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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**  
CONN-SELMER, INC., *et al.*, ) **RE: WARBURTON INDUSTRIES, INC.**  
Defendants. )  
\_\_\_\_\_ )

**1. INTRODUCTION**

1.1 The Parties to this Consent Judgment are the Center for Environmental Health, a California non-profit corporation (“CEH”) and Warburton Industries, 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

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 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.

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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     **Clear and Reasonable Warnings.**

7                 3.1.1     **Warnings.** As of the Effective Date, no Covered Product purchased,  
8 manufactured, shipped, sold or offered for sale by Settling Defendant may be sold or offered for  
9 sale in California unless it meets the Reformulation Level or contains a Clear and Reasonable  
10 Warning that complies with the provisions of this Section 3.2. A Clear and Reasonable Warning  
11 under this Agreement shall state:



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

15  
16 Or:



17                 **WARNING:** Cancer and Reproductive Harm – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

18  
19 The word “**WARNING**” shall be displayed in all capital letters and bold print and shall be  
20 preceded by the yellow warning triangle symbol depicted above. This warning statement shall be  
21 prominently displayed on the outer packaging of the Covered Product and shall be displayed with  
22 such conspicuousness, as compared with other words, statements or designs as to render it likely  
23 to be seen, read and understood by an ordinary individual prior to sale. The warning statement  
24 must be set off from other surrounding information and enclosed in a text box. For internet,  
25 catalog or any other sale where the consumer is not physically present, the warning statement  
26 shall be displayed in such a manner that it is likely to be read and understood by an ordinary  
27 individual prior to the authorization of or actual payment.

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1     **4.     ENFORCEMENT**

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

16     **5.     PAYMENTS**

17             **5.1     Payments by Settling Defendant.** On or before April 30, 2020, Settling  
18 Defendant shall pay the total sum of \$15,000 as a settlement payment as further set forth in this  
19 Section.

20             **5.2     Allocation of Payments.** The total settlement amount for Settling Defendant shall  
21 be paid in five (5) separate checks in the amounts specified below and delivered as set forth  
22 below. Any failure by Settling Defendant to comply with the payment terms herein shall be  
23 subject to a joint and several stipulated late fee to be paid by Settling Defendant in the amount of  
24 \$100 for each day the full payment is not received after the applicable payment due date set forth  
25 in Section 5.1. The late fees required under this Section shall be recoverable, together with  
26 reasonable attorneys’ fees, in an enforcement proceeding brought pursuant to Section 4 of this  
27 Consent Judgment. The funds paid by Settling Defendant shall be allocated as set forth below

1 between the following categories and made payable as follows:

2 5.2.1 \$1,920 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).

3 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §  
4 25249.12 (25% to CEH and 75% to the State of California’s Office of Environmental Health  
5 Hazard Assessment (“OEHHA”). Accordingly, the OEHHA portion of the civil penalty  
6 payment for \$1,441 shall be made payable to OEHHA and associated with taxpayer identification  
7 number 68-0284486. This payment shall be delivered as follows:

8 For United States Postal Service Delivery:

9 Attn: Mike Gyurics  
10 Fiscal Operations Branch Chief  
11 Office of Environmental Health Hazard Assessment  
12 P.O. Box 4010, MS #19B  
13 Sacramento, CA 95812-4010

14 For Non-United States Postal Service Delivery:

15 Attn: Mike Gyurics  
16 Fiscal Operations Branch Chief  
17 Office of Environmental Health Hazard Assessment  
18 1001 I Street, MS #19B  
19 Sacramento, CA 95814

20 The CEH portion of the civil penalty payment for \$479 shall be made  
21 payable to the Center for Environmental Health and associated with taxpayer identification  
22 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero  
23 Street, San Francisco, CA 94117.

24 5.2.2 \$1,440 as an Additional Settlement Payment (“ASP”) to CEH pursuant to  
25 Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH  
26 intends to place these funds in CEH’s Toxics and Youth Fund and use them to: (1) support CEH  
27 programs and activities that seek to educate the public about lead and other toxic chemicals in  
28 consumer products that are marketed to youth; (2) expand its use of social media to communicate  
with Californians about the risks of exposures to lead in the products they and their children use  
and about ways to reduce those exposures; and (3) work with industries that market products to



1 mechanism available to CEH, CEH may seek an order requiring Settling Defendant to submit to a  
2 debtor’s examination in the Alameda County Superior Court. In the event that Settling  
3 Defendant fails to submit to any such debtor’s examination ordered by the Court, CEH may seek  
4 an order holding Settling Defendant in contempt of Court.

5 **6. MODIFICATION AND DISPUTE RESOLUTION**

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

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

12 **7. CLAIMS COVERED AND RELEASE**

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

## 10 **8. PROVISION OF NOTICE**

11 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the  
12 notice shall be sent by first class and electronic mail to:

13 Mark N. Todzo  
14 Lexington Law Group  
15 503 Divisadero Street  
16 San Francisco, CA 94117  
17 mtodzo@lexlawgroup.com

18 8.2 When Settling Defendant is entitled to receive any notice under this Consent  
19 Judgment, the notice shall be sent by first class and electronic mail to:

20 Nicholas Pellegrino  
21 Scarinci Hollenbeck  
22 1100 Valley Brook Avenue, P.O. Box 790  
23 Lyndhurst, N.J. 07071  
24 npellegrino@sh-law.com

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

## 27 **9. COURT APPROVAL**

28 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

1 Consent Judgment by the Court.

2 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or  
3 effect and shall not be introduced into evidence or otherwise used in any proceeding for any  
4 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

5 **10. GOVERNING LAW AND CONSTRUCTION**

6 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
7 California.

8 **11. ATTORNEYS' FEES**

9 11.1 A Party who unsuccessfully brings or contests an action, motion, or application  
10 arising out of this Consent Judgment shall be required to pay the prevailing Party's reasonable  
11 attorneys' fees and costs.

12 11.2 Nothing in this Section 11 shall preclude a Party from seeking an award of  
13 sanctions pursuant to law.

14 **12. ENTIRE AGREEMENT**

15 12.1 This Consent Judgment contains the sole and entire agreement and understanding  
16 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
17 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein  
18 and therein. There are no warranties, representations, or other agreements between the Parties  
19 except as expressly set forth herein. No representations, oral or otherwise, express or implied,  
20 other than those specifically referred to in this Consent Judgment have been made by any Party  
21 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,  
22 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically  
23 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the  
24 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,  
25 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in  
26 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent  
27 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof

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1 whether or not similar, nor shall such waiver constitute a continuing waiver.

2 **13. RETENTION OF JURISDICTION**

3 13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
4 Consent Judgment.

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

6 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
7 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and  
8 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

9 **15. SUCCESSORS AND ASSIGNS**

10 15.1 This Consent Judgment shall apply to and be binding upon CEH and Settling  
11 Defendant, and their respective divisions, subdivisions, and subsidiaries, and the successors or  
12 assigns of any of them.

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

14 16.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
15 against an entity that is not Settling Defendant on terms that are different from those contained in  
16 this Consent Judgment.

17 **17. EXECUTION IN COUNTERPARTS**

18 17.1 The stipulations to this Consent Judgment may be executed in counterparts and by  
19 means of facsimile or portable document format (pdf), which taken together shall be deemed to  
20 constitute one document.

21

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

24

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

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

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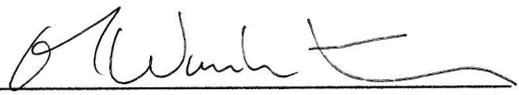
1 **IT IS SO STIPULATED:**

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Dated: <u>2/7</u> , 2020	<b>CENTER FOR ENVIRONMENTAL HEALTH</b>   _____ Signature  <u>Michael Green</u> _____ Printed Name  <u>CEO</u> _____ Title
Dated: _____, 2019	<b>WARBURTON INDUSTRIES, INC.</b>  _____ Signature  _____ Printed Name  _____ Title

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Dated: _____, 2019	<b>CENTER FOR ENVIRONMENTAL HEALTH</b>  _____ Signature  _____ Printed Name  _____ Title
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Dated: <u>January 29</u> , <sup>2020</sup> <del>2019</del>	<b>WARBURTON INDUSTRIES, INC.</b>   _____ Signature  <u>Ardean T. Warburton</u> _____ Printed Name  <u>President</u> _____ Title
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