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FILED
Superior Court of California
County of San Francisco

APR 11 2025

CLERK OF THE COURT

BY:  Deputy Clerk

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 EMA BELL,

12 Plaintiff,

13 v.

14 TEN ACRE GIFTS, LLC,

15 Defendant.

Case No.: CGC-25-621521

CONSENT JUDGMENT

Judge: Barbara Zúñiga

Dept.: 301

Hearing Date: April 10, 2025

Hearing Time: 9:30 AM

Complaint Filed: January 17, 2025

1 **1. INTRODUCTION**

2 **1.1 The Parties.** This Consent Judgment is entered into by and between Ema Bell acting
3 on behalf of the public interest (hereinafter “Bell”) and Ten Acre Gifts, LLC (“Ten Acre” or
4 “Defendant”) with Bell and Defendant collectively referred to as the “Parties” and each of them as
5 a “Party.” Bell is an individual residing in California that allegedly seeks to promote awareness of
6 exposures to toxic chemicals and improve human health by reducing or eliminating hazardous
7 substances contained in consumer products. Ten Acre is alleged to be a person in the course of
8 doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

9 **1.2 Allegations and Representations.** Bell alleges that Defendant has exposed
10 individuals to lead from its sales of hot cocoa mugs without providing a clear and reasonable
11 exposure warning pursuant to Proposition 65. Lead is listed pursuant to Proposition 65 as a
12 chemical known to the State of California to cause cancer and birth defects or other reproductive
13 harm.

14 **1.3 Notice of Violation/Action.** On February 15, 2024, Bell served The TJX
15 Companies, Inc. (“TJX”), Ten Acre, and various public enforcement agencies with documents
16 entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the
17 “Notice”), alleging that Defendant violated Proposition 65 for failing to warn consumers and
18 customers that use of hot cocoa mugs exposes users in California to lead. No public enforcer has
19 brought and is diligently prosecuting the claims alleged in the Notice. On January 17, 2025, Bell
20 filed a complaint (the “Complaint”).

21 **1.4 Jurisdiction.** For purposes of this Consent Judgment only, the Parties stipulate that
22 this Court has jurisdiction over Defendant as to the allegations contained in the Action filed in this
23 matter, that venue is proper in the County of San Francisco, and that this Court has jurisdiction to
24 approve, enter, and oversee the enforcement of this Consent Judgment as a full and final binding
25 resolution of all claims which were or could have been raised in the Action based on the facts
26 alleged therein and in the Notice.

1 **1.5 No Admission.** Defendant denies the material allegations contained in Bell's Notice
2 and Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent
3 Judgment shall be construed as an admission by Defendant of any fact, finding, issue of law, or
4 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an
5 admission by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such
6 being specifically denied by Defendant. However, this section shall not diminish or otherwise affect
7 the obligations, responsibilities, and duties of Defendant under this Consent Judgment.

8 **2. DEFINITIONS**

9 **2.1 Covered Products.** The term "Covered Products" means hot cocoa mugs that have
10 been manufactured, imported, distributed, shipped into California and/or offered for sale in
11 California by Ten Acre.

12 **2.2 Effective Date.** The term "Effective Date" means the date this Consent Judgment is
13 entered as a Judgment of the Court and Bell or Bell's attorney provides Ten Acre with notice of the
14 entry of Judgment.

15 **3. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**

16 **3.1 Reformulation of Products.** Commencing within sixty (60) days after the Effective
17 Date, and continuing thereafter, Products that Ten Acre directly manufactures, imports, distributes,
18 sells, or offers for sale in California shall either be: (a) Reformulated Products pursuant to § 3.2,
19 below; or (b) labeled with a clear and reasonable exposure warning pursuant to §§ 3.3 - 3.4, below.
20 For purposes of this Settlement Agreement, a "Reformulated Product" is a Product that is in
21 compliance with the standard set forth in § 3.2, below. The warning requirement set forth in §§ 3.3
22 - 3.4 shall not apply to any Reformulated Product. There shall be no obligation for Ten Acre to
23 provide an exposure warning for Products that were manufactured, entered the stream of commerce,
24 or are in Ten Acre's inventory prior to the Effective Date through sixty (60) days after Effective
25 Date.

26 **3.2 Reformulation Standard.** "Reformulated Products" shall mean Products that
27 produce a wipe test result -performed over a representative portion of the surface, rather than a
28

1 confined area, no higher than 1 microgram (µg) of lead when analyzed pursuant to NIOSH method
2 no. 9100.

3 **3.3 Clear and Reasonable Warning.** Commencing within 60 days after the Effective
4 Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3
5 and 3.4 must be provided for all Products that Ten Acre manufacturers, imports, distributes, sells,
6 or offers for sale in California that is not a Reformulated Product. There shall be no obligation for
7 Ten Acre to provide an exposure warning for Products that are in inventory or entered the stream
8 of commerce prior to the Effective Date, or within 60 days after the Effective Date. The warning
9 shall consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b),
10 respectively:

11 (a) **Warning.** The “Warning” shall consist of the statement:

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

14 (b) **Alternative Warning:** Ten Acre may, but is not required to, use the
15 alternative short-form warning¹ as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

16 ⚠ **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

17 **3.4 A Warning or Alternative Warning** provided pursuant to § 3.3 must print the word
18 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
19 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
20 triangle with a black outline, except that if the sign or label for the Products does not use the color
21 yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the
22 height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed to or
23 printed on the Products’ packaging or labeling, or on a placard, shelf tag, sign or electronic device
24 or automatic process, provided that the **Warning** or **Alternative Warning** is displayed with such
25 conspicuousness, as compared with other words, statements, or designs as to render it likely to be
26 read and understood by an ordinary individual under customary conditions of purchase or use. The

27 ¹ An **Alternative Warning** on a Covered Product manufactured and labeled after January 1, 2028
28 shall be provided in accordance with Title 27, California Code of Regulations, § 25603(b).

1 **Warning or Alternative Warning** may be contained in the same section of the packaging, labeling,
2 or instruction booklet that states other safety warnings, if any, concerning the use of the Product
3 and shall be at least the same size as those other safety warnings. If “consumer information,” as
4 that term is defined in Title 27, California Code of Regulations, Section 25600.1(c) as it may be
5 amended from time to time, is provided in a foreign language, Ten Acre shall provide the **Warning**
6 or **Alternative Warning** in the foreign language in accordance with applicable warning regulations
7 adopted by the State of California’s Office of Environmental Health Hazard Assessment
8 (“OEHHA”).

9 In addition to affixing the **Warning or Alternative Warning** to the Product’s packaging or
10 labeling, the **Warning or Alternative Warning** shall be posted on websites where Ten Acre offers
11 Products for sale to consumers in California. The requirements of this Section shall be satisfied if
12 the **Warning or Alternative Warning**, or a clearly marked hyperlink using the word
13 “**WARNING**,” appears on the product display page, or by otherwise prominently displaying the
14 warning to the purchaser prior to completing the purchase. To comply with this Section, Ten Acre
15 shall (a) post the **Warning or Alternative Warning** on its own website and, if it has the ability to
16 do so, on the websites of its third-party internet sellers; and (b) if it does not have the ability to post
17 the **Warning or Alternative Warning** on the websites of its third-party internet sellers, provide
18 such sellers with written notice in accordance with Title 27, California Code of Regulations, Section
19 25600.2. Third-party internet sellers of the Product that have been provided with written notice in
20 accordance with Title 27, California Code of Regulations, Section 25600.2 are not released in
21 Section 5 of this Agreement if they fail to meet the warning requirements of this Section.

22 **3.5 Compliance with Warning Regulations.** The Parties agree that Ten Acre shall be
23 deemed to be in compliance with this Settlement Agreement by either adhering to § 3 of this
24 Settlement Agreement or by complying with warning regulations adopted by the State of
25 California’s OEHHA applicable to the Product and the exposure at issue.

1 **4. MONETARY TERMS**

2 **4.1 Civil Penalty.** In settlement of all the claims referred to in this Settlement
3 Agreement, Ten Acre shall pay \$2,000.00 as a Civil Penalty pursuant to Health and Safety Code
4 section 25249.7(b), to be apportioned in accordance with California Health & Safety Code § 25192,
5 with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil Penalty remitted
6 to Bell, as provided by California Health & Safety Code § 25249.12(d).

7 4.1.1 Within ten (10) days of the Effective Date, Ten Acre shall issue two
8 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and
9 to (b) "Ema Bell" in the amount of \$500.00. Payment owed to Bell pursuant to this Section shall
10 be delivered to the following payment address:

11 Evan J. Smith, Esquire
12 Brodsky Smith
13 Two Bala Plaza, Suite 805
14 Bala Cynwyd, PA 19004

15 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly
16 to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

17 For United States Postal Service Delivery:

18 Mike Gyurics
19 Fiscal Operations Branch Chief
20 Office of Environmental Health Hazard Assessment
21 P.O. Box 4010
22 Sacramento, CA 95812-4010

23 For Non-United States Postal Service Delivery:

24 Mike Gyurics
25 Fiscal Operations Branch Chief
26 Office of Environmental Health Hazard Assessment
27 1001 I Street
28 Sacramento, CA 95814

A copy of the check payable to OEHHA shall be mailed to Brodsky Smith at the address set forth
above as proof of payment to OEHHA.

4.2 Attorneys' Fees. Within ten (10) days of the Effective Date, Ten Acre shall pay
\$23,000.00 to Brodsky Smith as complete reimbursement for Bell's attorneys' fees and costs
incurred as a result of investigating, bringing this matter to the attention of Ten Acre, litigating and

1 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code
2 of Civil Procedure § 1021.5.

3 **5. RELEASE OF ALL CLAIMS**

4 **5.1** This Consent Judgment is a full, final, and binding resolution between Bell acting
5 on her own behalf, and on behalf of the public interest, and Ten Acre, and its parents, shareholders,
6 members, directors, officers, managers, employees, representatives, agents, attorneys, divisions,
7 subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors,
8 successors and assigns ("Defendant Releasees"), and all entities to whom they directly or indirectly
9 distribute or sell Covered Products, including but not limited to manufacturers, upstream suppliers,
10 distributors, wholesalers, customers, licensors, licensees retailers, including but not limited to TJX,
11 and its parents, subsidiaries, and affiliates, franchisees, and cooperative members (collectively, the
12 "Releasees"), of all claims for violations of Proposition 65 based on exposure to lead from use of
13 the Covered Products manufactured, distributed, or sold by Ten Acre within 60 days after the
14 Effective Date, as set forth in the Notice. It is the Parties' intention that this Consent Judgment shall
15 have preclusive effect such that no other actions by private enforcers, whether purporting to act in
16 his, her, or its interests or the public interest shall be permitted to pursue and take any action with
17 respect to any violation of Proposition 65 based on exposure to lead from use of the Covered
18 Products that was alleged in the Complaint, or that could have been brought pursuant to the Notice
19 against Ten Acre and the Releasees ("Proposition 65 Claims"). Ten Acre's compliance with the
20 terms of this Consent Judgment constitutes compliance with Proposition 65 by Ten Acre with
21 regard to exposure to lead from use of the Covered Products.

22 **5.2** In addition to the foregoing, Bell, on behalf of herself, her past and current agents,
23 representatives, attorneys, and successors and assignees, and *not* in her representative capacity,
24 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action
25 and releases Ten Acre, Defendant Releasees, and Releasees from any and all manner of actions,
26 causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises,
27 liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of any nature whatsoever,
28

1 known or unknown, in law or equity, fixed or contingent, now or in the future, with respect to any
2 alleged violations of Proposition 65 related to or arising from Covered Products manufactured,
3 distributed, or sold by Ten Acre, Defendant Releasees or Releasees. With respect to the foregoing
4 waivers and releases in this paragraph, Bell hereby specifically waives any and all rights and
5 benefits which she now has, or in the future may have, conferred by virtue of the provisions of §
6 1542 of the California Civil Code, which provides as follows:

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

13 5.3 Ten Acre waives any and all claims against Bell, her attorneys and other
14 representatives, for any and all actions taken, or statements made (or those that could have been
15 taken or made) by Bell and her attorneys and other representatives, whether in the course of
16 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
17 and with respect to Covered Products.

18 6. INTEGRATION

19 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
20 any and all prior negotiations and understandings related hereto shall be deemed to have been
21 merged within it. No representations or terms of agreement other than those contained herein exist
22 or have been made by any Party with respect to the other Party or the subject matter hereof.

23 7. GOVERNING LAW

24 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
25 California and apply within the State of California.

26 8. NOTICES

27 8.1 Unless specified herein, all correspondence and notices required to be provided
28 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
by the other party at the following addresses:

1 For Defendant:

2 Sedina L. Banks
3 Sherry E. Jackman
4 Greenberg Glusker LLP
2049 Century Park East, Ste. 2600
Los Angeles, CA 90067

5 And

6 For Bell:

7 Evan Smith
8 Brodsky Smith
9465 Wilshire Blvd., Ste. 300
Beverly Hills, CA 90212

10 Any party, from time to time, may specify in writing to the other party a change of address to
11 which all notices and other communications shall be sent.

12 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

13 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
14 which shall be deemed an original, and all of which, when taken together, shall constitute one and
15 the same document.

16 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
17 **APPROVAL**

18 10.1 Bell agrees to comply with the requirements set forth in California Health & Safety
19 Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
20 Defendant agrees it shall support approval of such Motion.

21 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
22 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
23 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
24 days, the case shall proceed on its normal course.

25 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
26 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
27 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
28 its normal course on the trial court's calendar.

1 **11. MODIFICATION**

2 **11.1** This Consent Judgment may be modified only by further stipulation of the Parties
3 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

4 **12. ATTORNEY'S FEES**

5 **12.1** A Party who unsuccessfully brings or contests an action arising out of this Consent
6 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

7 **12.2** Nothing in this Section shall preclude a Party from seeking an award of sanctions
8 pursuant to law.

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. ENFORCEMENT OF SETTLEMENT AGREEMENT**

13 **14.1** A Party may enforce any of the terms and conditions of this Settlement Agreement
14 only after that Party provides sixty (60) days written notice to the Party allegedly failing to comply
15 with the terms and conditions of this Settlement Agreement and attempts to resolve such Party's
16 failure to comply in an open and good faith manner without the alleged non-complying Party having
17 to pay any settlement amount.

18 **14.2 Notice of Violation.** Prior to bringing any proceeding to enforce the terms of this
19 Settlement Agreement, Bell shall provide a written notice of violation ("NOV") to Ten Acre that
20 includes the information sufficient for them to be able to understand and correct the violation
21 without payment of any settlement amount or monetary payment, including but not limited to: (a)
22 the name of the product, (b) specific dates when the product was sold in California, (c) the store,
23 website, or other place at which the product was available for sale to California consumers, and (d)
24 any other evidence or other support for the allegations in the NOV, including all test data obtained
25 by Bell regarding the Product.

26 **14.3 Notice of Election Response.** Within thirty (30) days of receiving an NOV, Ten
27 Acre shall serve a Notice of Election ("NOE") either contesting or not contesting the NOV.
28

1 14.3.1 **Non-Contested NOV.** Bell shall take no further action regarding the alleged
2 violation against Ten Acre including, without limitation, requiring a monetary payment, if
3 Ten Acre serves a NOE then elects not to contest the NOV and meets one of the following
4 conditions: (a) the Product was shipped by Ten Acre for sale in California within sixty (60)
5 days of the Effective Date, or (b) since receiving the NOV, Ten Acre has taken corrective
6 action by either taking all steps necessary to bring the sale of the Products into compliance
7 under the terms of this Settlement Agreement, or requesting that its customers in California
8 remove the Products identified in the NOV from sale in California and destroy or return the
9 Products to Ten Acre.

10 14.3.2 **Contested NOV.** If Ten Acre serves a NOE electing to contest the NOV,
11 the provisions of this Section 14.3.2 shall apply.

12 (a) Ten Acre may request that the sample(s) of the Product tested by Ten
13 Acre be subject to confirmatory testing at an EPA or California accredited laboratory of Ten
14 Acre's choosing.

15 (b) If the confirmatory testing establishes that the Product does not
16 contain lead in excess of the levels allowed by this Settlement Agreement, Bell shall take
17 no further action regarding the alleged violation. If the testing does not establish
18 compliance as Reformulated Products, Ten Acre may withdraw its NOE to contest the
19 violation and may serve a new NOE pursuant to Section 14.3.1.

20 (c) If Ten Acre does not withdraw an NOE to contest the NOV to take
21 action under 14.3.1 above, the Parties shall meet and confer for a period of no less than
22 thirty (30) days before Bell may take action seeking to enforce the terms of this Settlement
23 Agreement.

24 **14.4 Recovery of Fees and Costs.** In any proceeding brought by either Party to enforce
25 this Settlement Agreement, the prevailing party shall be entitled to recover its reasonable attorney's
26 fees and costs.

1 **15. AUTHORIZATION**

2 **15.1** The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this
4 document and certify that he or she is fully authorized by the Party he or she represents to execute
5 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
6 explicitly provided herein each Party is to bear its own fees and costs.

7
8 **AGREED TO:**

AGREED TO:

9 Date: _____

Date: February 12, 2025

10 By: _____
11 EMA BELL

By: [Signature]
TEN ACRE GIFTS, LLC

12
13 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

14
15 Dated: _____

16 [Signature]
Judge of Superior Court

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1 **15. AUTHORIZATION**

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4 document and certify that he or she is fully authorized by the Party he or she represents to execute
5 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
6 explicitly provided herein each Party is to bear its own fees and costs.

7
8 **AGREED TO:**

AGREED TO:

9 Date: 2 / 20 / 25

Date: _____

10 By: 

11 **EMA BELL**

By: _____

TEN ACRE GIFTS, LLC

12
13 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

14
15 

16 Judge of Superior Court
17 **HON. BARBARA ZÚÑIGA**