

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Audrey Kallander (“Kallander”) and Mad Global Engine, LLC (“Mad Engine”), with Kallander and Mad Engine each individually referred to as a “Party” and collectively as the “Parties.” Kallander 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. Kallander 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

Kallander alleges that Mad Engine manufactures, sells, and/or distributes for sale in California ceramic bowls with exterior designs containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Kallander 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 specifically defined as, and limited to, the *Maruchen Ramen Noodle Bowl*; UPC: 5995—9520—226456—FLS1, that are manufactured, sold, or distributed for sale in California by Mad Engine (hereinafter referred to as “Products”).

### 1.4 Notice of Violation

On August 25, 2022, Kallander served Mad Engine, The TJX Companies and the requisite public enforcement agencies with a 60-Day Notice of Violation, alleging that the notice recipients 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 November 21, 2022.

## **2. INJUNCTIVE RELIEF**

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

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/Warning 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 bear a warning pursuant to Section 2.3.

## **2.3 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 will 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 purchase or use. For purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall contain one of the following statements:

 **WARNING:** Reproductive Harm- [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

OR

 **WARNING:** This product can expose you to chemicals including lead, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://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 as consideration for the releases contained in Sections 4.1 and 4.2 below, Mad Engine agrees to pay \$2,400 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 (\$1,800) remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount (\$600) paid to Kallander.

#### **3.2 Attorneys’ Fees and Costs**

The Parties acknowledge that Kallander and her counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to her counsel, 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 Kallander’s fees and costs. The Parties reached an accord on the compensation due to Kallander’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 \$17,450, for all fees and costs incurred investigating, bringing this matter to the attention of Mad Engine’s management, and negotiating a settlement.

#### **3.3 Payment Instructions**

All payments under this Settlement Agreement shall be made in a single wire transfer in the amount of \$19,850 to Voorhees & Bailey, LLP which shall provide the wire transfer instructions to Mad Engine no later than the Effective Date. Voorhees & Bailey, LLP shall be responsible for distributing the payments pursuant to Sections 3.1 and 3.2 above.

#### **4. CLAIMS COVERED AND RELEASED**

##### **4.1 Kallander's Release of Proposition 65 Claims**

Kallander 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 sells Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers including, but not limited to The TJX Companies, Inc., 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 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.

##### **4.2 Kallander's Individual Release of Claims**

Kallander 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 Kallander 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 Kallander'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 Kallander**

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 Kallander and her attorneys and other representatives, for any and all actions taken, or statements made by Kallander 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 Kallander 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:**  
Noah Steinsapir, General Counsel  
Mad Engine Global, LLC  
1017 Grandview Avenue  
Glendale, CA 91201

**For Kallander:**  
Audrey Kallander  
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)**

Kallander 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: Nov 17, 2022

Date: November 16, 2022

By:  \_\_\_\_\_  
AUDREY KALLANDER

By: Noah Steinsapir \_\_\_\_\_  
MAD GLOBAL ENGINE, LLC  
Noah Steinsapir, General Counsel & EVP of Legal