

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Audrey Kallander (“Kallander”) and Mud Pie, LLC. (“Mud Pie”), with Kallander and Mud Pie each individually referred to as a “Party” and collectively as the “Parties.” Kallander represents that she 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 Mud Pie 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 Mud Pie manufactures, sells, and/or distributes for sale in California, the metal and glass boxes and metal and glass picture frames described in Section 1.3 below containing lead; and that lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Kallander alleges that Mud Pie failed to provide the health hazard warning required by Proposition 65 for exposures to lead for the products described in Section 1.3 below.

### 1.3 Product Description

The products covered by this Settlement Agreement are specifically defined as, and limited to, the (i) “*Advice and Wishes Box Set*” SKU: 0786998 , and (ii) “*4 X 6 Wedding Glass Frame*” UPC: 7 18540 67875 6 , sold by Mud Pie in California and/or manufactured, imported or distributed by Mud Pie for sale in California (hereinafter respectively, the “Wishes Box Product” and the “Picture Frame Product”). The Wish Box Product and the Picture Frame Product are hereinafter collectively referred to as the “Products”.

#### **1.4 Notices of Violation**

Kallander alleges service on Mud Pie and Dillard's, Inc., and the requisite public enforcement agencies, of a 60-Day Notice of Violation, dated May 17, 2023, alleging that the notice recipient violated Proposition 65 by failing to warn their customers and consumers in California of the health hazards associated with exposures to lead from the Wish Box Product.

Kallander alleges service on Mud Pie and R.C. Willey Home Furnishings, and the requisite public enforcement agencies, of a 60-Day Notice of Violation, dated May 17, 2023, alleging that the notice recipients violated Proposition 65 by failing to warn their customers and consumers in California of the health hazards associated with exposures to lead from the Picture Frame Product.

The foregoing two Proposition 65 notices are hereinafter collectively referred to as the "Notices."

No public enforcer has commenced and is diligently prosecuting the allegations set forth in either of the Notices.

#### **1.5 No Admission**

Mud Pie, the other Releasees (as defined in Section 4.1 below), and each of them, denies the material, factual, and legal allegations as well as alleged liabilities contained in the Notices and maintains that all of the products that it has sold and distributed for sale in California, including the Products, have been, and are, in compliance with all laws, including Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Mud Pie or any of the other Releasees of any fact, finding, conclusion, issue of law, violation of law, or liability nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Mud Pie or any of the other Releasees of any fact, finding, conclusion, issue of law, violation of law, or liability, such being specifically denied by Mud Pie, the other Releasees, and each of them. 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 August 30, 2023.

## **2. INJUNCTIVE RELIEF**

### **2.1 Reformulation Standards**

“Reformulated Products” are defined as those Products that contain no more than 90 parts per million (“ppm”) lead in any accessible component 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.

### **2.2 Reformulation/Warning Commitment**

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 be (a) Reformulated Products pursuant to Section 2.1 above, or (b) contain appropriate health hazard warnings pursuant to Section 2.3 below. The Parties agree and intend that compliance with the terms of this Settlement Agreement shall constitute compliance with Proposition 65 with respect to exposures to Lead from the Products.


### **2.3 Product Warnings**

After the Effective Date, any Products (other than those covered by Section 2.4) that are manufactured, imported, or distributed by Mud Pie for sale in California, that do not qualify as Reformulated Products under Section 2.1 above shall bear a clear and reasonable warning pursuant to this Section. Mud Pie 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:** Reproductive Harm- [www.P65Warnings.ca.gov](http://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 birth defects and other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

The above warning statements shall also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label 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.”

If Mud Pie sells any of the Products via its own proprietary internet website directly to consumers located in California, the warning requirements of this section shall be satisfied if the foregoing warning appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; (c) on one or more web pages displayed to a California purchaser prior to completion of the checkout process. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, if the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies.

The parties acknowledge that the warnings required by this section are not the exclusive methods of providing Proposition 65 warnings and agree that Mud Pie may utilize “safe harbor” warning language and methods of transmission promulgated by the

Office of Environmental Health Hazard Assessment without being deemed in breach of this Settlement Agreement.

**2.4 Products Previously Sold By Mud Pie In California And/or Previously Manufactured, Imported Or Distributed By Mud Pie For Sale In California**

Based on the civil penalties to be paid pursuant to Section 3.1 below, Products previously sold by Mud Pie in California and/or Products previously manufactured, imported, or distributed by Mud Pie 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 as consideration for the releases contained in Sections 4.1 and 4.2 below, Mud Pie 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 Kallander. Mud Pie shall make its payment in two checks, delivered to the address in section 3.3, as follows: (1) “OEHHA” in the amount of \$2,250.00; and (2) “Audrey Kallander” in the amount of \$750.00.

**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, Mud Pie 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, Mud Pie agrees to pay \$20,500.00, 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’s management, and negotiating a settlement.

### **3.3 Payment Address**

Kallander directs that all payments under this Settlement Agreement shall be delivered to her counsel at the following address and Kallander hereby directs her counsel to forward the applicable payment to OEHHA:

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

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

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

Except for the obligations expressly set forth in this Settlement Agreement, Kallander, acting on her own behalf, and not on behalf of the public, releases on behalf of herself, her past and current agents, representatives, contractors, attorneys, successors and/or assignees, Mud Pie, its parents, subsidiaries, affiliated entities, directors, officers, shareholders, marketplaces, representatives, agents, contractors, employees, attorneys, franchisees, licensees, successor, assigns and each entity or person to whom any of them directly or indirectly distributes or sells or provides or obtains any of the Products, including, but not limited, to manufacturers, material suppliers, other suppliers, vendors, contractors, importers, jobbers, upstream distributors, downstream distributors, wholesalers, customers, franchisees, cooperative members, licensees and retailers (including but not limited to Dillard’s, Inc. and R.C. Willey Home Furnishings and their respective subsidiaries, affiliates, parents, shareholders, marketplaces, officers, directors, employees, agents, representatives, contractors, franchisees, cooperative members,

licensees, attorneys, successors, and assigns, (collectively, "Releasees"), from any and all claims for violations of Proposition 65 for the Products.

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

Except for the obligations expressly set forth in this Settlement Agreement, Kallander, in her individual capacity only and not in her representative capacity, on behalf of herself, her past and current agents, representatives, contractors, attorneys, successors and/or assignees, provides a release herein to Mud Pie and each of the other Releasees which shall be and is 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, including but not limited to all failure to warn claims, arising out of alleged or actual exposures to lead in or from any of the Products.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to § 3 above, Kallander, on behalf of herself, her past and current agents, representatives, contractors, attorneys, successors and/or assignees, hereby covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of legal action and releases all claims that she may have against Mud Pie or any of the other Releasees, including without limitation, all actions and causes of action in law and in equity, all obligations, expenses (including without limitation all attorneys' fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and demands against any of Mud Pie or any of the other Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to lead required under Proposition 65 in any of the Products, whether known or unknown, suspected or unsuspected.

As part of the releases given in this Agreement, Kallander acknowledges that the

claims released in §§ 4.1 and 4.2 above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 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.**

#### **4.3 Mud Pie's Release of Kallander**

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 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.

#### **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 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 Mud Pie:**

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

**For Kallander:**

Audrey Kallander  
c/o Voorhees & Bailey, LLP  
Proposition 65 Coordinator  
535 Ramona St.; Suite 5  
Palo Alto, CA 94301

And to

Michael Abraham  
Bartko Zankel Bunzel & Miller  
1 Embarcadero Ctr, 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)**

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 that is signed by both 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.

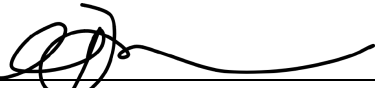
**AGREED TO:**

**AGREED TO:**

Date: 9/12/2023

Date: \_\_\_\_\_

Mud Pie, LLC

By:  \_\_\_\_\_  
Audrey Kallander

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**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: \_\_\_\_\_

Date: \_\_\_\_\_

Mud Pie, LLC

By: \_\_\_\_\_  
Audrey Kallander

By:  \_\_\_\_\_  
Its: President