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**FILED**  
**ALAMEDA COUNTY**

JUN 17 2020

CLERK OF THE SUPERIOR COURT

By [Signature] 12/15/20  
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

<sup>mc Partial mc</sup>  
~~PROPOSED~~ CONSENT JUDGMENT  
AS TO THEO WANNE HOLDINGS,  
LLC

**1. INTRODUCTION**

1.1 The Parties to this Consent Judgment are the Center for Environmental Health, a California non-profit corporation ("CEH") and Theo Wanne Holdings, LLC ("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 mouthpieces used with brass instruments without first providing a clear  
5 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 as a defendant.

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.

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 nine months after the  
7 Effective Date (the "Compliance Date"), Settling Defendant shall not purchase, manufacture,  
8 ship, sell, or offer for sale Covered Products that will be sold or offered for sale in California that  
9 contain lead in excess 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:



18 **WARNING**

19 This product can expose you to lead, which is known to the State of California  
20 to cause cancer, birth defects and other reproductive harm. For more  
21 information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

22 The word "**WARNING**" shall be displayed in all capital letters and bold print and shall be  
23 preceded by the yellow warning triangle symbol depicted above. This warning statement shall be  
24 prominently displayed on the outer packaging of the Covered Product and shall be displayed with  
25 such conspicuousness, as compared with other words, statements or designs as to render it likely  
26 to be seen, read and understood by an ordinary individual prior to sale. The warning statement  
27 must be set off from other surrounding information and enclosed in a text box. For internet,

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catalog or any other sale where the consumer is not physically present, the warning statement shall be displayed in such a manner that it is likely to be read and understood by an ordinary individual prior to the authorization of or actual payment.

**3.2.2 Election to Warn Permanently.** If Settling Defendant is unable to comply with the Reformulation provision set forth in Section 3.1 or otherwise elect to permanently avail themselves of the warning option provided by this Section 3.2, Settling Defendant shall provide written notice to CEH prior to the Compliance Date, and Settling Defendant concurrently shall make the additional payment specified in Section 5.4 below. Settling Defendant shall then continue to provide warnings in accordance with this Section 3.2 for each Covered Product sold in California.

#### **4. ENFORCEMENT**

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

#### **5. PAYMENTS**

**5.1 Payments by Settling Defendant.** Settling Defendant shall pay the total sum of

1 \$24,000 as an initial settlement payment payable in two payments as further set forth in this  
2 Section. The total initial payment shall be allocated as set forth below in Section 5.2. The  
3 schedule of the payments is set forth in Section 5.3.

4 **5.2 Allocation of Payments.** The total of the initial settlement payments by Settling  
5 Defendant shall be allocated as set for in Sections 5.2.1 to 5.2.3. The payments shall be paid and  
6 delivered according to the schedule set forth in Section 5.3. Any failure by Settling Defendant to  
7 comply with the payment terms herein shall be subject to a joint and several stipulated late fee to  
8 be paid by Settling Defendant in the amount of \$100 for each day the full payment is not received  
9 after the applicable payment due date set forth in Section 5.3. The late fees required under this  
10 Section shall be recoverable, together with reasonable attorneys' fees, in an enforcement  
11 proceeding brought pursuant to Section 4 of this Consent Judgment. The funds paid by Settling  
12 Defendant shall be allocated as set forth below between the following categories and made  
13 payable as follows:

14 **5.2.1** \$2,469 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).  
15 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §  
16 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health  
17 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty  
18 payment for \$1,852 shall be made payable to OEHHA and associated with taxpayer identification  
19 number 68-0284486. This payment shall be delivered as follows:

20 For United States Postal Service Delivery:

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

24 For Non-United States Postal Service Delivery:

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

1 The CEH portion of the civil penalty payment for \$617 shall be made  
2 payable to the Center for Environmental Health and associated with taxpayer identification  
3 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero  
4 Street, San Francisco, CA 94117.

5 5.2.2 \$1,851 as an Additional Settlement Payment ("ASP") to CEH pursuant to  
6 Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH  
7 intends to place these funds in CEH's Toxics and Youth Fund and use them to: (1) support CEH  
8 programs and activities that seek to educate the public about lead and other toxic chemicals in  
9 consumer products that are marketed to youth; (2) expand its use of social media to communicate  
10 with Californians about the risks of exposures to lead in the products they and their children use  
11 and about ways to reduce those exposures; and (3) work with industries that market products to  
12 youth to reduce exposures to lead and other toxic chemicals, and thereby reduce the public health  
13 impacts and risks of exposures to lead and other toxic chemicals in consumer products that are  
14 marketed to youth in California. CEH shall obtain and maintain adequate records to document  
15 that ASPs are spent on these activities and CEH agrees to provide such documentation to the  
16 Attorney General within thirty (30) days of any request from the Attorney General. The payment  
17 pursuant to this Section shall be made payable to the Center for Environmental Health and  
18 associated with taxpayer identification number 94-3251981. This payment shall be delivered to  
19 Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

20 5.2.3 \$19,680 as a reimbursement of a portion of CEH's reasonable attorneys'  
21 fees and costs. The attorneys' fees and cost reimbursement shall be made in two separate checks  
22 as follows: (a) \$16,420 payable to the Lexington Law Group and associated with taxpayer  
23 identification number 94-3317175; and (b) \$3,260 payable to the Center for Environmental  
24 Health and associated with taxpayer identification number 94-3251981. Both of these payments  
25 shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

26 5.3 The initial payment totaling \$24,000 shall be divided and made payable as set  
27 forth in this section. The first payment of \$12,000 shall be due within five days following the  
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Effective Date. The second payment of \$12,000 shall be due within 90 days following the Effective Date. Settling Defendant shall deliver checks made out to the payees in the amounts and on the dates set forth below:

Payment Deadline	Payee	Type	Amount	Deliver To
5 days after Effective Date	OEHHA	Penalty	\$1,852	OEHHA per Section 5.2.1
5 days after Effective Date	Center For Environmental Health	Penalty	\$617	LLG
5 days after Effective Date	Center For Environmental Health	ASP	\$1,851	LLG
5 days after Effective Date	Center For Environmental Health	Fee and Cost	\$3,260	LLG
5 days after Effective Date	Lexington Law Group	Fee and Cost	\$4,420	LLG
90 day after Effective Date	Lexington Law Group	Fee and Cost	\$12,000	LLG
<b>Total</b>			<b>\$24,000</b>	

5.4 If Settling Defendant avails itself of the permanent warning option provided for by Section 3.2, in lieu of reformulation, Settling Defendant shall make an additional payment of \$7,500 as 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 payment 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 for \$3,215 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 for \$1,071 shall be made payable to the Center for Environmental Health and associated with

1 taxpayer identification number 94-3251981. The remaining \$3,214 of the additional payment  
2 shall be made payable to the Center for Environmental Health and associated with taxpayer  
3 identification number 94-3251981 and shall be used as set forth in Section 5.2.2 above. These  
4 payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA  
5 94117.

6 5.5 Notwithstanding the provisions of the Enforcement of Judgments Law and Code  
7 of Civil Procedure § 780.160, in the event that Settling Defendant does not comply fully with its  
8 payment obligations under this Section 5, in addition to any other enforcement mechanism  
9 available to CEH, CEH may seek an order requiring Settling Defendant to submit to a debtor's  
10 examination in the Alameda County Superior Court. In the event that Settling Defendant fails to  
11 submit to any such debtor's examination ordered by the Court, CEH may seek an order holding  
12 Settling Defendant in contempt of Court.

## 13 6. MODIFICATION AND DISPUTE RESOLUTION

14 6.1 **Modification.** This Consent Judgment may be modified from time to time by  
15 express written agreement of the Parties, with the approval of the Court, or by an order of this  
16 Court upon motion and in accordance with law.

17 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment  
18 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
19 modify the Consent Judgment.

## 20 7. CLAIMS COVERED AND RELEASE

21 7.1 Provided that Settling Defendant complies in full with its obligations under  
22 Section 5 hereof, this Consent Judgment is a full, final, and binding resolution between CEH on  
23 behalf of itself and the public interest and Settling Defendant and its parents, subsidiaries,  
24 affiliated entities that are under common ownership, directors, officers, employees, agents,  
25 shareholders, successors, assigns, and attorneys ("Defendant Releasees"), and all entities to  
26 which Settling Defendant directly or indirectly distribute or sell Covered Products, including but  
27 not limited to distributors, wholesalers, customers, retailers, franchisees, licensors, and licensees

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1 (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on failure to warn  
2 about alleged exposure to lead contained in Covered Products that were sold, distributed or  
3 offered for sale by Settling Defendant prior to the Compliance Date.

4 7.2 Provided that Settling Defendant complies in full with its obligations under  
5 Section 5 hereof, CEH, for itself, its agents, successors and assigns, releases, waives, and forever  
6 discharges any and all claims against Settling Defendant, Defendant Releasees, and Downstream  
7 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or  
8 common law claims that have been or could have been asserted by CEH individually or in the  
9 public interest regarding the failure to warn about exposure to lead arising in connection with  
10 Covered Products manufactured, distributed or sold by Settling Defendant prior to the  
11 Compliance Date.

12 7.3 Provided that Settling Defendant complies in full with its obligations under  
13 Section 5 hereof, compliance with the terms of this Consent Judgment by Settling Defendant  
14 shall constitute compliance with Proposition 65 by Settling Defendant, Defendant Releasees, and  
15 Downstream Defendant Releasees with respect to any alleged failure to warn about lead in  
16 Covered Products manufactured, distributed or sold by Settling Defendant after the Compliance  
17 Date.

18 **8. PROVISION OF NOTICE**

19 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the  
20 notice shall be sent by first class and electronic mail to:

21 Mark N. Todzo  
22 Lexington Law Group  
23 503 Divisadero Street  
24 San Francisco, CA 94117  
mtodzo@lexlawgroup.com

25 8.2 When Settling Defendant is entitled to receive any notice under this Consent  
26 Judgment, the notice shall be sent by first class and electronic mail to:  
27  
28

1 John Epperson  
2 Buchalter  
3 55 Second Street, Suite 1700  
4 San Francisco, CA 94105-3493  
5 jepperson@buchalter.com

6 Any Party may modify the person and/or address to whom the notice is to be sent by sending the  
7 other Party notice by first class and electronic mail.

8 **9. COURT APPROVAL**

9 9.1 This Consent Judgment shall become effective upon the date signed by CEH and  
10 Settling Defendant, whichever is later, provided however, that CEH shall prepare and file a  
11 Motion for Approval of this Consent Judgment and Settling Defendant shall support entry of this  
12 Consent Judgment by the Court.

13 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or  
14 effect and shall not be introduced into evidence or otherwise used in any proceeding for any  
15 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

16 **10. GOVERNING LAW AND CONSTRUCTION**

17 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
18 California.

19 **11. ATTORNEYS' FEES**

20 11.1 A Party who unsuccessfully brings or contests an action, motion, or application  
21 arising out of this Consent Judgment shall be required to pay the prevailing Party's reasonable  
22 attorneys' fees and costs.

23 11.2 Nothing in this Section 11 shall preclude a Party from seeking an award of  
24 sanctions pursuant to law.

25 **12. ENTIRE AGREEMENT**

26 12.1 This Consent Judgment contains the sole and entire agreement and understanding  
27 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
28 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein  
and therein. There are no warranties, representations, or other agreements between the Parties

except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Consent Judgment have been made by any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the 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.

### **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.

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

3  
4 Dated: \_\_\_\_\_  
5 Judge of the Superior Court

6 **IT IS SO STIPULATED:**

7  
8 Dated: \_\_\_\_\_, 2019

**CENTER FOR ENVIRONMENTAL HEALTH**

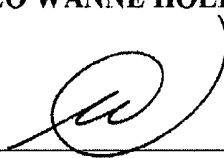
9  
10  
11 Signature \_\_\_\_\_

12  
13 Printed Name \_\_\_\_\_

14  
15 Title \_\_\_\_\_

16  
17  
18 Dated: 11-13, 2019

**THEO WANNE HOLDINGS, LLC**

19  
20   
21 Signature \_\_\_\_\_

22 Allen Theodore Wanne \_\_\_\_\_  
23 Printed Name

24 President \_\_\_\_\_  
25 Title

1 IT IS SO ORDERED, ADJUDGED,  
2 AND DECREED.

3  
4 Dated:

June 17, 2020



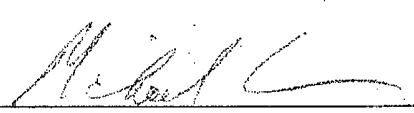
Judge of the Superior Court  
RICHARD L. SEABOLT

6 IT IS SO STIPULATED:

7  
8 Dated:

1/16, 2019 2020

CENTER FOR ENVIRONMENTAL HEALTH

  
Signature

Michael Green  
Printed Name

CEO  
Title

17 Dated: \_\_\_\_\_, 2019

THEO WANNE HOLDINGS, LLC

Signature

Printed Name

Title

Superior Court of California, County of Alameda

Hayward Hall of Justice

Case Number: RG19010030

**DECLARATION OF SERVICE BY MAIL**

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage pre-paid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 24405 Amador Street, Hayward, CA. Copies were provided to parties attending hearing.

Executed on: 06/18/2020

Lexington Law Group  
Attn: Todzo, Mark N.  
503 Divisadero Street  
San Francisco, CA 94117 \_\_\_\_\_

Chad Finke Executive Officer / Clerk of the Superior Court

By



Deputy Clerk