

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332(a)(1) because Plaintiff and Defendant are citizens of different states, and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

3. This Court has personal jurisdiction over the Defendant, and venue in this District is proper under 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400(a) as Defendant is incorporated in this District and maintains its principal place of business in this District.

THE PARTIES

4. Plaintiff Markham is a Nevada corporation, organized and existing under the laws of the State of Nevada, with its principle place of business in Las Vegas, Nevada. Markham is the owner of the rights and obligations of Bill Markham's estate, including his interest in the Game.

5. Defendant Hasbro is a Rhode Island corporation, organized and existing under the laws of the State of Rhode Island, with its principal place of business in Pawtucket, Rhode Island. Hasbro is the successor-in-interest to Milton Bradley Company's ("Milton Bradley") rights and obligations concerning the Game.

GENERAL FACTUAL ALLEGATIONS

6. Bill Markham, a celebrated inventor of board games and other toys, authored and created the Game in 1959. The iconic Game has since sold over 30 million copies and has been displayed at the Smithsonian Institution.

7. Following Bill Markham's creation of the Game, he entered into an assignment agreement with Link Research Corporation ("Link"), dated October 20, 1959, whereby Bill Markham (d/b/a California Products Corporation), subject to the governing law and terms of the agreement, assigned Link "all of his right[s], title and interest in and to the Game" ("the

Assignment Agreement”) (annexed hereto as Exhibit “A” and made a part hereof by this reference).

8. The Assignment Agreement stated that Bill Markham “has invented, designed and developed a game tentatively known as ‘THE GAME OF LIFE.’” In addition, the Assignment Agreement referenced a license agreement entered into by Link in which it “licensed for manufacture and sale” the Game to Milton Bradley.

9. The license agreement referenced in the Assignment Agreement was entered into on or about September 21, 1959, between Link and Milton Bradley (“the Licensing Agreement”) (annexed hereto as Exhibit “B” and made a part hereof by this reference). Under the terms of the Licensing Agreement, Milton Bradley was provided the “exclusive right and privilege to manufacture and market” the Game in exchange for payment of “a royalty of 6% of [net wholesale] on all shipments of the Game” with certain set offs for discounts and returns and otherwise in accordance with the governing law and its terms.

10. In consideration of his assignment of his rights and privileges to the Game under the Assignment Agreement, Link assigned to Bill Markham “30% of the total royalties to be received by it from the manufacture and sale of the Game.” In addition, Link agreed to serve as Markham’s “agent to receive the royalties due him from the manufacturer” (i.e., Milton Bradley).

11. In 1989, the Assignment Agreement was amended following litigation between Bill Markham and the successors-in-interest to Link – including Reuben Klammer, Art Linkletter, and Irvin Atkins – pursuant to a settlement agreement, dated July 9, 1989 (“the Link Settlement Agreement”) (attached hereto as Exhibit “C”). The Link Settlement Agreement provided that, from that point forward, Bill Markham would receive 36.66% of all royalties earned on international sales related to the Game, while continuing to receive 30% of all royalties earned

on domestic sales related to the Game. As a result of the Link Settlement Agreement, Markham was entitled to a royalty payment of at least 1.8% on all domestic sales and 2.1996% on all international sales.

12. The Link Settlement Agreement further provided that “Milton Bradley will pay the royalties on the board game ‘The Game of Life’ into a trust account, under written instructions by the parties as to distribution of the royalties to Markham and Link’s successors in interest. Such instructions shall be that Markham shall be paid 30% of all domestic royalties and 36.66% of all foreign royalties unless jointly instructed in writing by the parties hereto.”

13. Shortly after the Link Settlement Agreement was entered into, Bill Markham entered into a separate agreement with Milton Bradley, which upon information and belief was incorporated into a written agreement dated July 24, 1989 (“the MB Settlement Agreement”) (the License Agreement, the Assignment Agreement, the Link Settlement Agreement, and the MB Settlement Agreement collectively, “the Royalty Arrangement”). Under the terms of the MB Settlement Agreement, Milton Bradley agreed that the royalty payments Bill Markham was entitled to under the Licensing Agreement and Assignment Agreement would no longer be paid to Markham indirectly through Link. Rather, Milton Bradley agreed to pay royalty payments to a third-party escrow agent, who would then distribute funds directly to the parties to, beneficiaries to, or assignees of the Licensing Agreement, including Bill Markham.

14. Bill Markham and the successors-in-interest to Link executed an escrow agreement with First Interstate Bank of California, a predecessor-in-interest to Wells Fargo (collectively, “Wells Fargo”), dated November 1, 1989. Milton Bradley thereafter remitted royalty payments into the escrow account with Wells Fargo until it merged with Hasbro in 1990.

15. Upon information and belief, in 1990, Milton Bradley merged with Hasbro, with Hasbro, Inc. the surviving entity. As a result of this merger, Hasbro became the successor-in-

interest to the obligations of Milton Bradley, including those obligations to pay Bill Markham royalties related to the Game. After the merger, Hasbro remitted royalty payments directly to Markham through an escrow agent in the same manner that Milton Bradley had done previously. With quarterly remittance of royalty payments to the escrow agent, Hasbro was obligated to provide a “full, complete and accurate statement showing the quantity of the ‘GAME OF LIFE’ shipped, returned, and net gross dollar billings (if any) during the preceding quarter,” as required under § 2(b) of the Licensing Agreement.

16. Bill Markham died on April 1, 1993. Plaintiff Markham Concepts serves as Mr. Markham’s successor-in-interest to the intellectual property rights owned by Mr. Markham at the time of his death, including but not limited to the rights with respect to the Game and including the rights to which he was entitled under the Royalty Arrangement, or otherwise.

17. Upon information and belief, in late 2014 Wells Fargo informed the parties that it was no longer willing to serve as an escrow agent with respect to the Royalty Arrangement. Following Wells Fargo’s termination of the escrow agreement, Hasbro ceased making royalty payments related to the Game under the terms of the Royalty Arrangement. Hasbro has refused to remit payment until a new escrow agreement is executed by Markham and the successors-in-interest to Link. Markham and the successors-in-interest to Link attempted to negotiate a new escrow agreement, but have been unable to reach agreeable terms due to the unreasonable, bad-faith actions of Reuben Klamer.

18. Using the absence of an escrow agreement as leverage, Klamer attempted to extract concessions from Markham, including an agreement to pay Klamer – at the expense of Markham – the following: (i) purported “expenses incurred in review and enforcement of Hasbro’s compliance with the License Agreement”; (ii) an additional 10% of all royalties “as compensation for managing the License Agreement and Escrow”; and (iii) an increase in his

share of the total remaining international royalties after setoffs for any “expenses” and management fees. When this bad-faith proposal was rejected, Klamer next attempted to condition signing of a new escrow agreement on the inclusion of terms designed to prejudice Markham and to the benefit Klamer. This bad-faith proposal was also rejected. Klamer ultimately renounced his agency relationship with Markham, by telling Markham: “I am not your agent.”

19. Despite Klamer’s bad faith conduct, Markham attempted one last time to reach agreement on a new escrow agreement by setting forth a proposal designed to maintain the status quo and to remediate Hasbro’s breach by getting royalty streams flowing again from Hasbro (“the Status Quo Provisions”). U.S. Bank, the proposed new escrow agent, accepted in substance the inclusion of the Status Quo Provisions in a new escrow agreement. Klamer, however, rejected the inclusion of the Status Quo Provisions and provided one more bad-faith proposal.

20. As a result of Klamer’s misconduct, on September 27, 2015, Markham confirmed the termination of its business, agency, and any other relationship with Klamer and the other successors-in-interest to Link. Thereafter, Markham demanded payment directly from Hasbro for all royalties to which it was entitled from the moment that Hasbro stopped making royalty payments through the date of termination of the Assignment Agreement (“the Unpaid Markham Royalties”). Markham further directed that such payments as well as future undisputed royalty payments be made to a trust account that was specifically identified by Markham, which is the client trust account maintained by counsel to Markham. Markham made clear that, although Markham is reserving its rights to royalty payments and to royalties beyond what the current arrangement contemplates, it was for these purposes only limiting its request for payments by Hasbro to those amounts previously paid to Markham through the escrow agent. Hasbro has

refused to remit payment in the limited and pendent lite manner directed by Markham. Hasbro's refusal to pay and/or to use an escrow account as directed by Markham has caused and is continuing to cause Markham irreparable harm.

21. Upon information and belief, even though Hasbro ceased making royalty payments related to the Game, Hasbro has continued to sell, market, manufacture, use, and exploit the Game resulting in hundreds of thousands – if not millions – of dollars in additional revenue that Hasbro has not paid royalties on.

22. The royalties that Markham receives from Hasbro amount to nearly all of the income Markham receives. Hasbro has irreparably harmed and continues irreparably to harm Markham by withholding royalties to which Markham is entitled.

23. Markham has performed all of its obligations or conditions to suit or recovery under the Royalty Arrangement or otherwise, including all of its obligations under the Licensing Agreement and MB Settlement Agreement.

FIRST CLAIM FOR RELIEF

(Breach of Contract)

24. Markham repeats and realleges all other paragraphs of this Complaint as if fully set forth herein.

25. A valid and enforceable contract exists between Markham and Hasbro pursuant to which Hasbro must pay Markham royalty payments related to Hasbro's use and exploitation of the Game. In the alternative, privity of contract between Markham and Hasbro exists through Markham's status as an assignee of the right to receive royalties under the License Agreement or as an intended third-party beneficiary of the Licensing Agreement or because Link was acting as

Markham's agent in entering into the Licensing Agreement, a status known to Hasbro at all relevant times.

26. Both Markham and Hasbro assented to and ratified the benefits provided to both Markham and Hasbro in the Licensing Agreement, and in all other documents or agreements constituting the Royalty Arrangement.

27. Hasbro has breached the terms of the Licensing Agreement and the MB Settlement Agreement (both individually and collectively) in that it has failed and refused to pay the Unpaid Markham Royalties in full for the royalties to which Markham is entitled related to Defendant's use and exploitation of the Game.

28. Hasbro has further breached the terms of the Licensing Agreement and the MB Settlement Agreement (both individually and collectively) in that it has refused to use a valid escrow account as directed by Markham in order to remit payment of royalties.

29. Plaintiff has suffered damages as a direct and proximate cause of Hasbro's breach, and such damages exceed the jurisdictional minimum of this Court. By upending the status quo and stopping the royalty payments, Hasbro has also caused and is continuing to cause irreparable harm to Markham.

SECOND CLAIM FOR RELIEF

(Unjust Enrichment and/or Quantum Meruit)

30. Markham repeats and realleges all other paragraphs of this Complaint as if fully set forth herein.

31. Markham provided and is continuing to provide valuable services and property rights to Hasbro, including the right to use and exploit the concept of the Game and its associated intellectual property.

32. Hasbro accepted the services and property rights provided to it by Markham and benefited from these services.

33. Hasbro has failed and refused to pay Markham for the services and rights referenced herein.

34. As a result of the conduct described above, Hasbro has been unjustly enriched at the expense of Markham by maintaining funds that Markham is legally entitled to.

35. It would be inequitable to allow Hasbro to retain the value of this benefit without properly compensating Markham for the value of the services performed.

36. Hasbro should be required to disgorge all monies, profits, and gains which it obtained or will unjustly obtain in the future at the expense of Markham, and a constructive trust should be imposed for the benefit of Markham.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant, as follows:

1. For damages in an amount to be determined at trial;
2. For a temporary restraining order, preliminary injunction, and permanent injunction to return the status quo through payments of undisputed royalties to Markham and by requiring Hasbro (a) to make payments of royalties to Markham as required under the terms of the Royalty Arrangement, and (b) to use a valid escrow account as directed by Markham in order to remit payment under the Royalty Arrangement;
3. For an award of prejudgment interest at the maximum rate allowed by law;
4. For costs of suit incurred herein, including reasonable attorneys' and experts' fees;
5. For such other and further relief as the Court may deem just and proper.

Dated: October 2, 2015

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