

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Audrey Donaldson (“Donaldson”) and Mad Engine, LLC (“Mad Engine”), with Donaldson and Mad Engine 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. Donaldson alleges that Mad Engine 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 Mad Engine manufactures, sells, and distributes for sale in California, mugs with exterior decorations containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Donaldson alleges that Mad Engine failed to provide the health hazard warning required by Proposition 65 for exposures to lead.

1.3 Product Description

The products covered by this Settlement Agreement are ceramic bowls with exterior decoration including, but not limited to, the “*Maruchan Ramen Noodle Bowl*”; *UPC/SKU: 11836053 Dept: 0011*, that are manufactured, sold, or distributed for sale in California by Mad Engine (hereinafter referred to as “Products”).

1.4 Notice of Violation

On September 22, 2020, Donaldson served Mad Engine, Hot Topic, Inc. (“Hot Topic”) and the requisite public enforcement agencies with a 60-Day Notice of Violation, alleging that Mad Engine and Hot Topic violated Proposition 65 when they failed to warn

their 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 Notices.

1.5 No Admission

Mad Engine 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 Mad Engine 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 Mad Engine of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Mad Engine. This Section shall not, however, diminish or otherwise affect Mad Engine'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 11, 2020.

2. INJUNCTIVE RELIEF: REFORMULATION/WARNINGS

2.1 Reformulation Standards

"Reformulated Products" are defined as those Products that: (a) contain no more than 90 parts per million ("ppm") lead in any decoration, colored artwork, designs and/or marking on the surface of the Products when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3050B or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance; (b) yield a result of non-detect (defined as no more than 25 ppm by weight of lead) for any decorations located in the upper 20 millimeters of a Product, i.e., the "Lip-and-Rim" area, when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies used by state and federal agencies to determine lead content in

a solid substance; *and* (c) yield no more than 1.0 microgram of lead on any surface sampled and analyzed pursuant to the NIOSH 9100 testing protocol.


If the decoration is tested after it is affixed to the Product, the percentage of the lead by weight must related only to the decorating materials and must not include any quantity attributable to non-decorating material (e.g., ceramic substrate).

2.2 Reformulation Commitment


As of the Effective Date, Mad Engine shall not manufacture, import, distribute, sell or offer the Products for sale in the State of California unless they are Reformulated Products pursuant to Section 2.1 or contain appropriate health hazard warnings pursuant to Section 2.3 below.

2.3 Product Warnings

As of the Effective Date, all Products Mad Engine sells and/or distributes for sale in California that do not qualify as Reformulated Products, shall bear a clear and reasonable warning pursuant to this Section. Mad Engine further agrees that the warning shall be prominently placed with such conspicuousness when compared with other words, statements, designs or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of use. For purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall consist of a warning affixed directly to the product or product packaging, label, or tag, for Products sold in California, and contain one of the following statements:

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

OR

 **WARNING:**
This product can expose you to chemicals including lead, which are 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.

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, Mad Engine agrees to pay \$3,000 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. Mad Engine will provide its payment in two checks as follows: (1) “OEHHA” in the amount of \$2,250; and (2) “Audrey Donaldson” in the amount of \$750.

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, Mad Engine expressed a desire to resolve Donaldson’s fees and costs. The Parties reached an accord on the compensation due to Donaldson’s 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, Mad Engine agrees to pay \$16,000, 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 Mad Engine’s management, and negotiating a settlement.

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3.3 Payment Address

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

Voorhees & Bailey, LLP
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 Mad Engine, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Mad Engine directly or indirectly distributes or sell Products, including, but not limited to, downstream distributors, marketplace hosts, wholesalers, customers, retailers including, but not limited to Hot Topic, 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. The Parties further understand and agree that this Section 4.1 release shall extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Mad Engine, but only to the extent that the Products were then specifically sold by Mad Engine only. The parties intend and agree that compliance with the injunctive relief provisions of this Settlement Agreement shall be deemed compliance with Proposition 65 with respect to exposure to lead in the Products.

4.2 Donaldson's Individual 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 in the Products manufactured, imported, distributed, or sold by Mad Engine 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, or any component parts thereof, or any distributors or suppliers who sold the Products, or any component parts thereof to Mad Engine. Nothing in this Section affects Donaldson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Mad Engine's Products.

4.3 Mad Engine's Release of Donaldson

Mad Engine, 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 §1542

The Parties acknowledge that the claims released in Sections 4.1-4.3 may include unknown claims. The Parties further acknowledge that they are familiar with California Civil Code section 1542, which provides 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.

The Parties hereby expressly waive and relinquish any and all rights and benefits which they may have under, or which may be conferred on them by the provisions of

California Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the releases.

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 Mad Engine 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 Mad Engine, LLC:

Noah Steinsapir, General Counsel
Mad Engine, LLC
1017 Grandview Avenue
Glendale, CA 91201

For Donaldson:

Audrey Donaldson
c/o Voorhees & Bailey, LLP
990 Amarillo Avenue
Palo Alto, CA 94303

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

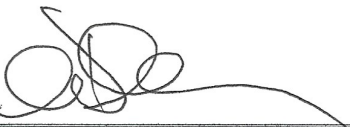
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: December 10, 2020

Date: December , 2020

By: 

AUDREY DONALDSON

By: _____
MAD ENGINE, LLC

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.

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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:

Date: December____, 2020

Date: December10, 2020

By: _____
AUDREY DONALDSON

By: Noah Steinsapir
MAD ENGINE, LLC