

PROPOSITION 65 SETTLEMENT AGREEMENT
(Susan Davia AG Notices 2021-00183, 2021-00186, 2021-00479 and 2021-01053)

1. INTRODUCTION

1.1 The Parties

This settlement agreement (“Agreement” or “Settlement Agreement”) is entered into by and between noticing party Susan Davia (“Davia”) and noticed party Fire Mountain Gems & Beads, Inc. (hereafter, “Fire Mountain”), with Davia and Fire Mountain each referred to as a “Party” and 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 Fire Mountain

For the sole purpose of this Agreement and the resolution of the subject claims, and without admitting any liability, Fire Mountain 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 Fire Mountain is responsible for the design, manufacture, distribution and/or sale, in the State of California, of craft pliers with vinyl grips, craft plier sets with vinyl grips and vinyl cases, vinyl craft cushion pads, and Blue Moon vinyl headbands, all of which were made with vinyl components that exposed users to di(2-ethylhexyl)phthalate (“DEHP”) without first providing “clear and reasonable warning” under Proposition 65. Pursuant to Proposition 65, DEHP is listed as a carcinogen and reproductive toxin. DEHP shall be referred to hereinafter as the “Listed Chemical.”

1.5 Notices of Violation

On January 29, 2021, Davia served Fire Mountain 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 found in vinyl craft cushion pad Covered Products (hereafter defined) sold in California (AG Notice 2020-00183).

On January 29, 2021, Davia also served Fire Mountain 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 found in Blue Moon vinyl headband Covered Products (hereafter defined) sold in California (AG Notice 2021-00186).

On February 26, 2021, Davia served Fire Mountain 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 found in craft pliers with vinyl grips Covered Products (hereafter defined) sold in California (AG Notice 2021-00479).

On May 13, 2021, Davia served Fire Mountain and thereafter served 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 found in craft plier sets with vinyl grips and vinyl cases Covered Products (hereafter defined) sold in California (AG Notice 2021-01053).

The January 29, 2021, Notices of Violation, February 26, 2021, Notice of Violation and May 13, 2021, Notice of Violation shall hereafter be collectively referred to as “Notice.” Fire Mountain 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 is hereinafter defined), as identified in the Notice.

1.6 No Admission

This Agreement resolves claims that are denied and disputed by Fire Mountain. 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. Fire Mountain: (1) denies the material factual and legal allegations contained in the Notice; (2) maintains that it did not knowingly or intentionally expose California consumers to the Listed Chemical through the reasonably foreseeable use of the Covered Products; (3) maintains that all Covered Products it distributed and/or sold to California Customers (as is hereinafter defined) have been and are in compliance with all applicable laws and regulations, including Proposition 65; and (4) otherwise contends that it has not violated Proposition 65 as alleged in the Notice. Nothing in this Agreement shall be construed as an admission by Fire Mountain 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 Fire Mountain of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Fire Mountain. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect Fire Mountain' 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 the Parties as to this Agreement, that venue for any action to enforce this Agreement is proper in County of Marin, and the Marin County Superior Court shall have jurisdiction to enforce the provisions of this Agreement until performance in full of the terms of the Agreement.

2. DEFINITIONS

2.1 "Covered Product" or "Phthalate Covered Product" shall mean all craft pliers with vinyl grips offered for sale by Fire Mountain (including, but not limited to, 5 Piece Plier Set Item 1608TL), craft plier sets with vinyl grips and vinyl cases offered for sale by Fire Mountain (including, but not limited to, Tool Set H20-3063TL with blue handled pliers and black vinyl case cover), vinyl craft cushion pads offered for sale by Fire Mountain (including, but not limited to, Cushion Pad Large H20-4005TL (W9356579 1230 1257)) and Blue Moon vinyl headbands offered for sale by Fire Mountain (including, but not limited to, Skinny Woven Black Headband (ZH-002-

00310, 611356078317)), which Fire Mountain allegedly sold without providing an exposure warning.

2.2 “Phthalate Free” Phthalate Covered Products shall mean any accessible component of any Covered Product that contains less than or equal to 1,000 parts per million (“ppm”) of DEHP, DINP, DBP, di-isodecyl phthalate (“DIDP”), di-n-hexyl phthalate (“DnHP”) and butyl benzyl phthalate (“BBP”) as determined by a minimum of duplicate quality controlled test results using Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies to determine the presence and measure the quantity of phthalates in solid substances.

2.3 “California Customer” shall mean any customer of Fire Mountain with a shipping or billing address in California, or any other national retailer customer of Fire Mountain that Fire Mountain reasonably understands or believes sells Phthalate Covered Products into California, if any.

2.4 “Effective Date” shall mean July 15, 2022.

3. INJUNCTIVE-TYPE RELIEF

3.1 Products No Longer in Fire Mountain’s Control

Fire Mountain represents that it functions as a retailer and does not, to its knowledge, sell products, including Covered Products, to other retailers. In such case as Fire Mountain has sold or sells, before the Effective Date, Covered Products to another entity that it reasonably understands is a retailer of those Covered Products, then, no later than the Effective Date, Fire Mountain shall send a letter, electronic or otherwise (“Notification Letter”) to the national or California purchasing manager for any retail entity to which Fire Mountain has sold Covered Products since January 29, 2019, and that Fire Mountain reasonably understands either maintains an ecommerce retail website or maintains retail outlets in California. The Notification Letter, if any, shall advise the recipient that Covered Products “have been tested for the presence of phthalates and found to 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 pull

all Covered Products from store displays and return its entire inventory of Covered Products to Fire Mountain or label the Covered Products remaining in its inventory for sale in California with a label that complies with Section 3.3 of this Agreement. The Notification Letter, if any, shall request a response from the recipient within 15 days, confirming that the letter was received. Fire Mountain shall maintain records of all correspondence or other communications generated pursuant to this Section, if any, 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 No later than the Effective Date, Fire Mountain shall provide the Phthalate Free concentration standards of Section 2.2 of this Agreement to its then-current vendors or manufacturers of any Phthalate Covered Product, and instruct such entities not to incorporate into any Phthalate Covered Product any raw or component materials that do not meet the Phthalate Free concentration standards of Section 2.2 of this Agreement and/or to supply any Phthalate Covered Product to Fire Mountain that is not Phthalate Free. Fire Mountain shall maintain copies of all correspondence 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.

3.2.2 After the Effective Date, Fire Mountain shall provide the Phthalate Free concentration standards of Section 2.2 of this Agreement to any new vendors or manufacturers of any Phthalate Covered Product and request such entities not to supply any Phthalate Covered Product to Fire Mountain that does not meet the Phthalate Free concentration standards of Section 2.2 of this Agreement. Prior to purchasing any Phthalate Covered Product from any new vendor, Fire Mountain shall obtain a written confirmation and accompanying laboratory test result from the new vendor demonstrating compliance with the Phthalate Free concentration standard in all vinyl components of the Phthalate Covered Product or, alternatively, written confirmation that it is not commercially practical or feasible for the vendor to produce the product with materials that are Phthalate Free. For two years after the Effective Date, Fire Mountain shall maintain copies of all correspondence generated pursuant to this Section, including any test

results received from a vendor, and shall, upon Davia's written request, promptly produce copies of such records to Davia.

3.2.3 After September 15, 2022, Fire Mountain shall not sell to any California Customer any Phthalate Covered Product unless such Phthalate Covered Product (1) meets the Phthalate Free concentration standards of Section 2.2 of this Agreement; or (2) is not commercially available with materials that Fire Mountain can be confident are Phthalate Free. For purposes of this Agreement, a product shall be considered "not commercially available with materials that Fire Mountain can be confident are Phthalate Free" if, despite Fire Mountain's expressed preference that suppliers provide only Phthalate Free Phthalate Covered Products as set forth in Sections 3.2.1 and 3.2.2 of this Agreement, the supplier of such product cannot or will not provide sufficient information and assurances for Fire Mountain to be reasonably certain that the product is Phthalate Free, including but not limited to duplicate quality controlled test results using EPA testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies to determine the presence and measure the quantity of phthalates in solid substances, demonstrating that all accessible components of any Phthalate Covered Product contain less than or equal to 1,000 ppm of DEHP, DINP, DBP, DIDP, DnHP and BBP - and the same product is not available at the same price from a supplier that can provide such assurances.

3.3 Interim Covered Product Warnings

3.3.1 For any inventory of Phthalate Covered Products obtained by Fire Mountain prior to September 15, 2022, that is not confirmed to be Phthalate Free, or for any Phthalate Covered Product obtained by Fire Mountain on or after September 15, 2022 that is not commercially available with materials that Fire Mountain can be confident are Phthalate Free, Fire Mountain shall not distribute, sell or ship, or cause to be distributed, sold or shipped, any such Phthalate Covered Product unless such Phthalate Covered Product is shipped with a warning as set forth hereafter.

Each such warning utilized by Fire Mountain for any Phthalate Covered Product shall be prominently PLACED either on the product, its labeling or its packaging with such

conspicuousness as 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 *before* purchase or use.

Each warning shall either be printed directly on the Phthalate Covered Product's consumer packaging or shall be affixed to the consumer packaging. Each warning shall include a yellow triangle with an internal exclamation point - or, where the packaging or label is not printed using the color yellow, the symbol may be printed in black and white - and state:



The vinyl materials of this product can expose you to chemicals, including phthalates, that 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.

or



Cancer and Reproductive Harm. - www.P65Warnings.ca.gov

3.4 Internet Ecommerce Covered Product Warnings

A warning must be given in conjunction with the sale, or offer of sale, by Fire Mountain of any Covered Product not confirmed by Fire Mountain to be Phthalate Free via any ecommerce website owned, operated, managed or controlled by, or for the direct benefit of, Fire Mountain. A warning will satisfy this requirement if it appears: (a) on the same web page on which a Covered Product is displayed; (b) on the same web page as the order form for a Covered Product; (c) on the same page as the price for any Covered Product; (d) on one or more web pages displayed to a purchaser during the checkout process. One of the following warning statements shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Covered Product for which it is given, or through a hyperlink using the word "WARNING", in the same type size or larger than the Covered Product description text:

⚠WARNING: This product can expose you to chemicals including phthalates, 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.

Alternatively, the following “short form” warning may be used on the ecommerce website, but only if the same warning language also appears on the product label or consumer packaging of the Covered Product itself.

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

4. MONETARY PAYMENTS

4.1 Civil Penalty

As a condition of settlement of all the claims referred to in this Agreement, Fire Mountain shall pay a total of \$2,400 in civil penalties in accordance with California Health & Safety Code § 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 Davia.

4.2 Augmentation of Penalty Payments

For purposes of the penalty assessment under this Agreement, Davia is relying entirely upon Fire Mountain 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 evidence to counsel for Fire Mountain that Fire Mountain materially misrepresented its quantity of sales of Covered Products to California Customers prior to execution of this Agreement, and Fire Mountain does not provide Davia with legally competent evidence to dispute this claim, then Fire Mountain shall be liable for an additional penalty amount of \$10,000.00. Davia agrees to provide counsel for Fire Mountain with a written demand for all such additional penalties and attorney fees under this Section. After service of such demand, Fire Mountain shall have 45 days to either present evidence to counter this claim or to agree to the amount of fees and penalties owing by Fire Mountain 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 of this Agreement. Should this forty-five (45) 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 the additional civil penalties pursuant to this Section and the prevailing party to such action 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 non-monetary terms of the agreement had been settled. The Parties then attempted to (and did) reach an accord on the compensation due to Davia and her counsel under the principles of California Code of Civil Procedure section 1021.5 and 11 C.C.R. § 3201, for all work performed in this matter. Under these legal principles, Fire Mountain shall pay Davia's counsel the amount of \$22,750 for fees and costs incurred investigating, litigating and enforcing this matter.

4.4 Payment Procedures

Fire Mountain shall satisfy its obligation to pay civil penalties pursuant to Section 4.1 by delivery of a civil penalty check payable to "OEHHHA" (EIN: 68-0284486, Memo line "Prop 65 Penalties, 2021-00479, 2021-00183, 2021-00186"), in the amount of \$1,800 and a civil penalty check payable to "Susan Davia" (Tax ID to be supplied, Memo line "Prop 65 Penalties, 2021-00479, 2021-00183, 2021-00186") in the amount of \$600.

Fire Mountain shall satisfy its obligation to pay attorney fees and costs pursuant to Section 4.3 by delivery of a check payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2021-00479, 2021-00183, 2021-00186") in the amount of \$22,750.

All civil penalty and attorney fee/cost payments shall be delivered to counsel for Davia at the following address within 15 business days after execution of this Agreement:

Sheffer Law Firm
Attn: Proposition 65 Controller
232 E. Blithedale Ave., Suite 210
Mill Valley, CA 94941

Fire Mountain 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 five business days of the due date for such payment.

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

Fire Mountain shall also pay any augmented civil penalties pursuant to Section 4.2 of this Agreement, on or before the date agreed upon by the Parties or ordered by a court pursuant to Section 4.2, with civil penalty checks payable to "OEHHA" (Memo line "Prop 65 Penalties, 2021-00479, 2021-00183, 2021-00186") and "Susan Davia" (Memo line "Prop 65 Penalties, 2021-00479, 2021-00183, 2021-00186") in the amount agreed to by the Parties or ordered by a court pursuant to Section 4.2 and as divided pursuant to California Health & Safety Code § 25249.12(c)(1) & (d).

Fire Mountain shall also pay attorney fees and costs pursuant to Section 4.2, on or before the date agreed upon by the Parties or ordered by a court pursuant to Section 4.2, with a check payable to "Sheffer Law Firm" (Memo line "2021-00479, 2021-00183, 2021-00186") in the amount agreed upon by the Parties or ordered by a court pursuant to Section 4.2.

All Section 4.2 payments shall be delivered to counsel for Davia at the following address:

Sheffer Law Firm
Attn: Proposition 65 Controller
232 E. Blithedale Ave., Suite 210
Mill Valley, CA 94941

Fire Mountain shall also be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing from it under Section 4.2 that are not received by Sheffer Law Firm within ten (10) 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, Fire Mountain shall issue three separate 1099 forms, as follows:

- (a) 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) 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; and
- (c) issued to the Sheffer Law Firm (EIN: 55-08-58910) in the amount paid pursuant to Section 4.2 and 4.3.

5. RELEASES

5.1 DAVIA'S RELEASE OF FIRE MOUNTAIN

5.1.1 This Agreement is a full, final and binding resolution between Davia, and Fire Mountain of any violation of Proposition 65 that was or could have been asserted by Davia, individually and on behalf of herself and her past and current representatives, agents, attorneys, successors and/or assigns ("Releasers") against Fire Mountain, and each of its owners, directors, officers, employees, attorneys, agents, parents, and subsidiaries ("Releasees"), based on their alleged failure to warn about alleged exposures to DEHP contained in the Covered Products that were designed, manufactured, distributed, sold or offered for sale by Fire Mountain before the Effective Date. Compliance with the terms of this Agreement constitutes compliance with Proposition 65 by Fire Mountain with regard to the alleged or actual failure to warn about exposure to DEHP from Covered Products designed, manufactured, sold or distributed for sale after the Effective Date.

5.1.2 In further consideration of the promises and agreements herein contained, and for so long as Fire Mountain remains in compliance with the terms of this Agreement, Davia on behalf of herself, her past and current representatives, agents, attorneys, successors and/or assigns hereby waives all Davia's rights to institute or participate in, directly or indirectly, any

form of legal action and releases all claims that Davia may have, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses -- including, but not limited to, investigation fees, expert fees, and attorneys' fees,-- limited to and arising under Proposition 65 with respect to the DEHP in the Covered Products designed, manufactured, distributed, sold and/or offered for sale by Fire Mountain before the Effective Date (collectively "Claims"), against Fire Mountain and Releasees.

5.1.3 Davia also, in her individual capacity and on behalf of her past and current representatives, agents, attorneys, successors and/or assigns, 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 Davia, 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 designed, manufactured, distributed or sold by Fire Mountain or Releasees before 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 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.

Davia, in her individual capacity and on behalf of her past and current representatives, agents, attorneys, successors and/or assigns 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 she 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.

5.1.4 Each of the Releasees is an intended beneficiary of the releases in its favor set forth in Sections 5.1.1, 5.1.2 and 5.1.3 above, and on that basis may enforce such releases to the extent that he, she or it is benefited by them. This Section 5.1 release shall not extend upstream to any entities, other than Fire Mountain, 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 Fire Mountain.

5.2 Fire Mountain's Release of Davia

The Release by Davia is mutual. Fire Mountain, 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 them in this matter, or with respect to the Covered Products. Fire Mountain 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 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.

Fire Mountain 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 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 it 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. ENFORCEMENT

Prior to bringing any motion, order to show cause, or other proceeding to enforce Proposition 65 or any terms of this Agreement relating to the alleged sale in California of any Covered Product without a warning and which is alleged to not be Phthalate Free, in actual or alleged violation of this Agreement, any citizen enforcer, including Davia, shall provide a Notice of Violation (“NOV”) to Fire Mountain. The NOV shall include, for each Covered Product alleged to be violation of this Agreement: (1) the date of alleged violations(s); (2) place of sale, date and proof of purchase (if relevant); and (3) any test data obtained by the citizen enforcer regarding each such Covered Product. Such citizen enforcer shall take no further action regarding any alleged violation nor seek any monetary recovery for the enforcer or the enforcer’s counsel or other agents if, within 30 days of receiving such NOV, Fire Mountain demonstrates: (1) that the Covered Product was manufactured, distributed, sold or offered for sale by Fire Mountain before July 1, 2022; (2) that Fire Mountain, following service of the NOV, directed the retailer or distributor of the Covered Product to take corrective action by placing an appropriate warning on the Covered Product(s) compliant with Section 3.3 of this Agreement following service of the NOV; (3) that the Covered Products are Phthalate Free; or (4) the Covered Product qualifies as an Exceptional Covered Product and Fire Mountain promptly placed a warning label, in compliance with Section 3.3 of this Agreement, on all of its affected inventory of such Covered Product following receipt of the NOV. The term “Exceptional Covered Product” means any Covered Product that Fire Mountain determines, either through its own investigation or discovery, or through the investigation of a citizen enforcer of Proposition 65 who shares the results of the investigation with Fire Mountain, after it has already taken ownership of the Covered Product, does not meet the Phthalate Free standards of Section 2.2 despite Fire Mountains good faith compliance with the commitments of Section 3.3 and that Fire Mountain determines is commercially impracticable to return to the vendor. For purposes of Exceptional Covered

Products, “commercially impracticable” means the Covered Product cannot be replaced with Phthalate Free Covered Products in a timely manner to meet customer demand or such other circumstance as will result in commercial or competitive harm to Fire Mountain despite its good faith efforts to meet the Phthalate Free concentration standards of Section 2.2 of this Agreement.

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 a 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 or electronic mail to the following:

For Fire Mountain:

Mrs. Christlin Freedman, CEO
Fire Mountain Gems & Beads, Inc.
1 Fire Mountain Way
Grants Pass, OR 97526-2373

With a copy to its counsel:

Kamran Javandel, Esq.
Allen Matkins Leck Gamble Mallory & Natsis LLP
Three Embarcadero Center, 12th Floor, San Francisco, CA 94111-4074
kjavandel@allenmatkins.com

For Davia to:

Proposition 65 Coordinator
Sheffer Law Firm
232 E. Blithedale Ave., Suite 210
Mill Valley, CA 94941
gregs@sheffer-law.net

Any Party may modify the person and address to whom the notice is to be sent by sending each other Party notice of such modification by certified mail and/or electronic mail.

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 either Party prevail on any motion, application for order to show cause or other proceeding to enforce a violation of this Agreement, that Party shall be entitled to its reasonable attorney fees and costs incurred as a result of such motion, order or application, and/or proceeding to enforce a violation of this Agreement.

13.2 Except as otherwise specifically provided herein, each Party shall bear its own costs and attorney's fees incurred 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 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: ^{July 12,} June ____, 2022</p> <p> Mrs. Christlin Freedman, CEO Fire Mountain Gems & Beads, Inc.</p>	<p>Dated: ^{July 11,} June ____, 2022</p> <p> Susan Davia</p>
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