

SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1. Ecological Alliance, LLC and Mud Pie

This Settlement Agreement is entered into by and between Ecological Alliance, LLC ("Alliance"), on the one hand, and Mud Pie, LLC ("Mud Pie"), on the other hand, with Alliance and Mud Pie collectively referred to as the "Parties."

1.2. General Allegations

Alliance alleges that Mud Pie manufactured and/or distributed and/or offered for sale in the State of California chef dress up sets that allegedly contain Di(2-ethylhexyl)phthalate ("DEHP") (hereinafter, the "Products") and that the Products did not include warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.* ("Proposition 65"). Alliance further alleges California has identified and listed DEHP under Proposition 65 as a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

1.3. Products Description

The Products that are covered by this Settlement Agreement are defined as chef dress up sets that Mud Pie has sold, offered for sale, distributed for sale, manufactured for sale, or imported for sale, in California.

1.4. Notice of Violation

Alliance alleges it served Mud Pie, T.J. Maxx of CA, LLC, and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with documents entitled "60-Day Notice of Violation," dated May 8, 2023, (the "Notice") that provided Mud Pie and such public enforcers with notice that Mud Pie was

allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn that the Products exposed consumers in California to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

1.5. No Admission

The Parties enter into this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notice concerning Mud Pie's compliance with Proposition 65. Specifically, Mud Pie denies the material factual and legal allegations contained in Alliance's Notice and maintains that all products that it has manufactured for sale, imported for sale, sold, offered for sale, and/or distributed for sale, in California, including the Products, have been and are in compliance with Proposition 65 or any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by Mud Pie of any fact, finding, 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. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Mud Pie under this Settlement Agreement.

1.6. Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement Agreement is fully executed by, and is exchanged between, all Parties.

2. INJUNCTIVE RELIEF: WARNING


2.1. Warning


Any Products that that are manufactured on or after the Effective Date that Mud Pie thereafter directly imports for sale in California or distributes for sale in California or directly sells in California shall either have concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state government agencies for the purpose of determining the phthalate content in a solid substance (the “Reformulated Products”) or shall contain appropriate health hazard warnings pursuant to Section 2.2 below. The warning requirement shall not apply to Products that were manufactured for, or imported by, or distributed by, or sold by Mud Pie prior to the Effective Date, including any Products that are already in the stream of commerce as of the Effective Date or that Mud Pie places into the stream of commerce as of the Effective Date.

2.2. Warning Language

Where required, Mud Pie shall provide Proposition 65 warnings as follows:

- (a) Mud Pie may use any of the following warning statements in full compliance with this Section:

(1)  **WARNING:** This product can expose you to DEHP, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more info go to www.P65Warnings.ca.gov.

(2)  **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov.

If Mud Pie elects to use the warning statements identified in either 2.2(a)(1) or (2), it may also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the sign, label or shelf tag for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word "WARNING".

(b) The requirements for warnings, set forth in subsection (a) above are imposed pursuant to the terms of this Settlement Agreement. The Parties recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations.

(c) If Proposition 65 warnings for DEHP should no longer be required, Mud Pie shall have no further obligations pursuant to this Settlement Agreement.

(d) In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, Mud Pie shall be entitled to use, at their discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, and without any admission of fault or liability, Mud Pie shall pay a total of Two Hundred Dollars (\$200.00) in civil penalties in accordance with this Section. The penalty payment will be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA")

and the remaining 25% of the penalty remitted to Alliance. Alliance's counsel is and shall be responsible for delivering OEHHA's portion of the penalty payment to OEHHA.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties reached an accord on the compensation due to Alliance and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Mud Pie shall reimburse Alliance's counsel for fees and costs incurred by Alliance as a result of investigating and bringing this matter to Mud Pie's attention. Mud Pie shall pay Alliance's counsel a total of Eight Thousand Six Hundred (\$8,600.00) for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

5. PAYMENT INFORMATION

By July 31, 2023, Alliance directs that all payments under this Settlement Agreement, which comprise a total combined amount of Eight Thousand Eight Hundred Dollars (\$8,800.00), be made to Alliance's counsel at the following address sent either by wire transfer or check made payable to "Custodio & Dubey LLP, client trust account"; and Alliance hereby directs its counsel to forward the applicable portion of the penalty payment to OEHHA:

If by check,

Vineet Dubey, Esq.
Custodio & Dubey LLP
445 S. Figueroa St., Suite 2520
Los Angeles, CA 90071

If by wire transfer,

Bank: Bank of America, N.A.
Routing No.: 026009593
Account No.: 325149324377
Beneficiary: Custodio & Dubey LLP

Other than this Eight Thousand Eight Hundred Dollars (\$8,800.00) settlement payment, each side is to, and shall bear, its own attorneys' fees and costs. No other payments of any type are due or owing.

6. RELEASE OF ALL CLAIMS

6.1. Release of Mud Pie, Downstream Customers and Upstream Vendors

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, Alliance, on behalf of itself, its past and current agents, representatives, contractors attorneys, successors and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims relating to the Products, including, without limitation, all actions, and causes of action, in law or in equity, suits, claims, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against (a) Mud Pie, (b) each of Mud Pie's downstream distributors, wholesalers, vendors, licensors, licensees, auctioneers, retailers (including but not limited to TJ Max of CA), franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and their respective parent companies, sister companies, affiliates, subsidiaries, and their respective officers, directors, owners, attorneys, representatives, shareholders, owners, contractors, agents, members, and employees; and (c) each of Mud Pie's parent companies, sister companies, affiliates, subsidiaries, owners, shareholders, members, contractors, attorneys, agents, representatives, employees, sourcing agents, and upstream vendors, and their respective officers, directors, officers, directors, owners, attorneys,

representatives, shareholders, owners, contractors, agents, members, and employees. (collectively "Releasees").

Alliance also, in its capacity, on behalf of itself, its past and current agents, representatives, attorneys, contractors, successors, and/or assignees and *not* in its representative capacity, provides a general 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 any nature, character or kind, known or unknown, suspected or unsuspected, against Mud Pie and the Releasees. Alliance acknowledges that it is 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.

Alliance, in its capacity only, and on behalf of itself, its past and current agents, representatives, contractors, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it 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 released matters.

6.2. Mud Pie's Release of Alliance

Mud Pie waives any and all claims against Alliance, its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Alliance and its attorneys and other representatives, whether in the course of

investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

7. 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 Product, then Mud Pie shall have no further obligations pursuant to this Settlement Agreement.

8. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; (ii) email; or (iii) overnight courier on any party by the other party at the following addresses:

For Mud Pie: Zander Brekke
Executive Vice President and General Counsel
Mud Pie, LLC
4893 Lewis Road, Suite A
Stone Mountain, GA 30083

And to

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

For Alliance: Vineet Dubey, Esq.
Custodio & Dubey LLP
445 S. Figueroa St., Suite 2520
Los Angeles, CA 90071

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

9. COUNTERPARTS; FACSIMILE/E-SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or e-signatures, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)

Alliance agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

11. ENTIRE AGREEMENT

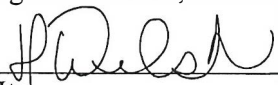

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

12. MODIFICATION

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

13. AUTHORIZATION

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

<p>AGREED TO: Date: July 25, 2023 Ecological Alliance, LLC By:  Its: _____</p>	<p>AGREED TO: Date: July 27, 2023 Mud Pie, LLC By:  Its: <u>CPO</u> <u>Mark Miller</u></p>
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