

NOTICE OF VIOLATION

California Safe Drinking Water and Toxic Enforcement Act

Lead in Mouthpieces Used with Brass Musical Instruments

December 21, 2018

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health and Safety Code section 25249.7(d).

- For general information regarding the California Safe Drinking Water and Toxic Enforcement Act, see the attached summary provided by the California EPA (copies not provided to public enforcement agencies).
- This Notice is provided by the Center for Environmental Health ("CEH"), 2201 Broadway, Suite 302, Oakland, CA 94612, (510) 655-3900. CEH is a nonprofit corporation dedicated to protecting the environment, improving human health, and supporting environmentally sound practices. Charlie Pizarro is the Associate Director of and a responsible individual within CEH.

Description of Violation:

- Violators: The names and addresses of the violators are identified on the attached Exhibit 1.
- Time Period of Exposure: The violations have been occurring since at least December 21, 2015, and are ongoing.
- Provision of Proposition 65: This Notice covers the "warning provision" of Proposition 65, which is found at California Health and Safety Code Section 25249.6.
- Chemical(s) Involved: The names of the listed chemicals involved in these violations are lead and lead compounds ("Lead"). Exposures to Lead occur from use of the products identified in this Notice.
- Type of Product: The specific type of product causing these violations is mouthpieces used with brass musical instruments. Non-exclusive examples of this specific type of product are identified on the attached Exhibit 1.
- Description of Exposure: This Notice addresses consumer exposures to Lead. Use of the products identified in this Notice results in human exposures to Lead. The products contain Lead. The primary routes of exposure for the violations are direct ingestion when consumers place the products in their mouth while playing the musical instruments for which the products are intended to be used; and ingestion via hand-to-mouth contact after consumers touch or handle the

products. No clear and reasonable warning is provided with these products regarding the carcinogenic or reproductive hazards of Lead.

Resolution of Noticed Claims:

Based on the allegations set forth in this Notice, CEH intends to file a citizen enforcement lawsuit against each alleged violator unless such violator agrees in a binding written instrument to: (1) recall products already sold; (2) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the Lead exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249.7(b). If any alleged violator is interested in resolving this dispute without resort to expensive and time-consuming litigation, please feel free to contact CEH through its counsel identified below. It should be noted that CEH cannot: (1) finalize any settlement until after the 60-day notice period has expired; nor (2) speak for the Attorney General or any District or City Attorney who received CEH's 60-day Notice. Therefore, while reaching an agreement with CEH will resolve its claims, such agreement may not satisfy the public prosecutors.

Preservation of Relevant Evidence:

This Notice also serves as a demand that each alleged violator preserve and maintain all relevant evidence, including all electronic documents and data, pending resolution of this matter. Such relevant evidence includes but is not limited to all documents relating to the presence or potential presence of Lead in mouthpieces used with brass musical instruments; purchase and sales information for such products; efforts to comply with Proposition 65 with respect to such products; communications with any person relating to the presence or potential presence of Lead in such products; and representative exemplars of each of the products sold by each alleged violator in the year preceding this Notice through the date of any trial of the claims alleged in this Notice.

Please direct any inquiries regarding this Notice to CEH's counsel Mark N. Todzo at Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117, (415) 913-7800, mtodzo@lexlawgroup.com.

EXHIBIT 1
December 21, 2018 Notice of Violation
Lead in Mouthpieces Used with Brass Musical Instruments

Names and Addresses of Responsible Parties	Non-Exclusive Examples of the Products	Item or SKU # or Further Description
American Way Marketing, LLC 400 Pine Creek Court Elkhart, IN 46516	Faxx French Horn Mouthpiece, Regular 2	Product No. FHORN-2P-1317 UPC No. 6-84770-10432-0 Item No. 465073000902000
Conn-Selmer, Inc. 600 Industrial Pkwy Elkhart, IN 46516	Bach Trumpet Mouthpiece Group II 10-3/4CW	Product No. 35110RCW UPC No. 6-41064-00464-3 Item No. 462984000000418
Denis Wick Products Limited Unit 19 Dawkins Road Poole, Dorset BH15 4JY United Kingdom	Denis Wick London Classic Series Tenor Horn Mouthpiece in Silver	Product No. DW5883-2 UPC No. 8-1275900144-9 Item No. 470603000001000
Guitar Center, Inc. 5795 Lindero Canyon Road Westlake Village, CA 91362	Bach Trumpet Mouthpiece Group II 10-3/4CW	Product No. 35110RCW UPC No. 6-41064-00464-3 Item No. 462984000000418
	Blessing French Horn Mouthpiece 11 in Silver	Product No. MPC11FR UPC No. 0-647759-026464 Item No. 464205000909000
	Curry Standard Large Shank Trombone Mouthpiece 5M	Product No. Lge Shank 5M Item No. 472834000913000

Guitar Center, Inc. 5795 Lindero Canyon Road Westlake Village, CA 91362 <i>(Continued)</i>	Denis Wick London Classic Series Tenor Horn Mouthpiece in Silver	Product No. DW5883-2 UPC No. 8-1275900144-9 Item No. 470603000001000
	Faxx French Horn Mouthpiece, Regular 2	Product No. FHORN-2P-1317 UPC No. 6-84770-10432-0 Item No. 465073000902000
	Schilke Standard Series Cornet Mouthpiece Group I in Silver Regular	Product No. 5 11A Item No. 475218000910902
	Theo Wanne Elements Series: Fire Alto Gold Saxophone Mouthpiece, Tip Opening 7	Product No. ELF-AG7 (17C4) UPC No. 8-168210-138592 Item No. K47327000002000
	Warburton Flugelhorn Mouthpiece, Regular 5M	Product No. 343022B17 Item No. 471941000915000
JodyJazz, Inc. 1335 Lynah Avenue Suite 112 Garden City, GA 31408 JodyJazz Inc. 35 White Street, #5 New York, NY 10013	JodyJazz Super Jet Silver-Plated Brass Alto Sax 6 Mouthpiece	SKU No. JASSJ6XXX UPC No. 8-59668-00282-2
Sam Ash Music Corporation 278 Duffy Avenue Hicksville, NY 11801	JodyJazz Super Jet Silver-Plated Brass Alto Sax 6 Mouthpiece	SKU No. JASSJ6XXX UPC No. 8-59668-00282-2
Schilke Music Products, Inc. 4520 James Place Melrose Park, IL 60160	Schilke Standard Series Cornet Mouthpiece Group I in Silver Regular	Product No. 5 11A Item No. 475218000910902
Theo Wanne Holdings, LLC 1221 Fraser Street, Suite E-2 Bellingham, WA 98229	Theo Wanne Elements Series: Fire Alto Gold Saxophone Mouthpiece, Tip Opening 7	Product No. ELF-AG7 (17C4) UPC No. 8-168210-138592 Item No. K47327000002000

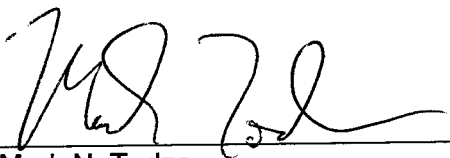
U.S. Band & Orchestra Supplies, Inc. 1400 Ferguson Avenue St. Louis, MO 63133	Blessing French Horn Mouthpiece 11 in Silver	Product No. MPC11FR UPC No. 0-647759-026464 Item No. 464205000909000
Warburton Industries, Inc. 2189 N. US Hwy 1 Titusville, FL 32796	Warburton Flugelhorn Mouthpiece, Regular 5M	Product No. 343022B17 Item No. 471941000915000

CERTIFICATE OF MERIT
Health & Safety Code § 25249.7(d)

I, Mark N. Todzo, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the parties identified in the notice have violated Health & Safety Code § 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney with the Lexington Law Group, and I represent the noticing party, the Center for Environmental Health.
3. Members of my firm and I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies or other data regarding the exposures to the listed chemical that is the subject of the action.
4. Based on the information obtained through those consultations, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and the information did not prove that the alleged violators will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of the Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code § 25249.7(h)(2), i.e. (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies or other data reviewed by those persons.

December 21, 2018



Mark N. Todzo
Attorney for CENTER FOR
ENVIRONMENTAL HEALTH

1 **PROOF OF SERVICE**

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3 I, Alexis Pearson, declare:

4 I am a citizen of the United States and employed in the County of San Francisco, State of
5 California. I am over the age of eighteen (18) years and not a party to this action. My business
6 address is 503 Divisadero Street, San Francisco, CA 94117 and my email address is
nredfield@lexlawgroup.com.

7 On December 21, 2018, I served the following document(s) on all interested parties in this
8 action by placing a true copy thereof in the manner and at the addresses indicated below:

9 **NOTICE OF VIOLATION OF CALIFORNIA SAFE DRINKING WATER AND
10 TOXIC ENFORCEMENT ACT;**

11 **CERTIFICATE OF MERIT;** and

12 **THE SAFE DRINKING AND TOXIC ENFORCEMENT ACT OF 1986**
13 **(PROPOSITION 65): A SUMMARY** (only sent to those on service list marked with an
14 asterisk).

15 ☒ **BY MAIL:** I am readily familiar with the firm's practice for collecting and processing mail
16 with the United States Postal Service ("USPS"). Under that practice, mail would be deposited
17 with USPS that same day with postage thereon fully prepaid at San Francisco, California in the
18 ordinary course of business. On this date, I placed sealed envelopes containing the above
19 mentioned documents for collection and mailing following my firm's ordinary business practices.

20 *Please see attached service list.*

21 ☐ **BY FACSIMILE:** I caused all pages of the document(s) listed above to be transmitted via
22 facsimile to the fax number(s) as indicated and said transmission was reported as complete and
23 without error.

24 ☒ **BY ELECTRONIC MAIL:** I transmitted a PDF version of the document(s) listed above via
25 email to the email address(es) indicated on the attached service list [or noted above] before 5 p.m.
26 on the date executed.

27 Stacey Grassini, Deputy District Attorney
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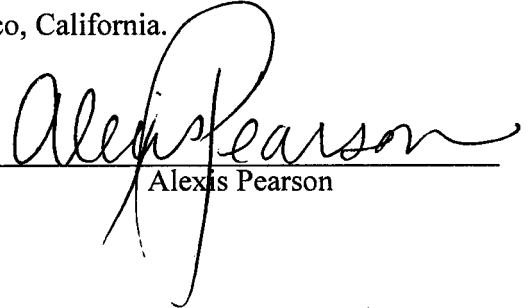
☐ **BY PERSONAL DELIVERY:** I placed all pages of the document(s) listed above in a sealed envelope addressed to the party(ies) listed above, and caused such envelope to be delivered by hand to the addressee(s) as indicated.

1 ☐ **BY OVERNIGHT DELIVERY:** I deposited such document(s) in a box or other facility
2 regularly maintained by FedEx, or delivered such document(s) to a courier or driver authorized by
3 FedEx, with delivery fees paid or provided for, and addressed to the person(s) being served.

4 I declare under penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct.

6 Executed on December 21, 2018 at San Francisco, California.

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Alexis Pearson

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