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ENDORSED
FILED
ALAMEDA COUNTY

DEC 05 2019

CLERK OF THE SUPERIOR COURT

BY: TIM LOPEZ
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,)

Plaintiff,)

v.)

CONN-SELMER, INC., *et al.*,)

Defendants.)

Case No. RG 19010030

T.L. partial T.C.
~~PROPOSED~~ CONSENT JUDGMENT
RE: JODYJAZZ, INC.

1. INTRODUCTION

1.1 The Parties to this Consent Judgment are the Center for Environmental Health, a California non-profit corporation ("CEH") and JodyJazz Inc. ("Settling Defendant"). CEH and Settling Defendant (the "Parties") enter into this Consent Judgment to settle certain claims asserted by CEH against Settling Defendant as set forth in the operative complaint ("Complaint") in the above-captioned matter.

1.2 On or about December 21, 2018, CEH provided a 60-day Notice of Violation of

1 Proposition 65 to the California Attorney General, the District Attorneys of every county in
2 California, the City Attorneys of every California city with a population greater than 750,000,
3 and to Settling Defendant, alleging that Settling Defendant violated Proposition 65 by exposing
4 persons to lead contained in mouthpieces used with brass instruments without first providing a
5 clear and reasonable Proposition 65 warning.

6 1.3 Settling Defendant is a corporation or other business entity that manufactures,
7 distributes, sells, or offers for sale Covered Products that are sold in the State of California or has
8 done so in the past.

9 1.4 On March 7, 2019, CEH filed the original Complaint in the above-captioned
10 matter naming Settling Defendant and Sam Ash Music Corporation (“Sam Ash”) as a defendants.

11 1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court
12 has jurisdiction over the allegations of violations contained in the Complaint and personal
13 jurisdiction over Settling Defendant as to the acts alleged in the Complaint, that venue is proper
14 in the County of Alameda, and that this Court has jurisdiction to enter and enforce this Consent
15 Judgment as a full and final resolution of all claims which were or could have been raised in the
16 Complaint based on the facts alleged therein with respect to Covered Products manufactured,
17 distributed, and/or sold by Settling Defendant and Sam Ash.

18 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by the
19 Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with
20 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
21 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
22 prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any
23 other pending or future legal proceedings. This Consent Judgment is the product of negotiation
24 and compromise and is accepted by the Parties solely for purposes of settling, compromising, and
25 resolving issues disputed in this Action.

26 **2. DEFINITIONS**

27 2.1 The “Complaint” means the operative complaint in the above-captioned matter.

1 2.2 “Covered Products” means mouthpieces used with brass musical instruments.

2 2.3 “Effective Date” means the date on which notice of entry of this Consent
3 Judgment by the Court is served upon Settling Defendant.

4 2.4 “Reformulation Level” means 100 parts per million (“ppm”) lead.

5 **3. INJUNCTIVE RELIEF**

6 3.1 **Reformulation of Covered Products.** Commencing July 31, 2020 (the
7 “Compliance Date”), Settling Defendant shall not purchase, manufacture, ship, sell, or offer for
8 sale Covered Products that will be sold or offered for sale in California that contain lead in excess
9 the Reformulation Level.

10 3.2 **Clear and Reasonable Warnings.**

11 3.2.1 **Interim Warnings.** As of the Effective Date and up until the
12 Compliance Date, no Covered Product purchased, manufactured, shipped, sold or offered for sale
13 by Settling Defendant may be sold or offered for sale in California unless it contains a Clear and
14 Reasonable Warning that complies with the provisions of this Section 3.2. A Clear and
15 Reasonable Warning under this Agreement shall state:



17 **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov.

18 The word “**WARNING**” shall be displayed in all capital letters and bold print and shall be
19 preceded by the yellow warning triangle symbol depicted above. This warning statement shall be
20 prominently displayed on the outer packaging of the Covered Product and shall be displayed with
21 such conspicuousness, as compared with other words, statements or designs as to render it likely
22 to be seen, read and understood by an ordinary individual prior to sale. The warning statement
23 must be set off from other surrounding information and enclosed in a text box. For internet,
24 catalog or any other sale where the consumer is not physically present, the warning statement
25 shall be displayed in such a manner that it is likely to be read and understood by an ordinary
26 individual prior to the authorization of or actual payment.
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1 3.2.2 **Election to Warn Permanently.** If Settling Defendant is unable to
2 comply with the Reformulation provision set forth in Section 3.1 or otherwise elect to
3 permanently avail themselves of the warning option provided by this Section 3.2, Settling
4 Defendant shall provide written notice to CEH prior to the Compliance Date, and Settling
5 Defendant concurrently shall make the additional payment specified in Section 5.2.5 below.
6 Settling Defendant shall then continue to provide warnings in accordance with this Section 3.2
7 for each Covered Product sold in California.

8 **4. ENFORCEMENT**

9 4.1 **General Enforcement Provisions.** CEH may, by motion or application for an
10 order to show cause before this Court, enforce the terms and conditions contained in this Consent
11 Judgment. Prior to bringing any motion or application to enforce the requirements of Section 3
12 above, CEH shall provide Settling Defendant with a notice setting forth the factual basis for the
13 alleged violation of Section 3 (“Notice of Violation”). The Parties shall then meet and confer
14 regarding the basis for CEH’s anticipated motion or application in an attempt to resolve it
15 informally. Should such attempts at informal resolution fail, CEH may file its enforcement
16 motion or application. The prevailing party on any motion to enforce this Consent Judgment
17 shall be entitled to its fees and costs associated with the motion. In addition, should CEH prevail
18 on a motion to enforce the Consent Judgment, Settling Defendant shall pay \$15,000 to be
19 allocated between a civil penalty and Additional Settlement Payment as follows: 57% to civil
20 penalties and 43% to ASP. In the event that Settling Defendant does not contest CEH’s Notice of
21 Violation, Settling Defendant shall pay \$5,000 to be divided between a Civil Penalty and
22 Additional Settlement Payment in accordance with the allocation set forth above.

23 **5. PAYMENTS**

24 5.1 **Payments by Settling Defendant.** Within five (5) calendar days of the Effective
25 Date, Settling Defendant shall pay the total sum of \$27,500 as a settlement payment as further set
26 forth in this Section.

27 5.2 **Allocation of Payments.** The total settlement amount for Settling Defendant shall
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1 be paid in five (5) separate checks in the amounts specified below and delivered as set forth
2 below. Any failure by Settling Defendant to comply with the payment terms herein shall be
3 subject to a joint and several stipulated late fee to be paid by Settling Defendant in the amount of
4 \$100 for each day the full payment is not received after the applicable payment due date set forth
5 in Section 5.1. The late fees required under this Section shall be recoverable, together with
6 reasonable attorneys' fees, in an enforcement proceeding brought pursuant to Section 4 of this
7 Consent Judgment. The funds paid by Settling Defendant shall be allocated as set forth below
8 between the following categories and made payable as follows:

9 5.2.1 \$2,949 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).

10 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §
11 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health
12 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty
13 payment for \$2,212 shall be made payable to OEHHA and associated with taxpayer identification
14 number 68-0284486. This payment shall be delivered as follows:

15 For United States Postal Service Delivery:

16 Attn: Mike Gyurics
17 Fiscal Operations Branch Chief
18 Office of Environmental Health Hazard Assessment
19 P.O. Box 4010, MS #19B
20 Sacramento, CA 95812-4010

21 For Non-United States Postal Service Delivery:

22 Attn: Mike Gyurics
23 Fiscal Operations Branch Chief
24 Office of Environmental Health Hazard Assessment
25 1001 I Street, MS #19B
26 Sacramento, CA 95814

27 The CEH portion of the civil penalty payment for \$737 shall be made
28 payable to the Center for Environmental Health and associated with taxpayer identification
number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero
Street, San Francisco, CA 94117.

1 5.2.2 \$2,211 as an Additional Settlement Payment (“ASP”) to CEH pursuant to
2 Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH
3 intends to place these funds in CEH’s Toxics and Youth Fund and use them to: (1) support CEH
4 programs and activities that seek to educate the public about lead and other toxic chemicals in
5 consumer products that are marketed to youth; (2) expand its use of social media to communicate
6 with Californians about the risks of exposures to lead in the products they and their children use
7 and about ways to reduce those exposures; and (3) work with industries that market products to
8 youth to reduce exposures to lead and other toxic chemicals, and thereby reduce the public health
9 impacts and risks of exposures to lead and other toxic chemicals in consumer products that are
10 marketed to youth in California. CEH shall obtain and maintain adequate records to document
11 that ASPs are spent on these activities and CEH agrees to provide such documentation to the
12 Attorney General within thirty (30) days of any request from the Attorney General. The payment
13 pursuant to this Section shall be made payable to the Center for Environmental Health and
14 associated with taxpayer identification number 94-3251981. This payment shall be delivered to
15 Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

16 5.2.3 \$22,340 as a reimbursement of a portion of CEH’s reasonable attorneys’
17 fees and costs. The attorneys’ fees and cost reimbursement shall be made in two separate checks
18 as follows: (a) \$18,660 payable to the Lexington Law Group and associated with taxpayer
19 identification number 94-3317175; and (b) \$3,680 payable to the Center for Environmental
20 Health and associated with taxpayer identification number 94-3251981. Both of these payments
21 shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.
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5.2.4 To summarize, Settling Defendant shall deliver checks made out to the payees and in the amounts set forth below:

Payee	Type	Amount	Deliver To
OEHHA	Penalty	\$2,212	OEHHA per Section 5.2.1
Center For Environmental Health	Penalty	\$737	LLG
Center For Environmental Health	ASP	\$2,211	LLG
Lexington Law Group	Fee and Cost	\$18,660	LLG
Center For Environmental Health	Fee and Cost	\$3,680	LLG

5.2.5 If Settling Defendant avails itself of the permanent warning option provided for by Section 3.2, Settling Defendant shall make an additional payment of \$7,500 to be split between a civil penalty and ASP as set forth herein, concurrently with its written notice as provided in Section 3.2. Of the additional payment, \$4,286 shall be a civil penalty, apportioned in accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment of \$3,216 shall be made payable to OEHHA, associated with taxpayer identification number 68-0284486, and sent to the OEHHA address set forth in section 5.2.1 above. The CEH portion of the additional civil penalty payment of \$1,070 shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. The remaining \$3,214 of the additional payment shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981 and shall be used as set forth in Section 5.2.2 above. Both payments to CEH shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.2.6 Notwithstanding the provisions of the Enforcement of Judgments Law and Code of Civil Procedure § 780.160, in the event that Settling Defendant does not comply fully with its payment obligations under this Section 5, in addition to any other enforcement mechanism available to CEH, CEH may seek an order requiring Settling Defendant to submit to a

debtor's examination in the Alameda County Superior Court. In the event that Settling Defendant fails to submit to any such debtor's examination ordered by the Court, CEH may seek an order holding Settling Defendant in contempt of Court.

6. MODIFICATION AND DISPUTE RESOLUTION

6.1 Modification. This Consent Judgment may be modified from time to time by express written agreement of the Parties, with the approval of the Court, or by an order of this Court upon motion and in accordance with law.

6.2 Notice; Meet and Confer. Any Party seeking to modify this Consent Judgment shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to modify the Consent Judgment.

7. CLAIMS COVERED AND RELEASE

7.1 Provided that Settling Defendant complies in full with its obligations under Section 5 hereof, this Consent Judgment is a full, final, and binding resolution between CEH on behalf of itself and the public interest and Settling Defendant and its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, agents, shareholders, successors, assigns, and attorneys ("Defendant Releasees"), and all entities to which Settling Defendant directly or indirectly distribute or sell Covered Products, including but not limited to Sam Ash and any and all distributors, wholesalers, customers, retailers, franchisees, licensors, and licensees ("Downstream Defendant Releasees"), of any violation of Proposition 65 based on failure to warn about alleged exposure to lead contained in Covered Products that were sold, distributed or offered for sale by Settling Defendant prior to the Compliance Date.

7.2 Provided that Settling Defendant complies in full with its obligations under Section 5 hereof, CEH, for itself, its agents, successors and assigns, releases, waives, and forever discharges any and all claims against Settling Defendant, Defendant Releasees, Sam Ash and Downstream Defendant Releasees arising from any violation of Proposition 65 or any other statutory or common law claims that have been or could have been asserted by CEH individually or in the public interest regarding the failure to warn about exposure to lead arising in connection

1 with Covered Products manufactured, distributed or sold by Settling Defendant prior to the
2 Compliance Date.

3 7.3 Provided that Settling Defendant complies in full with its obligations under
4 Section 5 hereof, compliance with the terms of this Consent Judgment by Settling Defendant
5 shall constitute compliance with Proposition 65 by Settling Defendant, Defendant Releasees, and
6 Downstream Defendant Releasees with respect to any alleged failure to warn about lead in
7 Covered Products manufactured, distributed or sold by Settling Defendant after the Compliance
8 Date.

9 **8. PROVISION OF NOTICE**

10 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
11 notice shall be sent by first class and electronic mail to:

12 Mark N. Todzo
13 Lexington Law Group
14 503 Divisadero Street
15 San Francisco, CA 94117
16 mtodzo@lexlawgroup.com

17 8.2 When Settling Defendant is entitled to receive any notice under this Consent
18 Judgment, the notice shall be sent by first class and electronic mail to:

19 Brent M. Davis
20 Scarinci Hollenbeck
21 1100 Valley Brook Avenue, P.O. Box 790
22 Lyndhurst, N.J. 07071
23 bdavis@sh-law.com

24 Any Party may modify the person and/or address to whom the notice is to be sent by sending the
25 other Party notice by first class and electronic mail.
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1 **9. COURT APPROVAL**

2 9.1 This Consent Judgment shall become effective upon the date signed by CEH and
3 Settling Defendant, whichever is later, provided however, that CEH shall prepare and file a
4 Motion for Approval of this Consent Judgment and Settling Defendant shall support entry of this
5 Consent Judgment by the Court.

6 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
7 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
8 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

9 **10. GOVERNING LAW AND CONSTRUCTION**

10 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
11 California.

12 **11. ATTORNEYS' FEES**

13 11.1 A Party who unsuccessfully brings or contests an action, motion, or application
14 arising out of this Consent Judgment shall be required to pay the prevailing Party's reasonable
15 attorneys' fees and costs.

16 11.2 Nothing in this Section 11 shall preclude a Party from seeking an award of
17 sanctions pursuant to law.

18 **12. ENTIRE AGREEMENT**

19 12.1 This Consent Judgment contains the sole and entire agreement and understanding
20 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
21 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
22 and therein. There are no warranties, representations, or other agreements between the Parties
23 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
24 other than those specifically referred to in this Consent Judgment have been made by any Party
25 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
26 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
27 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
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Parties hereto only to the extent that they are expressly incorporated herein. No supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

13. RETENTION OF JURISDICTION

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

14. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT

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 and to enter into and execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

15. NO EFFECT ON OTHER SETTLEMENTS


15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim against an entity that is not Settling Defendant on terms that are different from those contained in this Consent Judgment, with the exception of Sam Ash as pertaining to the Covered Products

16. EXECUTION IN COUNTERPARTS

16.1 The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile or portable document format (pdf), which taken together shall be deemed to constitute one document.

**IT IS SO ORDERED, ADJUDGED,
AND DECREED.**

Dated: 12/5/19



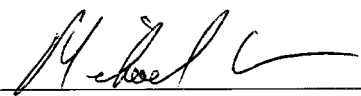
Judge of the Superior Court

JO-LYNNE Q. LEE

1 **IT IS SO STIPULATED:**

2
3 Dated: 7/25, 2019

CENTER FOR ENVIRONMENTAL HEALTH

4
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6 Signature 

7 Printed Name

8 Michael Green

9 Title

10 CEO

11
12 Dated: _____, 2019

JODYJAZZ INC.

13
14
15 Signature _____

16 Printed Name _____

17 Title _____

1 **IT IS SO STIPULATED:**

2
3 Dated: _____, 2019

CENTER FOR ENVIRONMENTAL HEALTH

4
5
6 Signature _____

7
8 Printed Name _____

9
10 Title _____

11
12
13 Dated: 7/30, 2019

JODYJAZZ INC.

14
15
16 Signature Jody Espina

17
18 Printed Name JODY ESPINA

19
20 Title President