding the alleged violation if, within 60 days of receiving  
7 such NOV, Pilot serves a Notice of Election (“NOE”) that meets one of the following conditions:

8           (a) The Covered Products were shipped by Pilot for sale in California before the  
9 Effective Date, or

10           (b) Since receiving the NOV Pilot has taken corrective action by either (i) taking all  
11 steps necessary to bring the sale of the product into compliance under the terms of this Consent  
12 Judgment, or (ii) requesting that its customers or stores in California, as applicable, remove the  
13 Covered Products identified in the NOV from sale in California and destroy or return the  
14 Covered Products to Pilot or vendors, as applicable, or (iii) refute the information provided in  
15 paragraph 6.2.

16       **6.2.2 Contested NOV.** For NOVs from CAG relating to the Covered Products, Pilot  
17 may serve a Notice of Election (“NOE”) informing CAG of its election to contest the NOV  
18 within 30 days of receiving the NOV.

19           (a) In its election, Pilot may request that the sample(s) of Covered Products tested by  
20 CAG be subject to confirmatory testing at an EPA-accredited laboratory.

21           (b) If the confirmatory testing establishes that the Covered Products do not contain  
22 DINP in excess of the levels allowed in Sections 3.1 or 3.3, above, CAG shall take no further  
23 action regarding the alleged violation. If the testing does not establish compliance with Sections  
24 3.1 or 3.3, above, Pilot may withdraw its NOE to contest the violation and may serve a new NOE  
25 pursuant to Section 6.2.1.  
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1 (c) If Pilot does not withdraw an NOE to contest the NOV or take action under  
2 Section 6.2.1, above, the Parties shall meet and confer for a period of no less than 30 days before  
3 CAG may seek an order enforcing the terms of this Consent Judgment.

4 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, the  
5 prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

6 **7. ENTRY OF CONSENT JUDGMENT**

7 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to  
8 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG, and  
9 Pilot waive their respective rights to a hearing or trial on the allegations of the Complaint.

10 7.2 If this Consent Judgment is not approved in full by the Court, (a) this Consent  
11 Judgment and any and all prior agreements between the parties merged herein shall terminate  
12 and become null and void, and the actions shall revert to the status that existed prior to the  
13 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft  
14 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement  
15 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any  
16 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to  
17 determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

18 **8. MODIFICATION OF JUDGMENT**

19 8.1 This Consent Judgment may be modified only upon written agreement of the  
20 Parties and, if the modification affects a substantive provision of this Consent Judgment, upon  
21 entry of a modified Consent Judgment by the Court thereon, or otherwise upon motion of any  
22 party as provided by law and upon entry of a modified Consent Judgment by the Court.

23 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to  
24 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.  
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1 **9. RETENTION OF JURISDICTION**

2 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the  
3 terms of this Consent Judgment under Code of Civil Procedure § 664.6.

4 **10. DUTIES LIMITED TO CALIFORNIA**

5 10.1 Except as provided in Section 3.1 above, this Consent Judgment shall have no  
6 effect on Covered Products sold or distributed by Pilot outside the State of California.

7 **11. SERVICE ON THE ATTORNEY GENERAL**

8 11.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the  
9 California Attorney General so that the Attorney General may review this Consent Judgment  
10 prior to its submittal to the Court for approval. No sooner than forty-five (45) days after the  
11 Attorney General has received the aforementioned copy of this Consent Judgment, and in the  
12 absence of any written objection by the Attorney General to the terms of this Consent Judgment,  
13 the parties may then submit it to the Court for approval.

14 **12. ATTORNEY FEES**

15 12.1 Except as specifically provided in Sections 4.1.3 and 6.3, each Party shall bear its  
16 own attorneys' fees and costs in connection with the claims resolved in this Consent Judgment.

17 **13. ENTIRE AGREEMENT**

18 13.1 This Consent Judgment contains the sole and entire agreement and understanding  
19 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,  
20 negotiations, commitments and understandings related hereto. No representations, oral or  
21 otherwise, express or implied, other than those contained herein have been made by any party  
22 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be  
23 deemed to exist or to bind any of the Parties.  
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1 **14. GOVERNING LAW**

2 14.1 The validity, construction and performance of this Consent Judgment shall be  
3 governed by the laws of the State of California, without reference to any conflicts of law  
4 provisions of California law.

5 14.2 The terms of this Consent Judgment shall be governed by the laws of the State of  
6 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered  
7 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are  
8 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or  
9 rendered inapplicable by reason of law generally as to the Covered Products, then subject to this  
10 Consent Judgment Pilot may provide written notice to CAG of any asserted change in the law,  
11 and shall have no further obligations pursuant to this Consent Judgment with respect to, and to  
12 the extent that, the Covered Products are so affected. Nothing in this Consent Judgment shall be  
13 interpreted to relieve Pilot from any obligation to comply with any pertinent state or federal law  
14 or regulation.

15 14.3 The Parties, including their counsel, have participated in the preparation of this  
16 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
17 Consent Judgment was subject to revision and modification by the Parties and has been accepted  
18 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty  
19 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a  
20 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent  
21 Judgment agrees that any statute or rule of construction providing that ambiguities are to be  
22 resolved against the drafting Party should not be employed in the interpretation of this Consent  
23 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.  
24

1 **15. EXECUTION AND COUNTERPARTS**

2 15.1 This Consent Judgment may be executed in counterparts and by means of  
3 facsimile or portable document format (pdf), which taken together shall be deemed to constitute  
4 one document and have the same force and effect as original signatures.

5 **16. NOTICES**

6 16.1 Any notices under this Consent Judgment shall be by First Class Mail (with a  
7 courtesy copy by email).

8 If to CAG:

9 Yeroushalmi & Yeroushalmi  
10 9100 Wilshire Boulevard, Suite 240W  
11 Beverly Hills, CA 90212  
12 (310) 623-1926;  
Email: [lawfirm@yeroushalmi.com](mailto:lawfirm@yeroushalmi.com)

13 If to Pilot:

14 Ryan S. Landis, Esq.  
15 POLSINELLI LLP  
16 2049 Century Park East, Suite 2900  
17 Los Angeles, CA 90067  
E-mail: [rlandis@polsinelli.com](mailto:rlandis@polsinelli.com);

18 **17. AUTHORITY TO STIPULATE**

19 17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
20 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf  
21 of the party represented and legally to bind that party.

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23 ///

24 ///

1 AGREED TO:

2 Date: \_\_\_\_\_, 2018

3  
4 Name: \_\_\_\_\_

5 Title: \_\_\_\_\_

6 CONSUMER ADVOCACY  
7 GROUP, INC.

AGREED TO:

2 Date: Aug 20, 2018

3  
4 Name: \_\_\_\_\_

5 Title: \_\_\_\_\_

6 Scott Weber  
7 CFO  
8 PILOT AUTOMOTIVE, INC.

8 **IT IS SO ORDERED.**

9  
10 Date: \_\_\_\_\_

11 \_\_\_\_\_  
12 Hon. Ernest M. Hiroshige  
13 JUDGE OF THE SUPERIOR COURT  
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1 AGREED TO:

2 Date: August 20, 2018

3 Michael Marcus  
4 Name: Michael Marcus

5 Title: Director  
6 CONSUMER ADVOCACY  
7 GROUP, INC.

AGREED TO:

Date: \_\_\_\_\_, 2018

Name: \_\_\_\_\_

Title: \_\_\_\_\_  
PILOT AUTOMOTIVE, INC.

8 **IT IS SO ORDERED.**

9  
10 Date: \_\_\_\_\_

\_\_\_\_\_  
11 Hon. Ernest M. Hiroshige  
12 JUDGE OF THE SUPERIOR COURT  
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