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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.*, ) **AS TO GUITAR CENTER, 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 Guitar Center, Inc. (“Settling Defendant”). CEH and Settling Defendant (collectively, 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 the initial 60-day Notice of

1 Violation of Proposition 65 to the California Attorney General, the District Attorneys of every  
2 county in California, the City Attorneys of every California city with a population greater than  
3 750,000, and to Settling Defendant, alleging that Settling Defendant violated Proposition 65 by  
4 exposing persons to lead contained in mouthpieces used with brass musical instruments without  
5 first providing a clear and reasonable Proposition 65 warning. CEH provided a subsequent 60-  
6 day notice concerning additional Covered Products on January 4, 2019.

7 1.3 Settling Defendant is a corporation that does not manufacture, but distributes,  
8 sells, or offers for sale Covered Products that are sold in the State of California and has done so in  
9 the past.

10 1.4 On March 7, 2019, CEH filed the original complaint in the above-captioned matter  
11 naming Settling Defendant as a defendant.

12 1.5 CEH has entered into consent judgments with all other defendants in this matter  
13 which, among other things, releases Settling Defendant from liability for Covered Products sold  
14 by those other defendants (if any) to Settling Defendant.

15 1.6 For purposes of this Consent Judgment only, the Parties stipulate that this Court  
16 has jurisdiction over the allegations of violations contained in the Complaint and personal  
17 jurisdiction over Settling Defendant as to the acts alleged in the Complaint, that venue is proper  
18 in the County of Alameda, and that this Court has jurisdiction to enter this Consent Judgment as a  
19 full and final resolution of all claims which were or could have been raised in the Complaint  
20 based on the facts alleged therein with respect to Covered Products manufactured, distributed,  
21 and/or sold by Settling Defendant.

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

3 **2. DEFINITIONS**

4 2.1 The “Complaint” means the operative complaint in the above-captioned matter.

5 2.2 “Covered Products” means brass mouthpieces used with musical instruments and  
6 sold into California by Settling Defendant.

7 2.3 “Effective Date” means the date on which notice of entry of this Consent  
8 Judgment by the Court is served upon Settling Defendant.

9 2.4 “Reformulation Level” means 100 parts per million (“ppm”) lead.


10 **3. INJUNCTIVE RELIEF**

11 3.1 **Specification to Suppliers.** No more than thirty (30) days after the Effective  
12 Date, Settling Defendant shall inform its suppliers of Covered Products that Settling Defendant  
13 will not sell such products in California without the warning statement set forth in Section 3.2.1  
14 unless such Covered Products are reformulated to contain lead in amounts below the  
15 Reformulation Level.

16 3.2 **Clear and Reasonable Warnings.**

17 3.2.1 **Warnings.** Subject to Section 3.2.2, as of ninety (90) days after the  
18 Effective Date, no Covered Product may be sold or offered for sale directly by Settling Defendant  
19 in California unless it meets the Reformulation Level or contains a Clear and Reasonable  
20 Warning as follows:

21 (a)


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

26 (b)

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 **WARNING:** Cancer and Reproductive Harm –

[www.P65Warnings.ca.gov](http://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 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; provided however, in the event the Covered Product is separated from its packaging for display or marketing purposes, a warning statement similar to those described above may be provided if placed in close proximity to the Covered Product so that a consumer will associate the Covered Product with the warning. For internet sites, or catalogs owned and controlled by Settling Defendant, 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.

**3.2.2 Sale of Covered Products Without a Warning.** As of ninety (90) days

after the Effective Date, Settling Defendant may only sell a Covered Product in California without a warning if the Settling Defendant has:  
received written notice from its supplier that the Covered Product contains lead in an amount that is below the Reformulation Level; OR  
obtained its own test report from an independent and certified laboratory that the specific Covered Product contains lead in an amount that is below the Reformulation Level; OR  
evidence that the Covered Product is the subject of a Safe Use Determination issued by the State of California.

Further, CEH expressly understands that Covered Products are already in the stream of commerce and are not under Settling Defendants’ control, and that such Covered Products may remain in the stream of commerce for several years.

**4. ENFORCEMENT**

**4.1 General Enforcement Provisions.** Any Party may, by motion or application for

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

17 **5. PAYMENTS**

18 5.1 **Payments by Settling Defendant.** Within ten (10) calendar days of the Effective  
19 Date, Settling Defendant shall pay the total sum of thirty-five thousand dollars (\$35,000.00) as a  
20 settlement payment as further set forth in this Section.

21 5.2 **Allocation of Payments.** The total settlement amount for Settling Defendant shall  
22 be paid in five (4) separate checks in the amounts specified below and delivered as set forth  
23 below. The funds paid by Settling Defendant shall be allocated as set forth below between the  
24 following categories and made payable as follows:

25 5.2.1 \$4,700 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).  
26 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §  
27 25249.12 (25% to CEH and 75% to the State of California’s Office of Environmental Health

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1 Hazard Assessment (“OEHHA”). Accordingly, the OEHHA portion of the civil penalty  
2 payment for \$ 3,525 shall be made payable to OEHHA and associated with taxpayer  
3 identification number 68-0284486. This payment shall be delivered as follows:

4 For United States Postal Service Delivery:

5 Attn: Mike Gyurics  
6 Fiscal Operations Branch Chief  
7 Office of Environmental Health Hazard Assessment  
8 P.O. Box 4010, MS #19B  
9 Sacramento, CA 95812-4010

10 For Non-United States Postal Service Delivery:

11 Attn: Mike Gyurics  
12 Fiscal Operations Branch Chief  
13 Office of Environmental Health Hazard Assessment  
14 1001 I Street, MS #19B  
15 Sacramento, CA 95814

16 The CEH portion of the civil penalty payment for \$1,175 shall be made  
17 Payable to the Center for Environmental Health and associated with taxpayer identification  
18 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero  
19 Street, San Francisco, CA 94117.

20 5.2.2 \$ 3,500 as an Additional Settlement Payment (“ASP”) to CEH pursuant  
21 to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204.  
22 CEH intends to place these funds in CEH’s Toxics and Youth Fund and use them to: (1) support  
23 CEH programs and activities that seek to educate the public about lead and other toxic chemicals  
24 in consumer products that are marketed to youth; (2) expand its use of social media to  
25 communicate with Californians about the risks of exposures to lead in the products they and their  
26 children use and about ways to reduce those exposures; and (3) work with industries that market  
27 products to youth to reduce exposures to lead and other toxic chemicals, and thereby reduce the  
28 public health impacts and risks of exposures to lead and other toxic chemicals in consumer  
products that are marketed to youth in California. CEH shall obtain and maintain adequate  
records to document that ASPs are spent on these activities and CEH agrees to provide such

1 documentation to the Attorney General and Settling Defendant within thirty (30) days of any  
2 request from the Attorney General or Settling Defendant. The payment pursuant to this Section  
3 shall be made payable to the Center for Environmental Health and associated with taxpayer  
4 identification number 94-3251981. This payment shall be delivered to Lexington Law Group  
5 (“LLG”), 503 Divisadero Street, San Francisco, CA 94117.

6 5.2.3 \$26,800 as reimbursement for CEH’s attorneys’ fees and costs incurred as  
7 a result of investigating, bringing this matter to Settling Defendant’s attention, litigating and  
8 negotiating and obtaining judicial approval of this Consent Judgment in the public interest. The  
9 attorneys’ fees and cost reimbursement shall be made payable to the Lexington Law Group and  
10 associated with taxpayer identification number 94-3317175. This payment shall be delivered to  
11 Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

12 5.2.4 To summarize, Settling Defendant shall deliver checks made out to the  
13 payees and in the amounts set forth below:

14

| 15 <b>Payee</b>                    | <b>Type</b>  | <b>Amount</b> | <b>Deliver To</b>       |
|------------------------------------|--------------|---------------|-------------------------|
| 16 OEHHA                           | Penalty      | \$3,525       | OEHHA per Section 5.2.1 |
| 17 Center For Environmental Health | Penalty      | \$1,175       | LLG                     |
| 18 Center For Environmental Health | ASP          | \$3,500       | LLG                     |
| 19 Lexington Law Group             | Fee and Cost | \$26,800      | LLG                     |

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21 **6. MODIFICATION AND DISPUTE RESOLUTION**

22 **6.1 Modification.** This Consent Judgment may be modified from time to time by  
23 express written agreement of the Parties, with the approval of the Court, or by an order of this  
24 Court upon motion and in accordance with law. The basis for such modification may include,  
25 but is not limited to, reasonable documentation supporting a toxicological exposure assessment or  
26 similar written analysis that is based on evidence and standards of comparable scientific validity  
27 to the evidence and standards which form the scientific basis for the listing of such chemical  
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1 pursuant to Cal. Health and Safety Code § 25249.8(a) that exposure to a Covered Product:

2           6.1.1 poses no significant risk assuming lifetime exposure at the level in  
3 question for substances known to the State to cause cancer; and/or

4           6.1.2 will have no observable effect assuming exposure at one thousand (1,000)  
5 times the level in question for substances known to the State to cause reproductive toxicity.

6           6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment  
7 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
8 modify the Consent Judgment.

9 **7. CLAIMS COVERED AND RELEASE**

10           7.1 Provided that Settling Defendant complies in full with its obligations under  
11 Section 5, Payments, hereof, this Consent Judgment is a full, final, and binding resolution  
12 between CEH on behalf of itself and the public interest and Settling Defendant and its parents,  
13 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,  
14 agents, shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities  
15 to which Settling Defendant directly or indirectly distributes or sells Covered Products, including  
16 but not limited to distributors, wholesalers, customers, retailers, franchisees, licensors, and  
17 licensees (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on  
18 failure to warn about alleged exposure to lead contained in Covered Products that were sold,  
19 distributed or offered for sale by Settling Defendant prior to or within ninety (90) days after the  
20 Effective Date. It is the Parties’ intent that this Consent Judgment shall have preclusive effect  
21 such that no other person or entity purporting to act in the public interest shall be permitted to  
22 pursue and/or take any action with respect to any violation of Proposition 65 that was alleged in  
23 the Notices of Violation dated December 21, 2018 and January 4, 2019 or the Complaint.

24           7.2 Provided that Settling Defendant complies in full with its obligations under Section  
25 5, Payments, hereof, CEH, for itself, its agents, successors and assigns, releases, waives, and  
26 forever discharges any and all claims against Settling Defendant, Defendant Releasees, and  
27 Downstream Defendant Releasees arising from any violation of Proposition 65 or any other



1 statutory or common law claims that have been or could have been asserted by CEH individually  
2 or in the public interest regarding the failure to warn about exposure to lead arising in connection  
3 with Covered Products distributed, sold, or offered for sale by Settling Defendant prior to or within  
4 ninety (90) days after the Effective Date. With respect to the foregoing waivers and releases in this  
5 paragraph, CEH hereby specifically waives any and all rights and benefits which it now has, or in  
6 the future may have, conferred by virtue of the provisions of Section 1542 of the California Civil  
7 Code, which provides as follows:

8  
9 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
10 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
11 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
12 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
DEBTOR OR RELEASED PARTY.

13 7.3 Provided that Settling Defendant complies in full with its obligations under  
14 Section 5, Payments, hereof, then compliance with the terms of this Consent Judgment by  
15 Settling Defendant shall constitute compliance with Proposition 65 by Settling Defendant and  
16 Defendant Releasees with respect to any alleged failure to warn about lead in Covered Products  
17 distributed, sold, or offered for sale by Settling Defendant.

18 **8. PROVISION OF NOTICE**

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

21 Mark N. Todzo  
22 Lexington Law Group  
23 503 Divisadero Street  
24 San Francisco, CA 94117  
mtodzo@lexlawgroup.com

25 8.2 When each 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:

Todd O. Maiden  
Reed Smith LLP  
101 Second Street, Ste. 1800  
San Francisco, CA 94105  
tmaiden@reedsmith.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 Effective Date.

9.2 If this Consent Judgment is not entered by the Court within one (1) year after being signed by CEH and Settling Defendant, 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 A Party who unsuccessfully brings or contests an action, motion, or application arising out of this Consent Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs.

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

**12. ENTIRE AGREEMENT**

12.1 This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Consent Judgment have been made by any Party

1 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,  
2 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically  
3 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the  
4 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,  
5 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in  
6 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent  
7 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof  
8 whether or not similar, nor shall such waiver constitute a continuing waiver.

9 **13. RETENTION OF JURISDICTION**

10 13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
11 Consent Judgment.

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

13 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
14 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and  
15 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

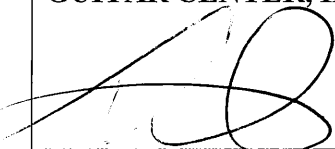
17 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
18 against an entity that is not a Settling Defendant on terms that are different from those contained  
19 in this Consent Judgment.

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1 **16. EXECUTION IN COUNTERPARTS**

2 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by  
3 means of facsimile or portable document format (pdf), which taken together shall be deemed to  
4 constitute one document.

5 **IT IS SO STIPULATED:**  
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|   |  |
|---|--|
| 7 Dated: February __, 2020<br>8<br>9<br>10      | 11 <b>CENTER FOR ENVIRONMENTAL HEALTH</b><br><br>12 _____<br>13 Michael Green<br>14 Chief Executive Officer  |
| 15 Dated: February <u>28</u> , 2020<br>16<br>17 | 18 <b>GUITAR CENTER, INC.</b><br>19 <br>20 _____<br>21 Signature<br>22 <u>Tim Martin</u><br>23 Printed Name<br>24 <u>CFO</u><br>25 Title |

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

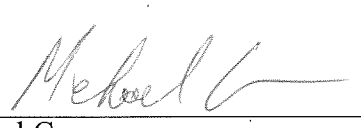
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26 Dated: \_\_\_\_\_ Judge of the Superior Court

1 **16. EXECUTION IN COUNTERPARTS**

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3 means of facsimile or portable document format (pdf), which taken together shall be deemed to  
4 constitute one document.

5 **IT IS SO STIPULATED:**

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| <p>Dated: <sup>March</sup> <del>February</del> 5, 2020</p> | <p><b>CENTER FOR ENVIRONMENTAL HEALTH</b></p><br> <hr/> <p>Michael Green<br/>Chief Executive Officer</p> |
| <p>Dated: February __, 2020</p>                            | <p><b>GUITAR CENTER, INC.</b></p><br><hr/> <p>Signature</p> <hr/> <p>Printed Name</p> <hr/> <p>Title</p>   |

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

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