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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 BUFFALO GAMES, LLC, KOHL'S, INC.,

15 Defendants.

Case No.: CGC-25-621295

CONSENT JUDGMENT

Judge: Chistine Van Aken
Dept.: 301

Hearing Date: May 15, 2025

Hearing Time: 9:30 AM

Complaint Filed: January 10, 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 Buffalo Games, LLC (“Buffalo Games” 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 seeks to promote awareness of exposures
6 to toxic chemicals and improve human health by reducing or eliminating hazardous substances
7 contained in consumer products. Buffalo Games is alleged to be a person in the course of doing
8 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 di(2-ethylhexyl) phthalate (DEHP) from its sales of Chuckle & Roar dot art activity
11 set bags, UPC # 079346627110 without providing a clear and reasonable exposure warning
12 pursuant to Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the
13 State of California to cause cancer and birth defects or other reproductive harm.

14 **1.3 Notice of Violation/Action.** On May 22, 2024, Bell served Kohl’s, Inc., Kin, Inc.
15 (collectively “Kohl’s”), Buffalo Games, 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 Chuckle & Roar dot art activity set bags, UPC # 079346627110 expose users
19 in California to DEHP. No public enforcer has brought and is diligently prosecuting the claims
20 alleged in the Notice. On January 10, 2025, Bell filed a complaint (the “Complaint”).

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

1 1.5 Defendant denies the material allegations contained in Bell's Notice and Complaint
2 and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be
3 construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor
4 shall compliance with this Consent Judgment constitute or be construed as an admission by
5 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
6 denied by Defendant. However, this section shall not diminish or otherwise affect the obligations,
7 responsibilities, and duties of Defendant under this Consent Judgment.

8 **2. DEFINITIONS**

9 2.1 **Covered Products.** The term "Covered Products" means Chuckle & Roar dot art
10 activity set bags, UPC # 079346627110 that are manufactured, distributed, shipped into California
11 and offered for sale in California by Buffalo Games.

12 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
13 entered as a Judgment of the Court.

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

15 3.1 **Reformulation of Covered Products.** Commencing within sixty (60) days after the
16 Effective Date, and continuing thereafter, Covered Products that Buffalo Games directly
17 manufactures, imports, distributes, sells, or offers for sale in California shall either be: (a)
18 Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable
19 exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a
20 "Reformulated Product" is a Covered Product that is in compliance with the standard set forth in §
21 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated
22 Product.

23 3.2 **Reformulation Standard.** "Reformulated Products" shall mean Covered Products
24 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP
25 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
26 and 8270C or other methodology utilized by federal or state government agencies for the purpose
27 of determining the phthalate content in a solid substance.
28

1 3.3 **Clear and Reasonable Warning.** Commencing within 60 days after the Effective
2 Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3
3 and 3.4 must be provided for all Covered Products that Defendant manufacturers, imports,
4 distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be
5 no obligation for Defendant to provide a warning for Covered Products that enter the stream of
6 commerce within 60 days after the Effective Date. The warning shall consist of either the **Warning**
7 or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

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

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

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

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

16 3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word
17 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
18 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
19 triangle with a black outline, except that if the sign or label for the Covered Product does not use
20 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
21 than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed
22 to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or
23 electronic device or automatic process only if such electronic device or automatic process provides
24 the **Warning** or **Alternative Warning** without the purchaser having to seek it out, providing that
25 the **Warning** or **Alternative Warning** is displayed with such conspicuousness, as compared with
26 other words, statements, or designs as to render it likely to be read and understood by an ordinary
individual under customary conditions of purchase or use. The **Warning** or **Alternative Warning**

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

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

21 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
22 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
23 Judgment or by complying with warning regulations adopted by OEHHA applicable to the Covered
24 Product and exposures at issue.

25 4. **MONETARY TERMS**

26 4.1 **Civil Penalty.** Buffalo Games shall pay \$2,000.00 as a Civil Penalty pursuant to
27 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health
28

1 & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of
2 the Civil Penalty remitted to Bell, as provided by California Health & Safety Code § 25249.12(d).

3 4.1.1 Within ten (10) days of the Effective Date, Buffalo Games shall issue two
4 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and
5 to (b) "Ema Bell" in the amount of \$500.00. Payment owed to Bell pursuant to this Section shall
6 be delivered to the following payment address:

7 Evan J. Smith, Esquire
8 Brodsky Smith
9 Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

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

12 For United States Postal Service Delivery:

13 Mike Gyurics
14 Fiscal Operations Branch Chief
15 Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

16 For Non-United States Postal Service Delivery:

17 Mike Gyurics
18 Fiscal Operations Branch Chief
19 Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

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

22 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Buffalo Games shall
23 pay \$22,000.00 to Brodsky Smith as complete reimbursement for Bell's attorneys' fees and costs
24 incurred as a result of investigating, bringing this matter to the attention of Buffalo Games,
25 litigating and negotiating and obtaining judicial approval of a settlement in the public interest,
26 pursuant to Code of Civil Procedure § 1021.5.

1 **5. RELEASE OF ALL CLAIMS**

2 5.1 This Consent Judgment is a full, final, and binding resolution between Bell acting
3 on her own behalf, and on behalf of the public interest, and Buffalo Games, and its parents,
4 shareholders, members, directors, officers, managers, employees, representatives, agents,
5 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
6 predecessors, successors and assigns (“Defendant Releasees”), and all entities to whom they
7 directly or indirectly distribute or sell Covered Products, including but not limited to manufacturers,
8 suppliers, distributors, wholesalers, customers, licensors, licensees retailers, including but not
9 limited to Kohl’s, its parents, subsidiaries, and affiliates, franchisees, and cooperative members
10 (“Downstream Releasees”), of all claims for violations of Proposition 65 based on exposure to
11 DEHP from use of the Covered Products manufactured, distributed, or sold by Buffalo Games
12 within 60 days after the Effective Date as set forth in the Notice. It is the Parties’ intention that this
13 Consent Judgment shall have preclusive effect such that no other actions by private enforcers,
14 whether purporting to act in his, her, or its interests or the public interest shall be permitted to
15 pursue and take any action with respect to any violation of Proposition 65 based on exposure to
16 DEHP from use of the Covered Products that was alleged in the Complaint, or that could have been
17 brought pursuant to the Notice against Buffalo Games and the Downstream Releasees (“Proposition
18 65 Claims”). Buffalo Games’s compliance with the terms of this Consent Judgment constitutes
19 compliance with Proposition 65 by Buffalo Games with regard to exposure to DEHP from use of
20 the Covered Products.

21 5.2 In addition to the foregoing, Bell, on behalf of herself, her past and current agents,
22 representatives, attorneys, and successors and assignees, and not in her representative capacity,
23 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action
24 and releases Buffalo Games, Defendant Releasees, and Downstream Releasees from any and all
25 manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
26 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys’ fees, of
27 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
28

1 future, with respect to any alleged violations of Proposition 65 related to or arising from Covered
2 Products manufactured, distributed, or sold by Buffalo Games, Defendant Releasees or
3 Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph, Bell
4 hereby specifically waives any and all rights and benefits which she now has, or in the future may
5 have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides
6 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 Buffalo Games 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 David Ludwig
3 Dunlap Bennett & Ludwig
4 11 Broadway, Ste. 615
New York, NY 10004

And

5 For Bell:

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

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

11 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

12 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
13 which shall be deemed an original, and all of which, when taken together, shall constitute one and
14 the same document.

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

17 10.1 Bell agrees to comply with the requirements set forth in California Health & Safety
18 Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
19 Defendant agrees it shall support approval of such Motion.

20 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
21 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
22 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
23 days, the case shall proceed on its normal course.

24 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
25 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
26 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
27 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. AUTHORIZATION**

13 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
14 respective Parties and have read, understood, and agree to all of the terms and conditions of this
15 document and certify that he or she is fully authorized by the Party he or she represents to execute
16 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
17 explicitly provided herein each Party is to bear its own fees and costs.

18 **AGREED TO:**

AGREED TO:

19
20 Date: _____

Date: March 5 2025

21 By: _____
22 EMA BELL

By:  _____
BUFFALO GAMES, LLC

23
24 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

25
26 Dated: _____

27 _____
Judge of Superior Court

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16 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
17 explicitly provided herein each Party is to bear its own fees and costs.

18 **AGREED TO:**

AGREED TO:

19
20 Date: 3 / 28 / 25

Date: _____

21 By: [Signature]

22 By: _____

23 EMA BELL

BUFFALO GAMES, LLC

24 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

25
26 Dated: _____

27 _____
Judge of Superior Court