

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Audrey Donaldson (“Donaldson”) and Mud Pie, LLC (“Mud Pie”), with Donaldson and Mud Pie each individually referred to as a “Party” and collectively as the “Parties.” Donaldson is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. Mud Pie employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Donaldson alleges that Mud Pie manufactures, sells, and distributes for sale in California, shot glasses with exterior decorations containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause cancer and birth defects and other reproductive harm. Donaldson alleges that Mud Pie failed to provide the warning required by Proposition 65 for exposures to lead.

1.3 Product Description

The products covered by this Settlement Agreement are shot glasses with exterior decorations containing lead that are manufactured, sold, or distributed for sale in California by Mud Pie including, but not limited to, the *“In Alcohol’s Defense I’ve Done Dumb Things Sober Too” Shot Glass, UPC: 7 18540 477915* (hereinafter referred to as “Products”).

1.4 Notice of Violation

On August 27, 2020, Donaldson served Mud Pie, Judd Miller Holding Corporation and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Mud Pie violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to lead from the Products. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Mud Pie denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has sold and distributed in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Mud Pie of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Mud Pie of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Mud Pie. This Section shall not, however, diminish or otherwise affect Mud Pie’s obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean December 4, 2020.

2. INJUNCTIVE RELIEF

2.1 Cease and Desist California Sales

As of the Effective Date, Mud Pie shall cease and desist California sales of the *“In Alcohol’s Defense I’ve Done Dumb Things Sober Too” Shot Glass, UPC: 7 18540 477915*, to the extent any remain in Mud Pie’s inventory. Should Mud Pie reintroduce

UPC: 7 18540 477915 into the California market in the future, such products shall meet the requirements of Section 2.2 or 2.3.

2.2 Reformulation Standards

“Reformulated Products” are defined as those Products which comply with the requirements for “Glassware Food/Beverage products” as set forth in Section 2.3.1 of the Proposition 65 consent judgment entered into in *Brimer v. The Boelter Companies, et al.*, San Francisco Superior Court No. CGC-05-440811 (“Boelter CJ”), to which Mudd Pie’s predecessor Judd Miller & Co., dba Mud Pie, is a party.

2.3 Warnings

As of the Effective Date, Products which fail to meet the requirements for “Glassware Food/Beverage Products” as set forth in Section 2.2(a)(i) of the Boelter CJ, shall be labeled in compliance with the Proposition 65 warning requirements set forth in the Boelter CJ.

2.4 The Parties agree and intend for compliance with the terms of Sections 2.2 or 2.3 to constitute compliance with Proposition 65 with respect to exposures to lead from the Products.

2.5. Products in the Stream of Commerce

Based on the civil penalties to be paid pursuant to Section 3.1 below, Products previously distributed for sale in California shall be exempt from the requirements of Sections 2.1, 2.2 and 2.3, and are covered by the releases in Section 4.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Mud Pie agrees to pay \$1,250.00 in civil penalties no later than the Effective Date. The penalty payment will be allocated in accordance with California Health and Safety Code section

25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Donaldson, and delivered to the address in Section 3.3 herein. Mud Pie will provide its payment in two checks as follows: (1) “OEHHA” in the amount of \$937.50; and (2) “Audrey Donaldson” in the amount of \$312.50.

3.2 Attorneys’ Fees and Costs

The Parties acknowledge that Donaldson and her counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been reached, Mud Pie expressed a desire to resolve Donaldson’s fees and costs. The Parties reached an accord on the compensation due to Donaldson and her counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, on or before the Effective Date, Mud Pie agrees to pay \$10,500.00 in the form of a check made payable to “Voorhees & Bailey, LLP,” for all fees and costs incurred investigating, bringing this matter to the attention of Mud Pie’ management, and negotiating a settlement.

3.3 Payment Address

All payments under this Settlement Agreement shall be delivered to the following address:

Voorhees & Bailey, LLP
Attn. Donaldson v. Mud Pie
990 Amarillo Avenue
Palo Alto, CA 94303

4. CLAIMS COVERED AND RELEASED

4.1 Donaldson's Release of Proposition 65 Claims

Donaldson acting on her own behalf, and *not* on behalf of the public, releases Mud Pie, its parents, subsidiaries, predecessors, successors, affiliated entities under common ownership, directors, officers, agents employees, attorneys, licensors and each entity to whom Mud Pie directly or indirectly distribute or sell the Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers (including but not limited to Mixed Bag), franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to lead in the Products. Donaldson further represents and warrants that she, her attorneys, and each of them, is not presently aware of a basis for a Proposition 65 claim against Mud Pie or any of the other Releasees with regard to the Products concerning any other Proposition 65 listed chemical. The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products.

4.2 Donaldson's Extended Release of Claims

Donaldson, in her individual capacity only and *not* in her representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of Donaldson of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to lead or cadmium or other chemical in the Products manufactured, imported, otherwise acquired, distributed, or sold by Mud Pie or its predecessors (including corporations it previously acquired) prior to the Effective Date. The Parties further understand and agree that this Section 4.2 release shall not extend upstream to any entities that manufactured the Products. Nothing in this Section affects Donaldson's right to commence or prosecute an action under Proposition 65

against a Releasee that does not involve the Products.

4.3 Mud Pie' Release of Donaldson

Mud Pie, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Donaldson and her attorneys and other representatives, for any and all actions taken or statements made by Donaldson and her attorneys and other representatives, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

4.4. California Civil Code Section 1542

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. Donaldson on behalf of herself only, on one hand, and Mud-Pie, on the other hand, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in Sections 4.1, 4.2, and 4.2, above, may include unknown claims, and nevertheless waive California Civil Code Section 1542 as to any such unknown claims. California Civil Code Section 1542 reads as follows:

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

Donaldson and Mud Pie each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code Section 1542.

5. **SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

6. **GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Mud Pie may provide written notice to Donaldson of any asserted change in the law and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

7. **NOTICE**

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Mud Pie:

Zander Brekke, Esq.
Mud Pie, LLC
4893 Lewis Road, Suite A
Stone Mountain, GA 30083

For Donaldson:

Voorhees & Bailey, LLP
Proposition 65 Coordinator
990 Amarillo Avenue
Palo Alto, CA 94303

With a copy to:

Michael D. Abraham, Esq.
Bartko, Zankel, Bunzel & Miller
One Embarcadero Center, Suite 800
San Francisco, CA 94111

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

8. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Donaldson and her attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

10. MODIFICATION

This Settlement Agreement may be modified only by written agreement of the Parties.

11. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.


AGREED TO:

AGREED TO:

Dated:

Dated: 11/16/20

By: _____
AUDREY DONALDSON

By:  _____
MUD PIE, LLC

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AGREED TO:

AGREED TO:

Dated:

Dated:

By: 

AUDREY DONALDSON

By: 13 NN 20

MUD PIE, LLC