

**SETTLEMENT AGREEMENT
SUSAN DAVIA AG NOTICE 2016-00534**

1. INTRODUCTION

1.1 The Parties

This settlement agreement (“Agreement” or “Settlement Agreement”) is entered into by and between Susan Davia, (“Davia”) and Sparkle Magic Dust Lights Corp. (hereafter, “Sparkle Magic”), with Davia and Sparkle Magic collectively referred to as the “Parties.”

1.2 Davia

Davia is an individual residing in the State of California who seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products.

1.3 Sparkle Magic Dust Lights Corp.

For purposes of this Agreement only, Sparkle Magic Dust Lights Corp. does not assert any denial that it is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.* (“Proposition 65”).

1.4 General Allegations

Davia alleges that Sparkle Magic participated in the manufacture (or other acquisition), distribution and/or sale, in the State of California, of Sparkle Magic accessory spring clamps with vinyl grips containing, and exposing users to, di(2-ethylhexyl)phthalate (DEHP) without first providing “clear and reasonable warning” under Proposition 65. DEHP is listed as a carcinogen and a reproductive and developmental toxicant pursuant to Proposition 65. DEHP shall hereinafter be referred to as the “Listed Chemical.”

1.5 Notice of Violation

On June 7, 2016, Davia served Sparkle Magic, Radio Shack Corporation and various public enforcement agencies with a document entitled “60-Day Notice of Violation” that

provided public enforcers and the noticed entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers of the presence of DEHP, a toxic chemical found in Covered Products sold in California. Sparkle Magic received the June 7, 2016, 60-Day Notice of Violation. The June 7, 2016, Notice to Sparkle Magic shall hereafter be referred to as “Notice”.

Sparkle Magic represents that, as of the date it executes this Agreement, it is not aware of any public enforcer that is diligently prosecuting a Proposition 65 enforcement action related to DEHP in the Covered Products, as identified in the 60-Day Notice.

1.6 No Admission

This Agreement resolves claims that are denied and disputed by Sparkle Magic. The Parties enter into this Agreement pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. Sparkle Magic denies the material factual and legal allegations contained in the Notice, maintains that it did not knowingly or intentionally expose California consumers to the Listed Chemical through the reasonably foreseeable use of the Covered Products and otherwise contends that, all Covered Products each has manufactured, distributed and/or sold in California have been and are in compliance with all applicable laws. Nothing in this Agreement shall be construed as an admission by Sparkle Magic of any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by the Sparkle Magic of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Sparkle Magic. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect Sparkle Magic’s obligations, responsibilities, and duties under this Agreement.

1.7 Consent to Jurisdiction

For purposes of this Agreement only, the Parties stipulate that the Marin County Superior Court has jurisdiction over Sparkle Magic as to the allegations in the 60-Day Notice received from

Davia, and this Agreement, that venue is proper in County of Marin, and that the Marin County Superior Court has jurisdiction to enforce the provisions of this Agreement. As an express part of this Agreement, pursuant to Code of Civil Procedure Section 664.6 the Marin County Superior Court has jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

2. DEFINITIONS

2.1 The term "Products" or "Covered Products" shall mean all Sparkle Magic accessory spring clamps with vinyl grips and/or tips.

2.2 The term "Phthalate Free" Covered Products shall mean any component of any Covered Product containing less than or equal to 1,000 parts per million ("ppm") of DEHP, DBP, DINP, DIDP, DnHP and BBP as determined by a minimum of duplicate quality controlled test results using Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C.

2.3 "Effective Date" shall mean November 21, 2016.

3. INJUNCTIVE-TYPE RELIEF

3.1 Products No Longer in Sparkle Magic's Control

No later than the Effective Date, Sparkle Magic shall send a letter, electronic or otherwise ("Notification Letter") to (1) its primary sales contact at Radio Shack and (2) to any California retailer or known re-seller that Sparkle Magic reasonably understands or believes had any inventory for resale in California of Covered Products as of January 1, 2016. The Notification Letter shall advise the recipient that the Covered Products "contain DEHP, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm," and request that the recipient either: (a) label the Covered Products remaining in inventory for sale in California, or to California Customers, with the following warning:

WARNING: This product contains chemicals
known to the State of California to

cause cancer and birth defects or other reproductive harm.

or (b) return, at Sparkle Magic's sole expense, all units of the Covered Product to Sparkle Magic. The Notification Letter shall require a response from the recipient within 15 days, confirming whether the Covered Products will be labeled or returned. Sparkle Magic shall maintain records of all correspondence or other communications generated pursuant to this Section for two years after the Effective Date and shall promptly produce copies of such records upon Davia's written request.

3.2 Product Reformulation Commitment

3.2.1 Sparkle Magic represents that, after receipt of the Notice, it stopped selling the Covered Products to any California customers or to any national retailers with California retail outlets. Should Sparkle Magic decide to sell the Covered Products into California after the Effective Date, Sparkle Magic shall provide the Phthalate Free phthalate concentration standards of Section 2.2 to any manufacturer or vendor of the Covered Product, any vinyl component thereof and any raw material used in any vinyl component thereof and instruct such manufacturer or vendor not to incorporate any raw or component materials that do not meet the Phthalate Free concentration standards of Section 2.2 into any Covered Product. Prior to manufacture of any Covered Product, Sparkle Magic shall obtain a written confirmation and accompanying laboratory test result from the new manufacturer or vendor of any raw material comprising the vinyl component of the Covered Product demonstrating compliance with the Phthalate Free phthalate concentration standard for each such material. Prior to purchase or other acquisition of any Covered Product from any manufacturer or vendor after the Effective Date, Sparkle Magic shall obtain a written confirmation and accompanying laboratory test result from the new vendor demonstrating compliance with the Phthalate Free phthalate concentration standard in all materials comprising the Covered Product and a post-production sample of Covered Product. For every Covered Product Sparkle Magic manufactures, causes to

be manufactured, orders, causes to be ordered or otherwise obtains from a new vendor after the Effective Date, Sparkle Magic shall maintain copies of all testing of such products demonstrating compliance with this section, shall maintain copies of all vendor correspondence relating to the Phthalate Free concentration standards and shall produce such copies to Davia within fifteen (15) days of receipt of written request from Davia.

3.2.2 As of the Effective Date, Sparkle Magic shall not sell or ship any Covered Product to a California vendor or retailer, or sell or ship any Covered Product to a vendor or retailer that Sparkle Magic reasonably understands maintains retail outlets in the California, unless such Covered Products are confirmed to be Phthalate Free pursuant to this section.

3.3 Radio Shack Corporation

3.3.1 No later than December 31, 2016, to the extent that Sparkle Magic has not already done so, it shall employ good faith efforts to make sure any inventory of Covered Product remaining for sale in any California Radio Shack retail stores returned to Sparkle Magic

4. MONETARY PAYMENTS

4.1 Civil Penalty

As a condition of settlement of all the claims referred to in this Agreement, Sparkle Magic shall pay a total of \$3,000 in civil penalties in accordance with California Health & Safety Code § 25249.12(c)(1) & (d).

4.2 Augmentation of Penalty Payments

For purposes of the penalty assessment under this Agreement, Davia is relying entirely upon Sparkle Magic and its counsel for accurate, good faith reporting to Davia of the nature and amounts of relevant sales activity. If within nine (9) months of the Effective Date, Davia discovers and presents to Sparkle Magic evidence that the Covered Products have been distributed by Sparkle Magic in sales volumes materially (more than 25%) different than those identified by Sparkle Magic prior to execution of this Agreement, then Sparkle Magic shall be

liable for an additional penalty amount of \$5,000. Sparkle Magic shall also be liable for any reasonable, additional attorney fees expended by Davia in discovering such additional retailers or sales, up to a maximum of \$5,000 or some other amount awarded by the court after hearing. Davia agrees to provide Sparkle Magic with a written demand for all such additional penalties and attorney fees under this Section. After service of such demand, Sparkle Magic shall have thirty (30) days to agree to the amount of fees and penalties owing by Sparkle Magic and submit such payment to Davia in accordance with the method of payment of penalties and fees identified in Section 4.1 and 4.4. Should this thirty (30) day period pass without any such resolution between the parties and payment of such additional penalties and fees, Davia shall be entitled to file a formal legal claim for additional civil penalties pursuant to this Section and shall be entitled to all reasonable attorney fees and costs relating to such claim.

4.3 Reimbursement of Davia's Fees and Costs

The Parties acknowledge that Davia 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 this fee issue to be resolved after the material terms of the agreement had been settled. Sparkle Magic then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Davia and her counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all work performed in this matter, except fees that may be incurred on appeal. Under these legal principles, Sparkle Magic shall pay Davia's counsel the amount of \$14,000 for fees and costs incurred investigating, litigating and enforcing this matter.

4.4 Payment Procedures

Sparkle Magic shall pay civil penalties pursuant to Section 4.1 by a civil penalty check payable to "OEHHA" (Memo line "Prop 65 Penalties, 2016-00534"), in the amount of \$2,250

and a civil penalty check payable to "Susan Davia" (Memo line "Prop 65 Penalties, 2016-00405") in the amount of \$750.

Sparkle Magic shall pay any civil penalties pursuant to Section 4.2 by a civil penalty check payable to "OEHHA" (Memo line "Prop 65 Penalties, 2016-00534"), in the amount of \$3,750 and a civil penalty check payable to "Susan Davia" (Memo line "Prop 65 Penalties, 2016-00534") in the amount of \$1,250.

Sparkle Magic shall pay attorney fees and costs pursuant to Section 4.3 by a check payable to "Sheffer Law Firm" (Memo line "2016-00534") in the amount of \$14,000.

Sparkle Magic shall pay any attorney fees and costs pursuant to Section 4.2 by delivery of a check payable to "Sheffer Law Firm" (Memo line "2016-00534") in the amount determined pursuant to that section.

All Section 4.1 and Section 4.3 civil penalty and attorney fee/cost payments shall be delivered to plaintiff's counsel at the following address on or before the Effective Date:

Sheffer Law Firm
Attn: Proposition 65 Controller
81 Throckmorton Ave., Suite 202
Mill Valley, CA 94941

All Section 4.2 civil penalty and attorney fee/cost payments shall be delivered to plaintiff's counsel at the following address on or before the date agreed upon pursuant to that section or ordered by the Court:

Sheffer Law Firm
Attn: Proposition 65 Controller
81 Throckmorton Ave., Suite 202
Mill Valley, CA 94941

Sparkle Magic shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing from it under this Section that are not received by Sheffer Law Firm within two business days of the due date for such payment.

4.5 Issuance of 1099 Forms

After this Agreement has been executed and the settlement funds have been transmitted to Davia's counsel, Sparkle Magic shall issue three separate 1099 forms, as follows:

- (a) The first 1099 shall be issued to the Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount paid pursuant to Sections 4.1 and 4.2;
- (b) The second 1099 shall be issued to Davia in the amount paid pursuant to Sections 4.1 and 4.2, whose address and tax identification number shall be furnished upon request;
- (c) The third 1099 shall be issued to the Sheffer Law Firm (EIN: 55-08-58910) in the amount paid pursuant to Section 4.2 and Section 4.3.

4.6 Delayed or Non-Payment of Civil Penalties or Attorney Fees

While the obligations of this agreement are binding upon execution, the Release of Sparkle Magic shall not become effective until after all Section 4.1 and Section 4.3 monetary payments have been made by Sparkle Magic and all funds have cleared.

5. RELEASES

5.1 DAVIA'S RELEASE OF SPARKLE MAGIC

5.1.1 This settlement agreement is a full, final and binding resolution between Davia and Sparkle Magic, of any violation of Proposition 65 that was or could have been asserted by Davia against Sparkle Magic and Radio Shack Corporation, based on their failure to warn about alleged exposures identified in the Notice. In consideration of the promises and agreements herein contained, Davia and her attorneys in this matter hereby releases Sparkle Magic and Radio Shack Corp. and each entity to which Sparkle Magic directly or indirectly distributed or sold Covered Products, including, but not limited, to downstream distributors, customers and retailers ("Releasees") from, all claims that Davia may have against them arising

under Proposition 65 with respect to the Listed Chemical in the Covered Products as identified in the Notice.

5.1.2 Davia also provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all claims, actions and causes of action, of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the Notice as to Covered Products manufactured, distributed or sold by Sparkle Magic or Releasees prior to the Effective Date. Davia acknowledges that she is familiar with section 1542 of the California civil code, which provides as follows:

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

Davia expressly waives and relinquishes any and all rights and benefits that she may have under, or which may be conferred on her by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, excepting Section 4.2, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

The Parties understand and agree that this Section 5.1 release shall not extend upstream to any entities, other than Sparkle Magic, that manufactured the Covered Products or any component parts thereof, or any distributors or suppliers who sold the Covered Products or any component parts thereof to Sparkle Magic.

5.2 Sparkle Magic' and Radio Shack Corp.'s Release of Davia

The Release by Davia is mutual. Sparkle Magic and Radio Shack Corp., each on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby

waives any and all claims against Davia and her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Davia and her attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered Products. Each Sparkle Magic acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

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

Sparkle Magic and Radio Shack Corp. each expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on him by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

6. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement Sparkle Magic may ask Davia, in writing, to file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment, and to seek the court's approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If so requested, Davia agrees to reasonably cooperate with Sparkle Magic and to use her best efforts,

and that of her counsel, to support the entry of a consent judgment by a superior court in California. Pursuant to Code of Civil Procedure sections 1021 and 1021.5, Sparkle Magic shall reimburse Davia and her counsel for their reasonable fees and costs incurred in filing the complaint, converting the Settlement Agreement into a proposed consent judgment and seeking judicial approval of the consent judgment, in an amount not to exceed \$12,000.00, exclusive of fees and cost that may be incurred on appeal. Such additional fees shall be paid by Sparkle Magic, within ten days after its receipt of any invoice from Davia for work performed under this paragraph. Sparkle Magic understands no motion to approve any proposed consent judgment will be filed absent payment for the work performed under this paragraph. All payments owed to Davia, pursuant to Section 6 shall be made payable to "Sheffer Law Firm" (Memo Line "2016-00534") and delivered to the following payment address:

Sheffer Law Firm
Attn: Proposition 65 Controller
81 Throckmorton Ave., Suite 202
Mill Valley, CA 94941

Any failure by Sparkle Magic to timely pay Davia invoices under this Section shall result in the assessment of ten percent (10%) interest on any outstanding balance.

7. SEVERABILITY

If any of the provisions of this Agreement are found by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected, unless the Court finds that any unenforceable provision is not severable from the remainder of the Agreement.

8. GOVERNING LAW

The terms of this Agreement shall be governed by the laws of the State of California.

9. NOTICES

When any Party is entitled to receive any notice under this Agreement, the notice shall be sent by certified mail and electronic mail to the following:

For Sparkle Magic Dust Lights Corp., to:

Sparkle Magic Dust Lights Corp.
4320 West Chandler Blvd., Suite 5
Chandler, AZ 85226

With a copy to their counsel:

Steven R. Beeghley, Esq.
Sacks Tierney PA
4250 N. Drinkwater Blvd., Fourth Floor
Scottsdale, AZ 85251

For Davia to:

Proposition 65 Coordinator
Sheffer Law Firm
81 Throckmorton Ave., Suite 202
Mill Valley, CA 94941

Any Party may modify the person and address to whom the notice is to be sent by sending each other Party notice by certified mail and/or other verifiable form of written communication.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)

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

11. MODIFICATION

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

12. ENTIRE AGREEMENT

This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations,

commitments, and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties. No supplementation, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the Party to be bound. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any of the other provisions whether or not similar, nor shall such waiver constitute a continuing waiver

13. ATTORNEY'S FEES

13.1 Should Davia prevail on any motion, application for order to show cause or other proceeding to enforce a violation of this Agreement, Davia shall be entitled to her reasonable attorney fees and costs incurred as a result of such motion, order or application, consistent with C.C.P. § 1021.5. Should Sparkle Magic prevail on any motion, application for order to show cause or other proceeding to enforce a violation of this Agreement, Sparkle Magic may be entitled to its reasonable attorney fees and costs incurred as a result of such motion, order or application upon a finding that Davia's prosecution of the motion or application lacked substantial justification. For purposes of this Agreement, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, *et seq.*

13.2 Except as otherwise specifically provided herein, each Party shall bear its own costs and attorney's fees in connection with the Notice.

13.3 Nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant to law.

14. NEUTRAL CONSTRUCTION

Both Parties and their counsel have participated in the preparation of this Agreement and this Agreement is the result of the joint efforts of the Parties. This Agreement was subject to

revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Agreement. Each Party to this Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Agreement and, in this regard, the Parties hereby waive California Civil Code Section 1654.



15. COUNTERPARTS, FACSIMILE SIGNATURES

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

16. AUTHORIZATION

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

IT IS SO AGREED

<p>Dated: November 21, 2016</p>  <p>By: Ian McCreadie Sparkle Magic Dust Lights Corp.</p>	<p>Dated: November 11, 2016</p>  <p>Susan Davia</p>
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