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

CENTER FOR ENVIRONMENTAL HEALTH, ) Case No. RG 19010030  
 )  
Plaintiff, )  
 )  
v. ) **[PROPOSED] CONSENT JUDGMENT**  
 ) **RE: CONN-SELMER, INC.**  
CONN-SELMER, INC., *et al.*, )  
 )  
Defendants. )  
 )  
 )  
 )  
 )

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**1. INTRODUCTION**

1.1 The Parties to this Consent Judgment are the Center for Environmental Health, a California non-profit corporation (“CEH”) and Conn-Selmer, 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 Proposition 65 to the California Attorney General, the District Attorneys of every county in

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

5 1.3 Settling Defendant is a corporation or other business entity that manufactures,  
6 distributes, sells, or offers for sale Covered Products that are sold in the State of California or has  
7 done so in the past.

8 1.4 On March 7, 2019, CEH filed the original Complaint in the above-captioned  
9 matter naming Settling Defendant as a defendant. On March 20, 2019, CEH filed an amended  
10 complaint.

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.

28

1           2.2     “Covered Products” means mouthpieces used with brass musical instruments  
2 manufactured, distributed or sold by Settling Defendant.

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

5           2.4     “Reformulation Level” means 100 parts per million (“ppm”) lead.

6     **3.     INJUNCTIVE RELIEF**

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

11          3.2     **Clear and Reasonable Warnings.**

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



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

21                 OR



23                 **WARNING:** Cancer and Reproductive Harm –  
24 [www.P65Warnings.ca.gov](http://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 yellow warning triangle symbol depicted above. Alternatively, if the sign, label,

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1 or shelf tag for the Covered Product is not printed using the color yellow, the symbol may be  
2 provided in black and white, consistent with section 25603(a) of the Proposition 65 Regulations.  
3 This warning statement shall be prominently displayed on the outer packaging of the Covered  
4 Product and shall be displayed with such conspicuousness, as compared with other words,  
5 statements or designs as to render it likely to be seen, read and understood by an ordinary  
6 individual prior to sale. The warning statement must be set off from other surrounding  
7 information and enclosed in a text box. For internet, catalog or any other sale where the  
8 consumer is not physically present, the warning statement shall be displayed in such a manner  
9 that it is likely to be read and understood by an ordinary individual prior to the authorization of or  
10 actual payment. In the event that subsequent revisions to Proposition 65's warning regulations  
11 set forth in in Title 27, California Code of Regulations, section 25600, *et seq*, preclude the use of  
12 the warning language set forth herein, Settling Defendant shall utilize a warning consistent with  
13 the new regulations, upon providing prior written notice to CEH.

14                   3.2.2     **Election to Warn Permanently.** If Settling Defendant is unable to  
15 comply with the Reformulation provision set forth in Section 3.1 or otherwise elect to  
16 permanently avail themselves of the warning option provided by this Section 3.2, Settling  
17 Defendant shall provide written notice to CEH prior to the Compliance Date, and Settling  
18 Defendant concurrently shall make the additional payment specified in Section 5.2.4 below.  
19 Settling Defendant shall then continue to provide warnings in accordance with this Section 3.2 for  
20 each Covered Product sold in California.

#### 21     **4.     ENFORCEMENT**

22                   4.1     **General Enforcement Provisions.** CEH may, by motion or application for an  
23 order to show cause before this Court, enforce the terms and conditions contained in this Consent  
24 Judgment. Prior to bringing any motion or application to enforce the requirements of Section 3  
25 above, CEH shall provide Settling Defendant with a notice setting forth the factual basis for the  
26 alleged violation of Section 3 (“Notice of Violation”). The Parties shall then meet and confer  
27 regarding the basis for CEH’s anticipated motion or application in an attempt to resolve it

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1 informally. Should such attempts at informal resolution fail, CEH may file its enforcement  
2 motion or application. The prevailing party on any motion to enforce this Consent Judgment  
3 shall be entitled to its fees and costs associated with the motion. In addition, should CEH prevail  
4 on a motion to enforce the Consent Judgment, Settling Defendant shall pay \$10,000 to be  
5 allocated between a civil penalty and an additional settlement payment (“Additional Settlement  
6 Payment” or “ASP”) as follows: 57% to civil penalties and 43% to ASP. In the event that  
7 Settling Defendant does not contest CEH’s Notice of Violation, Settling Defendant shall pay  
8 \$3,500 to be divided between a Civil Penalty and Additional Settlement Payment in accordance  
9 with the allocation set forth above. In no case shall Settling Defendant be obligated to pay more  
10 than \$25,000 for all Notices of Violation not successfully contested or withdrawn in any calendar  
11 year irrespective of the total number of Notices of Violation issued.

12 **5. PAYMENTS**

13 5.1 **Payments by Settling Defendant.** Within ten (10) calendar days of the Effective  
14 Date, Settling Defendant shall pay the total sum of \$115,000 as a settlement payment as further  
15 set forth in this Section.

16 5.2 **Allocation of Payments.** The total settlement amount for Settling Defendant shall  
17 be paid in five (5) separate checks in the amounts specified below and delivered as set forth  
18 below. The funds paid by Settling Defendant shall be allocated as set forth below between the  
19 following categories and made payable as follows:

20 5.2.1 \$13,000 as a civil penalty pursuant to Health & Safety Code §  
21 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety  
22 Code § 25249.12 (25% to CEH and 75% to the State of California’s Office of Environmental  
23 Health Hazard Assessment (“OEHHA”). Accordingly, the OEHHA portion of the civil penalty  
24 payment for \$9,750 shall be made payable to OEHHA and associated with taxpayer identification  
25 number 68-0284486. This payment shall be delivered as follows:

26 For United States Postal Service Delivery:

27 Attn: Mike Gyurics  
28 Fiscal Operations Branch Chief

1 Office of Environmental Health Hazard Assessment  
2 P.O. Box 4010, MS #19B  
3 Sacramento, CA 95812-4010

4 For Non-United States Postal Service Delivery:

5 Attn: Mike Gyurics  
6 Fiscal Operations Branch Chief  
7 Office of Environmental Health Hazard Assessment  
8 1001 I Street, MS #19B  
9 Sacramento, CA 95814

10 The CEH portion of the civil penalty payment for \$3,250 shall be made payable to  
11 the Center for Environmental Health and associated with taxpayer identification number 94-  
12 3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San  
13 Francisco, CA 94117.

14 5.2.2 \$9,720 as an Additional Settlement Payment (“ASP”) to CEH pursuant to  
15 Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH  
16 intends to place these funds in CEH’s Toxics and Youth Fund and use them to: (1) support CEH  
17 programs and activities that seek to educate the public about lead and other toxic chemicals in  
18 consumer products that are marketed to youth; (2) expand its use of social media to communicate  
19 with Californians about the risks of exposures to lead in the products they and their children use  
20 and about ways to reduce those exposures; and (3) work with industries that market products to  
21 youth to reduce exposures to lead and other toxic chemicals, and thereby reduce the public health  
22 impacts and risks of exposures to lead and other toxic chemicals in consumer products that are  
23 marketed to youth in California. CEH shall obtain and maintain adequate records to document  
24 that ASPs are spent on these activities and CEH agrees to provide such documentation to the  
25 Attorney General within thirty (30) days of any request from the Attorney General. The payment  
26 pursuant to this Section shall be made payable to the Center for Environmental Health and  
27 associated with taxpayer identification number 94-3251981. This payment shall be delivered to  
28 Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.2.3 \$92,280 as a reimbursement of a portion of CEH’s reasonable attorneys’  
fees and costs. The attorneys’ fees and cost reimbursement shall be made in two separate checks

1 as follows: (a) \$78,100 payable to the Lexington Law Group and associated with taxpayer  
2 identification number 94-3317175; and (b) \$14,180 payable to the Center for Environmental  
3 Health and associated with taxpayer identification number 94-3251981. Both of these payments  
4 shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5 5.2.4 To summarize, Settling Defendant shall deliver checks made out to the  
6 payees and in the amounts set forth below:

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8 <b>Payee</b>	<b>Type</b>	<b>Amount</b>	<b>Deliver To</b>
9 OEHHA	Penalty	\$9,750	OEHHA per Section 5.2.1
10 Center For Environmental Health	Penalty	\$3,250	Lexington Law Group
11 Center For Environmental Health	ASP	\$9,720	Lexington Law Group
12 Lexington Law Group	Fee and Cost	\$78,100	Lexington Law Group
13 Center For Environmental Health	Fee and Cost	\$14,180	Lexington Law Group

14

15 5.2.5 If Settling Defendant avails itself of the permanent warning option  
16 provided for by Section 3.2, Settling Defendant shall make an additional payment of \$29,000 to  
17 be split between a civil penalty and ASP as set forth herein, concurrently with its written notice as  
18 provided in Section 3.2. Of the additional payment, \$16,600 shall be a civil penalty, which shall  
19 be apportioned in accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to  
20 the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”)).

21 Accordingly, the OEHHA portion of the civil penalty payment for \$12,450 shall be made payable  
22 to OEHHA, associated with taxpayer identification number 68-0284486, and sent to the OEHHA  
23 address set forth in section 5.2.1 above. The CEH portion of the additional civil penalty payment  
24 for \$4,150 shall be made payable to the Center for Environmental Health and associated with  
25 taxpayer identification number 94-3251981. The remaining \$12,400 of the additional payment  
26 shall be made payable to the Center for Environmental Health and associated with taxpayer  
27 identification number 94-3251981 and shall be used as set forth in Section 5.2.2 above. Both

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1 payments to CEH shall be delivered to Lexington Law Group, 503 Divisadero Street, San  
2 Francisco, CA 94117.

3           5.2.6 Notwithstanding the provisions of the Enforcement of Judgments Law  
4 and Code of Civil Procedure § 780.160, in the event that Settling Defendant does not comply  
5 fully with its payment obligations under this Section 5, in addition to any other enforcement  
6 mechanism available to CEH, CEH may seek an order requiring Settling Defendant to submit to a  
7 debtor’s examination in the Alameda County Superior Court. In the event that Settling Defendant  
8 fails to submit to any such debtor’s examination ordered by the Court, CEH may seek an order  
9 holding Settling Defendant in contempt of Court.

10 **6. MODIFICATION AND DISPUTE RESOLUTION**

11           6.1 **Modification.** This Consent Judgment may be modified from time to time by  
12 express written agreement of the Parties, with the approval of the Court, or by an order of this  
13 Court upon motion and in accordance with law.

14           6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment  
15 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
16 modify the Consent Judgment.

17 **7. CLAIMS COVERED AND RELEASE**

18           7.1 Provided that Settling Defendant complies in full with its obligations under  
19 Section 5 hereof, this Consent Judgment is a full, final, and binding resolution between CEH on  
20 behalf of itself and the public interest and Settling Defendant and its parents, subsidiaries,  
21 affiliated entities that are under common ownership, directors, officers, employees, agents,  
22 shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities to which  
23 Settling Defendant directly or indirectly distributes or sells Covered Products, including but not  
24 limited to distributors, wholesalers, customers, retailers (including but not limited to Guitar  
25 Center, Inc. and Sam Ash Music Corporation), franchisees, licensors, and licensees  
26 (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on failure to warn  
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1 about alleged exposure to lead contained in Covered Products that were sold, distributed or  
2 offered for sale by Settling Defendant prior to the 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 individually or in the  
8 public interest regarding the failure to warn about exposure to lead arising in connection with  
9 Covered Products manufactured, distributed or sold by Settling Defendant prior to the  
10 Compliance Date.

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

17 **8. PROVISION OF NOTICE**

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

20 Mark N. Todzo  
21 Lexington Law Group  
22 503 Divisadero Street  
23 San Francisco, CA 94117  
24 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  
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1 Michael Scott Feeley  
2 LATHAM & WATKINS LLP  
3 355 South Grand Avenue, Suite 100  
4 Los Angeles, CA 90071-1560

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

7 **9. COURT APPROVAL**

8 9.1 The Parties shall use their reasonable best efforts to support the Court's approval  
9 of the Consent Judgment and entry of the Consent Judgment as soon as practicable. The Parties  
10 acknowledge that, pursuant to California Health and Safety Code Section 25249.7(f), a noticed  
11 motion is required for judicial approval of this Consent Judgment, which motion CEH shall draft  
12 and file and Settling Defendant shall support, appearing at the hearing if so requested.

13 9.2 If the California Attorney General objects to any term in this Consent Judgment,  
14 the Parties shall use their best efforts to resolve the concern in a timely manner, and, if possible,  
15 prior to the hearing on the Motion for Court Approval.

16 9.3 This Consent Judgement shall not be effective until it is approved by the Court and  
17 shall be null and void if, for any reason, it is not approved and entered by the Court within one (1)  
18 year after it has been fully executed by the Parties. If, despite the Parties' best efforts, the Court  
19 does not approve this settlement and enter a Consent Judgment thereon within nine (9) months of  
20 the date the Consent Judgment is executed by the Parties, the Parties shall meet to try and resolve  
21 the matter amicably. If such resolution cannot be reached, the settlement between the Parties is  
22 null and void and of no force or effect and shall not be introduced into evidence or otherwise used  
23 in any proceeding for any purpose other than to allow the Court to determine if there was a  
24 material breach of Section 9.1.

25 **10. GOVERNING LAW AND CONSTRUCTION**

26 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
27 California.

28 **11. ATTORNEYS' FEES**

11.1 A Party who unsuccessfully brings or contests an action, motion, or application

1 arising out of this Consent Judgment shall be required to pay the prevailing Party's reasonable  
2 attorneys' fees and costs.

3 11.2 Nothing in this Section 11 shall preclude a Party from seeking an award of  
4 sanctions pursuant to law.

5 **12. ENTIRE AGREEMENT**

6 12.1 This Consent Judgment contains the sole and entire agreement and understanding  
7 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
8 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein  
9 and therein. There are no warranties, representations, or other agreements between the Parties  
10 except as expressly set forth herein. No representations, oral or otherwise, express or implied,  
11 other than those specifically referred to in this Consent Judgment have been made by any Party  
12 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,  
13 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically  
14 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the  
15 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,  
16 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in  
17 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent  
18 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof  
19 whether or not similar, nor shall such waiver constitute a continuing waiver.

20 **13. RETENTION OF JURISDICTION**

21 13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
22 Consent Judgment.

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

24 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
25 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and  
26 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

27 **15. MOST FAVORED NATION**

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15.1 If CEH enters into any consent judgment (a “Settlement Document”) with any other similarly situated entity with respect to mouthpieces used with brass musical instruments, then CEH shall as soon as practicable provide notice thereof to Settling Defendant. In the event that Settling Defendant believes that such Settlement Document contains provisions that are more favorable to the defendant than those contained herein, Settling Defendant may seek to modify this Consent Judgment in accordance with the provisions of Section 6 above. For the avoidance of doubt, nothing in this Section 16 will apply to a monetary remedy contained or offered in any Settlement Document.

**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.

*[SIGNATURE PAGE TO FOLLOW]*

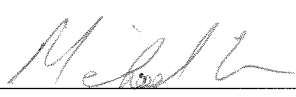
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**IT IS SO ORDERED, ADJUDGED,  
AND DECREED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of the Superior Court

**IT IS SO STIPULATED:**

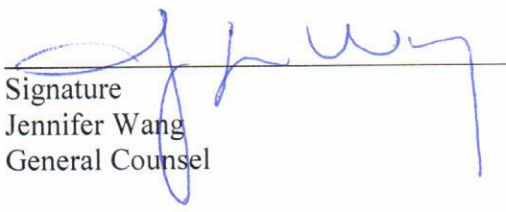
<p>Dated: <u>7/25</u>, 2019</p>	<p><b>CENTER FOR ENVIRONMENTAL HEALTH</b></p> <p></p> <p>_____ Michael Green CEO</p>
<p>Dated: _____, 2019</p>	<p><b>CONN-SELMER, INC.</b></p> <p>_____ Signature Jennifer Wang General Counsel</p>

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

Dated: \_\_\_\_\_ Judge of the Superior Court

**IT IS SO STIPULATED:**

Dated: _____, 2019	<b>CENTER FOR ENVIRONMENTAL HEALTH</b>  _____ Michael Green CEO
Dated: <u>July 24</u> , 2019	<b>CONN-SELMER, INC.</b>   _____ Signature Jennifer Wang General Counsel