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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
7c. Partial J.E.
**[PROPOSED] CONSENT JUDGMENT
AS TO EASTMAN MUSIC COMPANY**

1. INTRODUCTION

1.1 The Parties to this Consent Judgment are the Center for Environmental Health, a California non-profit corporation ("CEH") and Eastman Music Company, referred to herein as "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 January 4, 2019, 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. On March 20, 2019, CEH amended the Complaint naming Settling Defendant as a
11 defendant.

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

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

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1 **2. DEFINITIONS**

2 2.1 The “Complaint” means the operative complaint in the above-captioned matter.

3 2.2 The “Compliance Date” means July 31, 2020.

4 2.3 “Covered Products” means brass mouthpieces used with musical instruments.

5 2.4 “Effective Date” means the date on which notice of entry of this Consent
6 Judgment by the Court is served upon Settling Defendant.

7 2.5 “Election Date” is the date by which Settling Defendant must elect whether it will
8 reformulate in accordance with Section 3.1, which shall be six months after the Effective Date.


9 2.6 “Reformulation Level” means 100 parts per million (“ppm”) lead.

10 **3. INJUNCTIVE RELIEF**

11 3.1 **Reformulation of Covered Products.** As of the Compliance Date, Settling
12 Defendant shall not purchase, manufacture, ship, sell, or offer for sale Covered Products that will
13 be sold or offered for sale in California that contain lead in excess of the Reformulation Level.
14 As set forth in Section 3.2.2, Settling Defendant shall provide written notice to CEH regarding
15 whether it will reformulate the Covered Products on or before the Election Date.

16 3.2 **Clear and Reasonable Warnings.**

17 3.2.1 **Interim Warnings.** As of the Effective Date and up until the
18 Compliance Date, no Covered Product purchased, manufactured, shipped, sold or offered for sale
19 by Settling Defendant may be sold or offered for sale in California unless it contains a Clear and
20 Reasonable Warning that complies with the provisions of this Section 3.2. A Clear and
21 Reasonable Warning under this Agreement shall state:

22 ** WARNING:** This product can expose you to lead, which is known to the
23 State of California to cause cancer, birth defects and other reproductive harm.
24 For more information go to www.P65Warnings.ca.gov.

25
26 The word “**WARNING**” shall be displayed in all capital letters and bold print and shall be
27 preceded by the warning triangle symbol depicted above of at least the same height. The warning

1 triangle symbol may be printed in black and white in lieu of yellow and black. This warning
2 statement shall be prominently displayed on the outer packaging of the Covered Product and shall
3 be displayed with such conspicuousness, as compared with other words, statements or designs as
4 to render it likely to be seen, read and understood by an ordinary individual prior to sale.
5 Alternatively, Settling Defendant will give notice, including all warning materials, to its retailer
6 customers with shelf signs bearing the warning to be displayed in proximity to the Covered
7 Product with such conspicuousness, as compared with other words, statements or designs as to
8 render it likely to be seen, read and understood by an ordinary individual prior to sale. A shelf
9 sign warning must clearly identify the Covered Product(s) to which it applies (the “Retail
10 Warning”). For internet, catalog or any other sale by Settling Defendant where the consumer is
11 not physically present, the warning statement shall be displayed in such a manner that it is likely
12 to be read and understood by an ordinary individual prior to the authorization of or actual
13 payment. Settling Defendant also will give notice to its retail customers of the warning language
14 to be used for their internet and catalog sales of the Covered Products.

15 **3.2.2 Election to Warn Permanently.** If Settling Defendant is unable to
16 comply with the Reformulation provision set forth in Section 3.1 or otherwise elects to
17 permanently avail itself of the warning option provided by this Section 3.2, Settling Defendant
18 shall provide written notice to CEH prior to the Election Date, and Settling Defendant
19 concurrently shall make the additional payment specified in Section 5.2.4 below. Settling
20 Defendant shall then continue to provide warnings in accordance with this Section 3.2 for each
21 Covered Product sold in California.

22 **4. ENFORCEMENT**

23 **4.1 General Enforcement Provisions.** CEH may, by motion or application for an
24 order to show cause before this Court, enforce the terms and conditions contained in this Consent
25 Judgment. Prior to bringing any motion or application to enforce the requirements of Section 3
26 above, CEH shall provide Settling Defendant with a notice setting forth the factual basis for the
27 alleged violation of Section 3 (“Notice of Violation”). The Parties shall then meet and confer
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1 regarding the basis for CEH’s anticipated motion or application in an attempt to resolve it
2 informally. Should such attempts at informal resolution fail, CEH may file its enforcement
3 motion or application. The prevailing party on any motion to enforce this Consent Judgment
4 shall be entitled to its fees and costs associated with the motion. In addition, should CEH prevail
5 on a motion to enforce the Consent Judgment, Settling Defendant shall pay \$15,000 to be
6 allocated between a civil penalty and Additional Settlement Payment as follows: 57% to civil
7 penalties and 43% to ASP. In the event that Settling Defendant does not contest CEH’s Notice of
8 Violation, Settling Defendant shall pay \$5,000 to be divided between a Civil Penalty and
9 Additional Settlement Payment in accordance with the allocation set forth above.

10 **5. PAYMENTS**

11 5.1 **Payments by Settling Defendant.** Within ten (10) court days of the Effective
12 Date, Settling Defendant shall pay the total sum of \$41,500 as a settlement payment as further set
13 forth in this Section.

14 5.2 **Allocation of Payments.** The total settlement amount for Settling Defendant shall
15 be paid in five (5) separate checks in the amounts specified below and delivered as set forth
16 below. Any failure by Settling Defendant to comply with the payment terms herein shall be
17 subject to a joint and several stipulated late fee to be paid by Settling Defendant in the amount of
18 \$100 for each day the full payment is not received after the applicable payment due date set forth
19 in Section 5.1. The late fees required under this Section shall be recoverable, together with
20 reasonable attorneys’ fees, in an enforcement proceeding brought pursuant to Section 4 of this
21 Consent Judgment. The funds paid by Settling Defendant shall be allocated as set forth below
22 between the following categories and made payable as follows:

23 5.2.1 \$4,420 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).
24 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §
25 25249.12 (25% to CEH and 75% to the State of California’s Office of Environmental Health
26 Hazard Assessment (“OEHHA”). Accordingly, the OEHHA portion of the civil penalty
27 payment for \$3,315 shall be made payable to OEHHA and associated with taxpayer identification
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1 number 68-0284486. This payment shall be delivered as follows:

2 For United States Postal Service Delivery:
3 Attn: Mike Gyurics
4 Fiscal Operations Branch Chief
5 Office of Environmental Health Hazard Assessment
6 P.O. Box 4010, MS #19B
7 Sacramento, CA 95812-4010

8 For Non-United States Postal Service Delivery:
9 Attn: Mike Gyurics
10 Fiscal Operations Branch Chief
11 Office of Environmental Health Hazard Assessment
12 1001 I Street, MS #19B
13 Sacramento, CA 95814

14 The CEH portion of the civil penalty payment for \$1,105 shall be made
15 payable to the Center for Environmental Health and associated with taxpayer identification
16 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero
17 Street, San Francisco, CA 94117.

18 5.2.2 \$3,300 as an Additional Settlement Payment (“ASP”) to CEH pursuant to
19 Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH
20 intends to place these funds in CEH’s Toxics and Youth Fund and use them to: (1) support CEH
21 programs and activities that seek to educate the public about lead and other toxic chemicals in
22 consumer products that are marketed to youth; (2) expand its use of social media to communicate
23 with Californians about the risks of exposures to lead in the products they and their children use
24 and about ways to reduce those exposures; and (3) work with industries that market products to
25 youth to reduce exposures to lead and other toxic chemicals, and thereby reduce the public health
26 impacts and risks of exposures to lead and other toxic chemicals in consumer products that are
27 marketed to youth in California. CEH shall obtain and maintain adequate records to document
28 that ASPs are spent on these activities and CEH agrees to provide such documentation to the
Attorney General within thirty (30) days of any request from the Attorney General. The payment
pursuant to this Section shall be made payable to the Center for Environmental Health and

1 associated with taxpayer identification number 94-3251981. This payment shall be delivered to
2 Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

3 5.2.3 \$33,780 as a reimbursement of a portion of CEH’s reasonable attorneys’
4 fees and costs. The attorneys’ fees and cost reimbursement shall be made in two separate checks
5 as follows: (a) \$28,420 payable to the Lexington Law Group and associated with taxpayer
6 identification number 94-3317175; and (b) \$5,360 payable to the Center For Environmental
7 Health and associated with taxpayer identification number 94-3251981. Both of these payments
8 shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

9 5.2.4 To summarize, Settling Defendant shall deliver checks made out to the
10 payees and in the amounts set forth below:

11 Payee	Type	Amount	Deliver To
12 OEHHA	Penalty	\$3,315	OEHHA per Section 5.2.1
13 Center For Environmental Health	Penalty	\$1,105	LLG
14 Center For Environmental Health	ASP	\$3,300	LLG
15 Lexington Law Group	Fee and Cost	\$28,420	LLG
16 Center For Environmental Health	Fee and Cost	\$5,360	LLG

17
18 5.2.5 If Settling Defendant avails itself of the permanent warning option
19 provided for by Section 3.2 Settling Defendant shall make an additional payment of \$12,500 as a
20 civil penalty, concurrently with its written notice as provided in Section 3.2. This additional civil
21 penalty payment shall be apportioned in accordance with Health & Safety Code § 25249.12 (25%
22 to CEH and 75% to the State of California’s Office of Environmental Health Hazard Assessment
23 (“OEHHA”). Accordingly, the OEHHA portion of the civil penalty payment for \$9,375 shall be
24 made payable to OEHHA, associated with taxpayer identification number 68-0284486, and sent
25 to the OEHHA address set forth in section 5.2.1 above. The CEH portion of the additional civil
26 penalty payment for \$3,125 shall be made payable to the Center for Environmental Health and
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1 associated with taxpayer identification number 94-3251981. This payment shall be delivered to
2 Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

3 **6. MODIFICATION AND DISPUTE RESOLUTION**

4 6.1 **Modification.** This Consent Judgment may be modified from time to time by
5 express written agreement of the Parties, with the approval of the Court, or by an order of this
6 Court upon motion and in accordance with law.

7 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
8 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
9 modify the Consent Judgment.

10 **7. CLAIMS COVERED AND RELEASE**

11 7.1 Provided that Settling Defendant complies in full with its obligations under
12 Section 5 hereof, this Consent Judgment is a full, final, and binding resolution between CEH on
13 behalf of itself, its parents, subsidiaries, affiliates, officers, directors, employees, agents,
14 shareholders, assigns, attorneys, the predecessors, successors of each of them (“CEH Releasers”),
15 and the public interest and Settling Defendant and its parents, subsidiaries, affiliated entities that
16 are under common ownership, directors, officers, employees, agents, shareholders, successors,
17 assigns, and attorneys (“Defendant Releasees”), and all entities to which Settling Defendant
18 directly or indirectly distributes or sells Covered Products, including but not limited to
19 distributors, wholesalers, customers, retailers, franchisees, licensors, and licensees (“Downstream
20 Defendant Releasees”), of any violation of Proposition 65 based on failure to warn about alleged
21 exposure to lead contained in Covered Products that were sold, distributed or offered for sale by
22 Settling Defendant prior to the Compliance Date.

23 7.2 Provided that Settling Defendant complies in full with its obligations under
24 Section 5 hereof, CEH, for itself, and the CEH Releasers, releases, waives, and forever
25 discharges any and all claims against Settling Defendant, Defendant Releasees, and Downstream
26 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
27 common law claims that have been or could have been asserted by CEH individually or in the
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1 public interest regarding the failure to warn about exposure to lead arising in connection with
2 Covered Products manufactured, distributed or sold by Settling Defendant prior to the
3 Compliance Date.

4 7.3 Provided that Settling Defendant complies in full with its obligations under
5 Section 5 hereof, compliance with the terms of this Consent Judgment by Settling Defendant
6 shall constitute compliance with Proposition 65 by Settling Defendant, Defendant Releasees and
7 Downstream Defendant Releasees with respect to any alleged failure to warn about lead in
8 Covered Products manufactured, distributed or sold by Settling Defendant after the Compliance
9 Date. However, to the extent Settling Defendant elects to utilize the Retail Warning and/or its
10 retail customers sell Covered Products over the internet, the release set forth in Section 7.3 shall
11 apply to Downstream Defendant Releasees only to the extent the retail customers post the Retail
12 Warning and/or properly provide the internet warning for the Covered Products.

13 **8. PROVISION OF NOTICE**

14 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
15 notice shall be sent by first class and electronic mail to:

16 Mark N. Todzo
17 Lexington Law Group
18 503 Divisadero Street
19 San Francisco, CA 94117
20 mtodzo@lexlawgroup.com

21 8.2 When Settling Defendant is entitled to receive any notice under this Consent
22 Judgment, the notice shall be sent by first class and electronic mail to:

23 Zachary Maltzman
24 Chief Financial Officer
25 Eastman Music Company
26 2158 Pomona Boulevard
27 Pomona, CA 91768
28 ZMaltzman@eastmanstrings.com

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

1 **9. COURT APPROVAL**

2 9.1 This Consent Judgment shall become effective upon the Effective Date. CEH shall
3 prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant shall not
4 oppose entry of this Consent Judgment by the Court.

5 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
6 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
7 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

8 **10. GOVERNING LAW AND CONSTRUCTION**

9 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
10 California.

11 **11. ATTORNEYS' FEES**

12 11.1 A Party who unsuccessfully brings or contests an action, motion, or application
13 arising out of this Consent Judgment shall be required to pay the prevailing Party's reasonable
14 attorneys' fees and costs.

15 11.2 Nothing in this Section 11 shall preclude a Party from seeking an award of
16 sanctions pursuant to law.

17 **12. ENTIRE AGREEMENT**

18 12.1 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, or understandings related thereto, if any, are hereby merged herein
21 and therein. There are no warranties, representations, or other agreements between the Parties
22 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
23 other than those specifically referred to in this Consent Judgment have been made by any Party
24 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
25 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
26 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
27 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
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1 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
2 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
3 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
4 whether or not similar, nor shall such waiver constitute a continuing waiver.

5 **13. RETENTION OF JURISDICTION**

6 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
7 Consent Judgment.

8 **14. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

9 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
10 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
11 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

12 **15. NO EFFECT ON OTHER SETTLEMENTS**

13 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
14 against an entity that is not Settling Defendant on terms that are different from those contained in
15 this Consent Judgment.

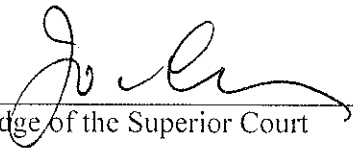
16 **16. EXECUTION IN COUNTERPARTS**

17 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by
18 means of facsimile or portable document format (pdf), which taken together shall be deemed to
19 constitute one document.

20
21 **IT IS SO ORDERED, ADJUDGED,
22 AND DECREED.**

23
24 Dated: _____

12/5/19

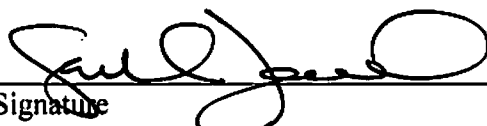
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Judge of the Superior Court

26 **JO-LYNNE O. LEE**

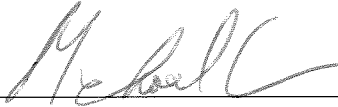
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IT IS SO STIPULATED:

<p>Dated: _____, 2019</p>	<p>CENTER FOR ENVIRONMENTAL HEALTH</p> <hr/> <p>Signature</p> <hr/> <p>Printed Name</p> <hr/> <p>Title</p>
<p>Dated: <u>June 11</u>, 2019</p>	<p>EASTMAN MUSIC COMPANY</p> <hr/>  <p>Signature</p> <hr/> <p><u>Saul Friedgood</u></p> <p>Printed Name</p> <hr/> <p><u>President</u></p> <p>Title</p>

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IT IS SO STIPULATED:

Dated: <u>6/25</u> 2019	CENTER FOR ENVIRONMENTAL HEALTH  _____ Signature <u>Michael Green</u> _____ Printed Name <u>CEO</u> _____ Title
Dated: _____, 2019	EASTMAN MUSIC COMPANY _____ Signature _____ Printed Name _____ Title