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

11 EMA BELL,

12 Plaintiff,

13 v.

14 UNIVERSITY GAMES CORPORATION,
15 THE TJX COMPANIES, INC.,

16 Defendants.

Case No.: CGC-22-601351

CONSENT JUDGMENT

Judge: Richard B. Ulmer
Dept.: 302
Hearing Date: January 11, 2024
Hearing Time: 9:30 AM
Complaint Filed: August 19, 2022

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 University Games Corporation (“University
4 Games” or “Defendant”) with Bell and Defendant collectively referred to as the “Parties” and each
5 of them as a “Party.” Bell is alleged to be an individual residing in California that seeks to promote
6 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating
7 hazardous substances contained in consumer products. University Games is alleged to be a person
8 in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§
9 25249.6 et seq.

10 **1.2 Allegations and Representations.** Bell alleges that Defendant has exposed
11 individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of Pete the Cat Children’s Puzzles,
12 without providing a clear and reasonable exposure warning pursuant to Proposition 65. DEHP is
13 listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and
14 birth defects or other reproductive harm.

15 **1.3 Notice of Violation/Action.** On or about August 19, 2021, Bell served University
16 Games, Briarpatch, Inc., Pete the Cat IP Holding Company, LLC, MerryMakers, Inc., The TJX
17 Companies, Inc., and various public enforcement agencies with documents entitled “60-Day Notice
18 of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that
19 Defendant violated Proposition 65 for failing to warn consumers and customers that use of Pete the
20 Cat Children’s Puzzles expose users in California to DEHP. No public enforcer has brought and is
21 diligently prosecuting the claims alleged in the Notice. On August 19, 2022, Bell filed a complaint
22 (the “Complaint”) setting forth a cause of action for violation of Proposition 65 concerning the
23 allegations in the Notice.

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

3 1.5 Defendant denies the material allegations contained in Bell's Notice and Complaint
4 and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be
5 construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor
6 shall compliance with this Consent Judgment constitute or be construed as an admission by
7 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
8 denied by Defendant. However, this section shall not diminish or otherwise affect the obligations,
9 responsibilities, and duties of Defendant under this Consent Judgment.

10 **2. DEFINITIONS**

11 2.1 **Covered Products.** The term "Covered Products" means Pete the Cat Children's
12 Puzzles that are manufactured, distributed, shipped into California and offered for sale in California
13 by University Games.

14 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
15 entered as a Judgment by this Court.

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

17 3.1 **Reformulation of Covered Products.** As of the Effective Date, and continuing
18 thereafter, Covered Products that University Games directly manufactures, imports, distributes,
19 sells, or offers for sale in California shall either be: (a) reformulated Products pursuant to § 3.2,
20 below; or (b) labeled with a clear and reasonable exposure warning pursuant to §§ 3.3 and 3.4,
21 below. For purposes of this Consent Judgment, a "Reformulated Product" is a Covered Product that
22 is in compliance with the standard set forth in § 3.2 below. The warning requirement set forth in §§
23 3.3 and 3.4 shall not apply to any Reformulated Product. Section 3 shall not apply to any products
24 that were already sold, distributed, or supplied to any third parties that have entered the stream of
25 commerce.

26 3.2 **Reformulation Standard.** "Reformulated Products" shall mean Covered Products
27 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP
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1 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
2 and 8270C or other methodology utilized by federal or state government agencies for the purpose
3 of determining the phthalate content in a solid substance.

4 **3.3 Clear and Reasonable Warning.** As of the Effective Date, and continuing
5 thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3 and 3.4 must be
6 provided for all Covered Products that Defendant manufacturers, imports, distributes, sells, or
7 offers for sale in California that is not a Reformulated Product. There shall be no obligation for
8 Defendant to provide a warning for Covered Products that enter the stream of commerce prior to
9 the date this Consent Judgment is signed by both Parties. The warning shall consist of either the
10 **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

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

12 ⚠ **WARNING:** This product can expose you to chemicals including di(2-
13 ethylhexyl) phthalate (DEHP), which is known to the State of California to cause
14 cancer and birth defects or other reproductive harm. For more information go to
www.P65Warnings.ca.gov.

15 (b) **Alternative Warning:** University Games may, but is not required to, use the
16 alternative short-form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

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

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

1 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning
2 the use of the Covered Product and shall be at least the same size as those other safety warnings.

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

18 **3.5 Compliance with Warning Regulations.** Defendant shall be deemed to be in
19 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
20 Judgment or by complying with warning requirements adopted by OEHHA applicable to the
21 Covered Product and exposures at issue after the Effective Date. If "consumer information," as that
22 term is defined in Title 27, California Code of Regulations, Section 25600.1(c) as it may be
23 amended from time to time, is provided in a foreign language, University Games shall provide the
24 **Warning** or **Alternative Warning** in the foreign language in accordance with applicable warning
25 regulations adopted by OEHHA.

1 **4. MONETARY TERMS**

2 **4.1 Civil Penalty.** University Games shall pay \$1,000.00 as a Civil Penalty pursuant to
3 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health
4 & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of
5 the Civil Penalty remitted to Bell, as provided by California Health & Safety Code § 25249.12(d).

6 4.1.1 Within fifteen (15) business days of the Effective Date, University Games
7 shall issue two separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of
8 \$750.00; and to (b) “Ema Bell” in the amount of \$250.00. Payment owed to Bell pursuant to this
9 Section shall be delivered to the following payment address:

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

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

15 For United States Postal Service Delivery:

16 Mike Gyurics
17 Fiscal Operations Branch Chief
18 Office of Environmental Health Hazard Assessment
 P.O. Box 4010
 Sacramento, CA 95812-4010

19 For Non-United States Postal Service Delivery:

20 Mike Gyurics
21 Fiscal Operations Branch Chief
22 Office of Environmental Health Hazard Assessment
 1001 I Street
 Sacramento, CA 95814

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

25 **4.2 Attorneys’ Fees.** The Parties acknowledge that Bell and her counsel offered to
26 reach preliminary agreement on the material terms of this dispute before reaching terms on the
27 amount of fees and costs to be reimbursed to them. The Parties thereafter reached an accord on
28 the compensation due to Bell and her counsel under general contract principles and the private

1 attorney general doctrine and principles codified at California Code of Civil Procedure § 1021.5,
2 for all work performed through the mutual execution of this agreement. Under these legal
3 principles, within fifteen (15) business days, University Games shall reimburse Bell's counsel
4 \$14,000.00 for fees and costs made payable to "Brotsky Smith" for delivery to the address
5 identified in § 3.2(a)(i) for investigating and bringing this matter to the attention of University
6 Games and negotiating a settlement in the public interest.

7 **5. RELEASE OF ALL CLAIMS**

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

1 5.2 In addition to the foregoing, Bell, on behalf of herself, her past and current agents,
2 representatives, attorneys, and successors and assignees, and *not* in her representative capacity,
3 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action
4 and releases University Games, Defendant Releasees, and Downstream Releasees from any and all
5 manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
6 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of
7 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
8 future, with respect to any alleged violations of Proposition 65 related to or arising from Covered
9 Products manufactured, distributed, or sold by University Games, Defendant Releasees or
10 Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph, Bell
11 hereby specifically waives any and all rights and benefits which she now has, or in the future may
12 have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides
13 as follows:

14 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
15 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
16 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
17 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
18 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
19 DEBTOR OR RELEASED PARTY.

18 5.3 University Games waives any and all claims against Bell, her attorneys and other
19 representatives, for any and all actions taken, or statements made (or those that could have been
20 taken or made) by Bell and her attorneys and other representatives relating to the allegations in the
21 Complaint, whether in the course of investigating the Notice or otherwise seeking enforcement of
22 Proposition 65 against it in this matter with respect to Covered Products.

23 **6. INTEGRATION**

24 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
25 any and all prior negotiations and understandings related hereto shall be deemed to have been
26 merged within it. No representations or terms of agreement other than those contained herein exist
27 or have been made by any Party with respect to the other Party or the subject matter hereof.
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1 **7. GOVERNING LAW**

2 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California and apply within the State of California. In the event that Proposition 65 is repealed or
4 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
5 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
6 to the extent that, Covered Products are so affected.

7 **8. NOTICES**

8 8.1 Unless specified herein, all correspondence and notices required to be provided
9 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
10 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
11 by the other party at the following addresses:

12 For Defendant:

13 Bob Moog
14 University Games Corporation
15 2030 Harrison Street
16 San Francisco, CA 94110

17 Jeffrey B. Margulies
18 Norton Rose Fulbright US LLP
19 555 South Flower Street, 41st Floor
20 Los Angeles, CA 90071

21 And

22 For Bell:

23 Evan Smith
24 Brodsky Smith
25 9595 Wilshire Blvd., Ste. 900
26 Beverly Hills, CA 90212

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

29 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

30 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
31 which shall be deemed an original, and all of which, when taken together, shall constitute one and
32 the same document.

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

2 **APPROVAL**

3 10.1 Bell agrees to comply with the requirements set forth in California Health & Safety
4 Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
5 Defendant agrees it shall support approval of such Motion.

6 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
7 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
8 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
9 days, the case shall proceed on its normal course.

10 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
11 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
12 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
13 its normal course on the trial court's calendar.

14 **11. MODIFICATION**

15 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
16 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

17 **12. ATTORNEY'S FEES**

18 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
19 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

20 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
21 pursuant to law.

22 **13. RETENTION OF JURISDICTION**

23 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
24 Consent Judgment.

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14. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date: _____

Date: November 9, 2023

By: _____

By: [Signature]

EMA BELL

UNIVERSITY GAMES CORPORATION

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

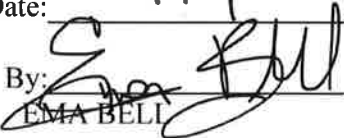
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AGREED TO:

AGREED TO:

Date: 11/22/23
By: 
EMMA BELL

Date: _____
By: _____
UNIVERSITY GAMES CORPORATION

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court