

1 PREPARED BY COUNSEL FOR THE PLAINTIFF.

2 **FILED**

3 Superior Court of California
County of San Francisco

4 OCT 08 2025

5 CLERK OF THE SUPERIOR COURT

6 By Victor P. Pomeda Deputy

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN FRANCISCO
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13 CENTER FOR ENVIRONMENTAL HEALTH,)

Case No. CGC-24-615171

14 Plaintiff,)

15 v.)

~~PROPOSED~~ CONSENT JUDGMENT
RE: KHS AMERICA, INC.

16 KHS AMERICA, INC., *et al.*,)

17 Defendants.)
18)
19)
20)
21)

22 **1. INTRODUCTION**

23 1.1 The Parties to this Consent Judgment are the Center for Environmental Health, a
24 California non-profit corporation ("CEH"), and KHS America, Inc. ("Settling Defendant"). CEH
25 and Settling Defendant (the "Parties") enter into this Consent Judgment to settle certain claims
26 asserted by CEH against Settling Defendant as set forth in the operative complaint ("Complaint")
in the above-captioned matter.

27 1.2 On or about February 22, 2024, 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 brass mouthpieces used with musical instruments without first
5 providing a 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 May 31, 2024, 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 San Francisco, and that this Court has jurisdiction to enter and enforce this
15 Consent Judgment as a full and final resolution of all claims which were or could have been
16 raised in the Complaint based on the facts alleged therein with respect to Covered Products
17 manufactured, distributed, and/or sold by Settling Defendant.

18 1.6 Settling Defendant expressly denies the material allegations contained in the
19 Complaint and Notices and maintains that it has not violated Proposition 65 or any other law or
20 legal duty. Defendant expressly denies any liability for any of the claims asserted and the facts
21 alleged in the Complaint and Notices.

22 1.7 Nothing in this Consent Judgment is or shall be construed as an admission by the
23 Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with
24 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
25 conclusion of law, issue of law, or violation of law; nor shall compliance with this Consent
26 Judgment constitute or be construed as an admission by Settling Defendant of any fact, finding,
27 conclusion, issue of law, or violation of law, such being specifically denied by Settling
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1 Defendant. Nothing in this Consent Judgment shall prejudice, waive, or impair any right,
2 remedy, argument, or defense the Parties may have in any other pending or future legal
3 proceedings. This Consent Judgment is the product of negotiation and compromise and is
4 accepted by the Parties solely for purposes of settling, compromising, and resolving issues
5 disputed in this action.

6 **2. DEFINITIONS**

7 2.1 The “Complaint” means the operative complaint in the above-captioned matter.

8 2.2 “Compliance Date” means ninety (90) days after the Effective Date.

9 2.3 “Covered Products” means brass mouthpieces used with musical instruments.

10 2.4 “Effective Date” means the date on which notice of entry of this Consent
11 Judgment by the Court is served upon Settling Defendant.

12 2.5 “Reformulation Level” means 100 parts per million (“ppm”) lead, which shall be
13 determined by total content testing.

14 **3. INJUNCTIVE RELIEF**

15 **3.1 Clear and Reasonable Warnings.**

16 3.1.1 **Warnings.** As of the Compliance Date, any Covered Product that is not
17 a Reformulated Covered Product and is sold or offered for sale in California by Settling
18 Defendant shall contain a Clear and Reasonable Warning that complies with the provisions of this
19 Section 3.1 in the following form:

20 3.1.1.1 **Long Form Warning.**



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

25 3.1.1.2 **Alternative Warnings Prior to January 1, 2028.** Prior to January
26 1, 2028, Settling Defendant may comply with the provisions of this Section 3.1 by displaying the
27 following warning or one of the warnings provided for in Section 3.1.1.3:
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WARNING: Cancer and Reproductive Harm. See www.P65Warnings.ca.gov.

3.1.1.3 **Alternative Warnings Following January 1, 2028.** Beginning on January 1, 2028, the alternative warning provided for in Section 3.1.1.2 shall no longer satisfy the warning provisions of this Consent Judgment. Settling Defendant may continue to comply with the provisions of this Section 3.1 by displaying one of the following warnings:



WARNING: Risk of cancer and reproductive harm from exposure to Lead. See www.P65Warnings.ca.gov;

Or



WARNING: Can expose you to lead, a carcinogen and reproductive toxicant. See www.P65Warnings.ca.gov.

The word “**WARNING**” shall be displayed in all capital letters and bold print and shall be preceded by the yellow warning triangle symbol depicted above. This warning statement shall be prominently displayed on the outer packaging or tag of the Covered Product and shall be displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be seen, read, and understood by an ordinary individual prior to sale. The warning statement must be set off from other surrounding information and enclosed in a text box. For internet, catalog, or any other online 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. The requirements of this Section shall be satisfied if the **Warning or Alternative Warning**, or a clearly marked hyperlink using the word “**WARNING**,” appears on the Covered Product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. Where a sign

1 or label used to provide a warning includes consumer information about a product in a language
2 other than English, the warning shall also be provided in that language in addition to English.

3 **3.2 Optional Reformulation of Covered Products.** After the Compliance Date,
4 Settling Defendant may, ship, sell, or offer for sale Covered Products in California without
5 meeting the warning requirements of Section 3.1 so long as those Covered Products meet the
6 Reformulation Level ("Reformulated Covered Products"). Should Settling Defendant avail itself
7 of this Section 3.2, it shall notify CEH in writing and concurrently with its release of the
8 Reformulated Covered Products of its intent to do so and provide CEH with information to
9 identify the Reformulated Covered Products, such as SKU and product name, as well as a testing
10 result demonstrating that the Reformulated Covered Products meet the Reformulation Level.

11 **3.3 Compliance with Warning Regulations.** Settling Defendant shall be deemed to
12 be in compliance with this Consent Judgment by adhering to Section 3 of this Consent Judgment
13 or by complying with warning requirements adopted or implemented by OEHHA applicable to
14 the Covered Product after the Effective Date.

15 **3.4** Notwithstanding anything else in this Consent Judgment, Covered Products that
16 are manufactured, packaged, or put into commerce on or before the Compliance Date shall be
17 subject to the release of liability pursuant to this Consent Judgment, without regard to when such
18 Covered Products were, or are in the future, distributed or sold to customers. As a result, the
19 obligations of Defendant, or any Releasees (if applicable), stated in this Section 3 do not apply to
20 Covered Products that are manufactured, in the process of being manufactured, packaged, in the
21 process of being packaged, or put into commerce prior to the Compliance Date.

22 **4. ENFORCEMENT**

23 **4.1 General Enforcement Provisions.** CEH may, by motion or application for an
24 order to show cause before the Superior Court of California County of San Francisco, enforce the
25 terms and conditions contained in this Consent Judgment. If a dispute arises with respect to
26 either Party's compliance with the terms of this Consent Judgment, the Parties shall meet and
27 confer in writing and endeavor to resolve the dispute in an amicable manner. No action may be
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1 filed in the absence of such good faith attempt to resolve the dispute beforehand. Should an
2 exceedance of the reformulation standard(s) in Section 3.2 be alleged, Settling Defendant must be
3 provided with written notice and data supporting such an allegation and thirty (30) days to
4 address the allegations before an enforcement motion may be filed. No violation of this Consent
5 Judgment shall be deemed to occur if Settling Defendant demonstrates that its own testing of the
6 Covered Product at issue is in accordance with Section 3.2. Only CEH may enforce the terms of
7 this Consent Judgment.

8 4.2 The inability of Settling Defendant to comply with any deadline set forth in this
9 Consent Judgment due to an act of terrorism, fire, earthquake, civil disorders, war, or act of God
10 that is beyond the reasonable control of Settling Defendant shall be grounds to move for
11 modification of the deadlines set forth in this Consent Judgment.

12 4.3 CEH and its attorneys shall be entitled to collect their reasonable fees and costs
13 should they resolve an alleged violation during the meet and confer process described in Section
14 4.1, except that Settling Defendant's failure to comply with the notification requirements of
15 Section 3.2 shall not provide a basis for CEH or its attorneys to recover their reasonable fees and
16 costs under this Section 4.3. Both CEH and its attorneys will, upon request by Settling
17 Defendant, provide their itemized time records substantiating their requested reasonable fees and
18 costs.

19 5. PAYMENTS

20 5.1 **Payments by Settling Defendant.** Within fifteen (15) calendar days of the
21 Effective Date, Settling Defendant shall pay the total sum of \$30,000 as a settlement payment as
22 further set forth in this Section.

23 5.2 **Allocation of Payments.** The total settlement amount for Settling Defendant shall
24 be paid in five separate checks in the amounts specified below and delivered as set forth below.
25 Any failure by Settling Defendant to comply with the payment terms herein shall be subject to a
26 stipulated late fee to be paid by Settling Defendant in the amount of \$100 for each day the full
27 payment is not received after the applicable payment due date set forth in Section 5.1. The late
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1 fees required under this Section shall be recoverable, together with reasonable attorneys' fees and
2 costs, in the event of a successful enforcement proceeding brought pursuant to Section 4 of this
3 Consent Judgment. The funds paid by Settling Defendant shall be allocated as set forth below
4 between the following categories and made payable as follows:

5 5.2.1 \$3,769 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).

6 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §
7 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health
8 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty
9 payment for \$2,826.75, shall be made payable to OEHHA and associated with taxpayer
10 identification number 68-0284486. This payment shall be delivered as follows:

11 For United States Postal Service Delivery:

12 Attn: Mike Gyurics
13 Deputy Director for Administrative Services
14 Office of Environmental Health Hazard Assessment
15 P.O. Box 4010, MS #19B
16 Sacramento, CA 95812-4010

17 For Non-United States Postal Service Delivery:

18 Attn: Mike Gyurics
19 Deputy Director for Administrative Services
20 Office of Environmental Health Hazard Assessment
21 1001 I Street, MS #19B
22 Sacramento, CA 95814

23 The CEH portion of the civil penalty payment for \$942.25 shall be made payable to the Center
24 for Environmental Health and associated with taxpayer identification number 94-3251981. This
25 payment shall be delivered to Lexington Law Group, LLP, 503 Divisadero Street, San Francisco,
26 CA 94117.

27 5.2.2 \$2,800 as an ASP to CEH pursuant to Health & Safety Code §
28 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH intends to place these
funds in CEH's Toxics and Youth Fund and use them to: (1) support CEH programs and
activities that seek to educate the public about lead and other toxic chemicals in consumer

1 products that are marketed to youth; (2) expand its use of social media to communicate with
2 Californians about the risks of exposures to lead in the products they and their children use and
3 about ways to reduce those exposures; and (3) work with industries that market products to youth
4 to reduce exposures to lead and other toxic chemicals, and thereby reduce the public health
5 impacts and risks of exposures to lead and other toxic chemicals in consumer products that are
6 marketed to youth in California. CEH shall obtain and maintain adequate records to document
7 that ASPs are spent on these activities and CEH agrees to provide such documentation to the
8 Attorney General within thirty days of any request from the Attorney General. The payment
9 pursuant to this Section shall be made payable to the Center for Environmental Health and
10 associated with taxpayer identification number 94-3251981. This payment shall be delivered to
11 Lexington Law Group, LLP, 503 Divisadero Street, San Francisco, CA 94117.

12 5.2.3 \$23,431 as a reimbursement of a portion of CEH's reasonable attorneys'
13 fees and costs (including but not limited to expert and investigative costs). The attorneys' fees
14 and cost reimbursement shall be made in two separate checks as follows: (a) \$19,700 payable to
15 the Lexington Law Group, LLP and associated with taxpayer identification number 88-4399775;
16 and (b) \$3,731 payable to the Center for Environmental Health and associated with taxpayer
17 identification number 94-3251981. Both of these payments shall be delivered to Lexington Law
18 Group, LLP, 503 Divisadero Street, San Francisco, CA 94117.

19 5.2.4 To summarize, Settling Defendant shall deliver checks made out to the
20 payees and in the amounts set forth below:

Payee	Type	Amount	Deliver To
OEHHA	Penalty	\$ 2,826.75	OEHHA per Section 5.2.1
Center for Environmental Health	Penalty	\$ 942.25	LLG
Center for Environmental Health	ASP	\$ 2,800.00	LLG
Lexington Law Group, LLP	Fees and Costs	\$ 19,700.00	LLG
Center for Environmental Health	Fees and Costs	\$ 3,731.00	LLG

1 **6. MODIFICATION AND DISPUTE RESOLUTION**

2 **6.1 Modification.** This Consent Judgment may be modified from time to time by
3 express written agreement of the Parties, with the approval of the Court, or by an order of this
4 Court upon motion and in accordance with law.

5 **6.1.1** If a California court enters a judgment in the Action or another
6 Proposition 65 enforcement action over exposure to lead in Covered Products or products
7 substantially similar to Covered Products that imposes a different injunctive relief from what is
8 set for in this Consent Judgment, Settling Defendant may seek to modify Section 3 of this
9 Consent Judgment to conform with the injunctive relief provided in such judgment. CEH may
10 oppose such modification, if good cause exists for such opposition.

11 **6.2 Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
12 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
13 modify the Consent Judgment.

14 **7. CLAIMS COVERED AND RELEASE**

15 **7.1** Provided that Settling Defendant complies in full with its obligations under
16 Section 5 hereof, this Consent Judgment is a full, final, and binding resolution of all claims
17 arising under Proposition 65 relating to alleged exposure to lead from Covered Products as to all
18 claims pursuant to Health and Safety Code § 25249.7(d) that were raised or could have been
19 raised in the Notices or Action, arising from the failure to warn under Proposition 65 regarding
20 the presence of lead in Covered Products, between CEH on behalf of itself and the public interest
21 and Settling Defendant and its parents, owners, members, managers, representatives, divisions,
22 subdivisions, subsidiaries, affiliated entities that are under common ownership, directors, officers,
23 employees, agents, shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and
24 all entities to which Settling Defendant directly or indirectly distributes or sells Covered
25 Products, including but not limited to any and all distributors, wholesalers, customers, retailers,
26 franchisees, licensors, and licensees (“Downstream Defendant Releasees”), of any violation of
27 Proposition 65 based on failure to warn about alleged exposure to lead contained in Covered
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1 Products that were sold, distributed, or offered for sale by Settling Defendant prior to the
2 Compliance Date.

3 7.2 Provided that Settling Defendant complies in full with its obligations under
4 Section 5 hereof, CEH, for itself, its agents, successors, and assigns, releases, waives, and forever
5 discharges any and all claims against Settling Defendant, Defendant Releasees, and Downstream
6 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
7 common law claims that have been or could have been asserted by CEH regarding the failure to
8 warn about exposure to lead arising in connection with Covered Products manufactured,
9 distributed, or sold by Settling Defendant prior to the Compliance Date.

10 7.3 Provided that Settling Defendant complies in full with its obligations under
11 Section 5 hereof, compliance with the terms of this Consent Judgment by Settling Defendant
12 shall constitute compliance with Proposition 65 by Settling Defendant, Defendant Releasees, and
13 Downstream Defendant Releasees with respect to any alleged failure to warn about lead in
14 Covered Products manufactured, distributed, or sold by Settling Defendant after the Compliance
15 Date.

16 **8. PROVISION OF NOTICE**

17 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
18 notice shall be sent by first class and electronic mail to:

19 Patrick Carey
20 Lexington Law Group, LLP
21 503 Divisadero Street
22 San Francisco, CA 94117
23 pcarey@lexlawgroup.com

24 8.2 When Settling Defendant is entitled to receive any notice under this Consent
25 Judgment, the notice shall be sent by first class and electronic mail to:

26 Jerry Goldenson
27 KHS America, Inc.
28 12020 Volunteer Blvd.
Mount Juliet, TN 37122

Jerry.Goldenson@khsmusic.com

With a copy by first class and electronic mail to:

J.T. Wells Blaxter
Blaxter | Blackman LLP
601 Montgomery Street, Suite 1110
San Francisco, CA 94111
wblaxter@blaxterlaw.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.

9. COURT APPROVAL

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

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

10. GOVERNING LAW AND CONSTRUCTION

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

11. ATTORNEYS' FEES

11.1 Except as provided in Section 11.2, should CEH prevail on any motion, application for an order to show cause, or other proceeding pursuant to this Consent Judgment, CEH shall be entitled to its reasonable attorneys' fees and costs incurred as a result of such motion or application.

11.2 Should CEH prevail on any motion or application for enforcement of the injunctive provisions pursuant to Section 3, and Settling Defendant had provided to CEH, before it filed such motion or application, a test report either (i) from a sample of the Covered Product

1 taken prior to the issuance of the Notice of Violation, or (ii) from the sample of the Covered
2 Product that forms the basis of the Notice of Violation that was provided to the Settling
3 Defendant by CEH, then CEH may be awarded its reasonable attorneys' fees and costs only upon
4 a finding by the Court that the Settling Defendant's opposition to the motion or application
5 lacked substantial justification. For purposes of this Consent Judgment, the term substantial
6 justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of
7 Civil Procedure §§ 2016, *et seq.*

8 11.3 Should Settling Defendant prevail on any motion, application for an order to show
9 cause, or other proceeding, Settling Defendant may be awarded its reasonable attorneys' fees and
10 costs against CEH as a result of such motion or application upon a finding by the Court that
11 CEH's prosecution of the motion or application lacked substantial justification.

12 11.4 Except as otherwise provided in this Consent Judgment, each party shall bear its
13 own attorneys' fees and costs.

14 11.5 Nothing in this Section 11 shall preclude a Party from seeking an award of
15 sanctions pursuant to law.

16 **12. ENTIRE AGREEMENT**

17 12.1 This Consent Judgment contains the sole and entire agreement and understanding
18 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
19 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
20 and therein. There are no warranties, representations, or other agreements between the Parties
21 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
22 other than those specifically referred to in this Consent Judgment have been made by any Party
23 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
24 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
25 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
26 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
27 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
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1 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
2 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
3 whether or not similar, nor shall such waiver constitute a continuing waiver.

4 **13. RETENTION OF JURISDICTION**

5 13.1 This Court shall retain jurisdiction over this matter to implement or modify the
6 Consent Judgment.

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

8 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
9 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
10 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

11 **15. SUCCESSORS AND ASSIGNS**

12 15.1 This Consent Judgment shall apply to and be binding upon CEH and Settling
13 Defendant, and their respective divisions, subdivisions, and subsidiaries, and the successors or
14 assigns of any of them.

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

16 16.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
17 against an entity that is not Settling Defendant on terms that are different from those contained in
18 this Consent Judgment.

19 **17. EXECUTION IN COUNTERPARTS**

20 17.1 The stipulations to this Consent Judgment may be executed in counterparts and by
21 means of facsimile or portable document format (pdf), which taken together shall be deemed to
22 constitute one document.

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

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27 Dated: 10/8/2015


Judge of the Superior Court

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IT IS SO STIPULATED:

Dated: July 3, 2025

CENTER FOR ENVIRONMENTAL HEALTH



Signature

Kizzy Charles-Guzman

Printed Name

CEO

Title

Dated: _____, 2025

KHS AMERICA, INC.

Signature

Printed Name

Title

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IT IS SO STIPULATED:

Dated: _____, 2025

CENTER FOR ENVIRONMENTAL HEALTH

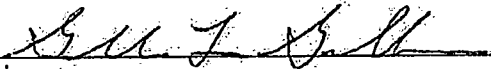
Signature

Printed Name

Title

Dated: July 23rd, 2025

KHS AMERICA, INC.


Signature

Gerald L. Goldenson
Printed Name

President
Title