

SETTLEMENT AGREEMENT
(Susan Davia AG Notice 2016-00932)

1. INTRODUCTION

1.1 The Parties

This settlement agreement (“Agreement” or “Settlement Agreement”) is entered into by and between Susan Davia (“Davia”), on the one hand, and Croscill Home, LLC and Patriarch Partners, LLC (collectively, “Croscill” or “Defendant”) on the other hand. Davia and Croscill are 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 Croscill

Croscill is alleged to have been responsible for the manufacture and/or distribution of the products subject to this Agreement. Croscill is alleged to be 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 Croscill participated in the manufacture, distribution and/or sale, in the State of California, of product display and storage cases made with materials that exposed users to DEHP and DINP without first providing “clear and reasonable warning” under Proposition 65.

DEHP is listed as a carcinogen and reproductive toxin pursuant to Proposition 65. DINP is listed as a carcinogen pursuant to Proposition 65. DEHP and DINP shall be referred to hereinafter, collectively, as “Listed Chemical”.

1.5 Notices of Violation

On August 25, 2016, Davia served Croscill and various public enforcement agencies with a document entitled “60-Day Notice of Violation” that purported to provide public enforcers and the noticed

entities with notice of alleged violations of Proposition 65 for failing to warn consumers of the presence of DEHP and DINP, a toxic chemical found in the Covered Products sold in California (AG Notice 2016-00934). The August 25, 2016, 60-Day Notice of Violation shall be referred to herein as "Notice."

Croscill received the Notice. Croscill 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 or DINP in the Covered Products, as identified in the 60-Day Notice.

1.6 No Admission of Fault or Liability

This Agreement resolves claims that are denied and disputed by Croscill. The Parties enter into this Agreement pursuant to a full, final and binding settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. Croscill denies the material factual and legal allegations contained in the Notice, maintains that it did not knowingly or intentionally expose California consumers to DEHP and/or DINP through the reasonably foreseeable use of the Covered Products and otherwise contends that, all Covered Products it has manufactured, distributed and/or sold in California have been and are in compliance with all applicable laws, including but not limited to Proposition 65. Nothing in this Agreement shall be construed as an admission by Croscill 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 Croscill of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Croscill. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect Croscill's obligations, responsibilities, and duties under this Agreement.

1.7 Enforcement and Consent to Jurisdiction

1.7.1 If either Party believes that this Agreement or any portion of it has been violated, such Party shall give notice (including reasonable particulars) of such violation to the other Party. The other Party must respond to such notice as soon as practicable but not later than thirty (30) calendar days thereafter. The Parties shall negotiate in good faith in an attempt to resolve any disputes relating thereto and will, if necessary, submit all disputes to a mutually agreeable mediator. If the Parties are unable to reach a mutually acceptable resolution, either Party may seek court enforcement of compliance with this Agreement.

1.7.2 For purposes of this Agreement only, after mediation per 1.7.1, the Parties stipulate that the Marin County Superior Court has jurisdiction over Croscill as to the allegations in the 60-Day Notices 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, the parties stipulate that this Agreement shall be considered a settlement pursuant to Code of Civil Procedure Section 664.6 such that 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 "Product" or "Covered Product" shall mean all vinyl or PVC packaging/storage cases for Croscill bedding sets, comforters and pillow shams of all sizes made with DEHP and/or DINP.

2.2 The term "Phthalate Free" Covered Products shall mean that each component of each Covered Product contains less than or equal to 1,000 parts per million ("ppm") of di(2-ethylhexyl phthalate) ("DEHP"), dibutyl phthalate ("DBP"), diisononyl phthalate ("DINP"), diisodecyl phthalate ("DIDP"), di-n-hexyl phthalate ("DnHP") and butyl benzyl phthalate ("BBP") as determined test results using Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C.

2.3 "Effective Date" shall be the date upon which all Parties have signed the Agreement and delivered a fully executed copy to counsel for Plaintiff and Defendant or October 20, 2017, whichever is earlier.

3. CONSIDERATION

3.1 Product Reformulation Commitment

3.1.1 As a material term of this Agreement, Croscill represents that it switched vendors and commenced ordering Phthalate Free Covered Products as of December 1, 2016. To the extent it has not already done so, no later than the Effective Date, Croscill shall provide the Phthalate Free phthalate concentration standards of Section 2.2 to its then-current vendors of any Covered Product and instruct such entities 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. Croscill shall maintain copies of all

vendor correspondence relating to the Phthalate Free concentration standards for two (2) years after the Effective Date and shall produce such copies to Davia within fifteen (15) days of receipt of reasonable request made in writing from Davia, as long as such request is made within two (2) years after the Effective Date.

3.1.2 After the Effective Date, Croscill shall provide the Phthalate Free phthalate concentration standards of Section 2.2 to any New Vendors of any Covered Product and instruct such entities 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. "New Vendors" means vendors of Covered Products from whom Croscill was not obtaining Covered Products as of the Effective Date. Prior to purchase and acquisition of any Covered Product from any New Vendor, Croscill 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. For two (2) years after the Effective Date, for every Covered Product Croscill manufactures, causes to be manufactured, orders, causes to be ordered or otherwise obtains from a New Vendor after the Effective Date, Croscill 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 reasonable request made in writing from Davia as long as such request is made within two (2) years after the Effective Date.

3.1.3 As of the Effective Date, Croscill shall not manufacture, cause to be manufactured, order or cause to be ordered any Covered Product that is not Phthalate Free. For every Covered Product Croscill manufactures, causes to be manufactured, orders or causes to be ordered after the Effective Date, Croscill shall maintain copies of any and all testing of such products demonstrating compliance with this section, shall maintain copies of any and all vendor correspondence relating to the Phthalate Free concentration standards of Section 2.2.

3.2 Previously Distributed Covered Products.

3.2.1 Customer Notification - Croscill represents as a material term of this Agreement that they commenced shipping Phthalate Free Covered Products to Croscill customers by March 2017. Croscill

further represents that the consumption rate of Covered Products is sufficiently high that it is estimated that a vast majority of Covered Product currently available for sale to consumers is Phthalate Free. Based upon these representations, no further notification to Croscill customers shall be required.

3.2.2 Settling Defendant shall maintain records of compliance correspondence, inventory reports or other communication regarding its representations in § 3.2.1 for two (2) years from the Effective Date and shall produce copies of such records upon written request by Davia.

3.3 Existing Inventory Product Packaging Labels

As of the Effective Date, Croscill shall implement best efforts to not sell or ship any existing inventory of Covered Product that does not meet the Phthalate Free content standards of Section 2.2 to a California customer or retailer, or sell or ship any such Covered Product to a customer or retailer that Croscill has reason to know maintains retail outlets in the California, unless such Covered Product is shipped with a product warning as set forth hereafter.

3.3.1 Covered Product Packaging Label.

For all non-Phthalate Free Covered Product sold into, California, to a California customer or to any entity that Croscill has reason to know either maintains retail outlets in California or is a distributor for any entity that maintains retail outlets in California, Croscill shall affix a label to the Covered Product that states:

WARNING: This packaging contains DEHP and DINP, chemicals known to the State of California to cause cancer and birth defects or other reproductive harm. *This packaging is not intended as a storage container. Please discard packaging after purchase.*

Each such label utilized by Croscill for any Covered Product shall be prominently placed either on the front, exterior surface of the clear packaging or where other health and safety warnings are located, 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.

3.3.2 Internet Website Warning.

A warning must be given in conjunction with the sale of any non-Phthalate Free Covered Products by Croscill via the Internet, provided it appears either: (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; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement 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 in the same type size or larger than the Covered Product description text:

WARNING: This packaging for this product contains DEHP and/or DINP, chemicals known to the State of California to cause cancer and birth defects or other reproductive harm. *This packaging is not intended as a storage container. Please discard packaging after purchase.*

Alternatively, a designated symbol may appear adjacent to or immediately following the display, description, or price of the Covered Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page, as follows:

WARNING: Products identified on this page with the following symbol ▼ include packaging containing DEHP and/or DINP, chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

Croscill shall implement best efforts to discontinue, by September 30, 2017, all sales of non-Phthalate Free Covered Product to a California customer or retailer, or to a customer or retailer that Croscill has reason to know maintains retail outlets in the California, regardless of whether such Covered Product is accompanied by a warning pursuant to this Section 3.3

4. MONETARY PAYMENTS

4.1 Civil Penalty

As a condition of settlement of all the claims referred to in this Agreement, Croscill shall cause to be paid a total of \$7,500 (hereinafter "Civil Penalty Payment") 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 Croscill 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 Croscill evidence that the Covered Products have been distributed by Croscill in sales volumes materially different (more than 25%) than those identified by Croscill prior to execution of this Agreement, then Croscill shall be liable for an additional, total penalty amount of \$10,000.¹ Croscill shall also be liable, in accordance with the requirements of Code of Civil Procedure section 1021.5 for any reasonable, additional attorney fees expended by Davia in discovering such additional retailers or sales. Davia agrees to provide Croscill with a written demand for all such additional penalties and attorney fees under this Section. After service of such demand, Croscill shall have thirty (30) days to agree to the amount of fees and penalties owing by Croscill 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. The Parties shall negotiate in good faith in an attempt to resolve any disputes relating to any additional penalty pursuant to this Section. If the Parties cannot reach an agreement as to any additional civil penalty pursuant to this Section, the Parties shall submit all disputes to a mutually agreeable mediator. If the Parties are unable to reach a mutually acceptable resolution through negotiation or mediation, 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, in accordance with the requirements of Code of Civil Procedure section 1021.5, 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

¹ The maximum aggregate penalty under this section is \$10,000 if requisite evidence of a material violation is presented, regardless of the alleged number of noncomplying individual sales of Covered Products to consumers prior to the execution of this agreement that comprise the material violation.

be resolved after the material terms of the agreement had been settled. Croscill 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, Croscill shall cause to be paid to Davia's counsel the amount of \$28,000 ("hereinafter Attorney Fee Payment") for fees and costs incurred investigating, litigating and enforcing this matter. Such payment shall be made payable to "Sheffer Law Firm".

4.4 Payment Procedures

Croscill shall satisfy its obligation to pay civil penalties pursuant to Section 4.1 by delivery of a civil penalty check payable to "OEHHA" (EIN: 68-0284486, Memo line "Prop 65 Penalties, 2016-00932"), in the amount of \$5,625 and a civil penalty check payable to "Susan Davia" (Tax ID to be supplied, Memo line "Prop 65 Penalties, 2016-00932") in the amount of \$1,875. Davia shall be required to promptly deliver to the California Office of Environmental Health Hazard Assessment the civil penalty check payable to OEHHA.

Croscill 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 "2016-00932") in the amount of \$28,000.

Croscill shall satisfy its obligation to pay any civil penalties pursuant to Section 4.2 by civil penalty checks payable to "OEHHA" and "Susan Davia" (Memo line "Prop 65 Penalties, 2016-00932"), in the amounts agreed to pursuant to Section 4.2 or as ordered by the Court.

Croscill shall satisfy its obligation to pay any attorney fees or costs pursuant to Section 4.2 by a check payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2016-00932"), in the amounts agreed to pursuant to Section 4.2 or as ordered by the Court.

All Section 4.1 and Section 4.3 civil penalty and attorney fee/cost payments shall be delivered to plaintiff's counsel within five (5) business days after execution of this Agreement by all Parties to this Agreement, and Croscill's receipt of the fully executed Agreement; and (b) Croscill's receipt of the requisite

tax information needed for payment. Such payments shall be sent to plaintiff's counsel at the following address:

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

Croscill 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, Croscill shall cause three separate 1099 forms to be issued, 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 to it pursuant to Sections 4.1 and 4.2;
- (b) The second 1099 shall be issued to Davia in the amount paid to her pursuant to Sections 4.1 and 4.2, whose address and tax identification number shall be furnished promptly after execution of this Agreement; and
- (c) The third 1099 shall be issued to the Sheffer Law Firm (EIN: 55-08-58910) in the amount paid pursuant to Section 4.3 and 4.2, whose address and complete W-9 shall be furnished to Croscill promptly after execution of this Agreement.

5. RELEASES

5.1 DAVIA'S RELEASE OF CROSCILL

5.1.1 Upon execution of this Agreement, and for and in consideration of the promises, commitments and undertakings set forth in this Agreement, and for other good and valuable consideration, the receipt of which is hereby acknowledged, Davia and all of her successors, assigns and attorneys ("Releasing Parties), hereby release and forever discharge Croscill Home, LLC and Patriarch Partners, LLC, and each of their parents, subsidiaries agents, directors, officers, employees, representatives, shareholders, insurers and attorneys ("Released Parties"), and each retailers, downstream distributors, person, partnership, corporation or other entity to whom the Released Parties directly or indirectly distribute, ship and/or sell Covered Products, including but not limited to Bed Bath and Beyond ("Downstream Releasees"), from and against all actions, causes of action, claims, suits, debts, damages, judgments, liabilities, and demands whatsoever relating to the Notice and the Covered Products, and any claims relating to the Listed Chemical in the Covered Products sold on or before the Effective Date (the "Released Claims").

5.1.2 Davia hereby expressly and knowingly waives and relinquishes any and all rights he has or might have relating to the Released Claims under California Civil Code § 1542 (and under any and all other statutes or common law principles of similar effect) which reads 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, in her individual capacity 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, 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.

This Section 5 release shall not release any obligations created by or set forth in this Agreement.

The Parties further understand and agree that this Section 5 release shall not extend upstream to any entities, other than Croscill, 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 Croscill.

5.2 CROSCILL RELEASE OF DAVIA

Croscill, 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 through the execution of this Agreement whether in the course of investigating claims in this matter, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered Products that were the subject of the Notices. Croscill 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.

Croscill 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 identified in this Section 5.2. 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. SEVERABILITY

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

7. GOVERNING LAW

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

8. NOTICES

When any Party is entitled to receive any notice under this Agreement, the notice shall be sent both by Federal Express (or other tracked delivery service) or electronic mail to the following:

For Croscill Home, LLC:

Margaritta Topielski or Current President/CEO
Croscill Home, LLC
295 5th Avenue
New York, NY 10016

With a copy to their counsel:

Kimberly Arouh, Esq.
Buchanan Ingersoll Rooney LLP
One America Plaza
600 West Broadway, Suite 1100
San Diego, CA 92101
kimberly.arouh@bipc.com

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.

9. 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).

10. MODIFICATION

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

11. 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

12. ATTORNEY'S FEES

12.1 Should any of the Parties hereto file suit to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.

12.2 Except as otherwise specifically provided herein, each Party shall bear its own costs and attorney's fees in connection with this Agreement, the Action, the Notice, the claims described in this Agreement, the Action and the Notice, and preparation of this Agreement.

13. 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.


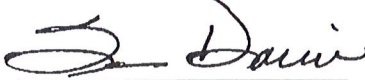
14. COUNTERPARTS, FACSIMILE SIGNATURES

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.

15. AUTHORIZATION

The undersigned parties 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>March Dated: February <u>15</u>, 2018</p> <p></p> <p>_____ Margaritta Topielski Chief Executive Officer Crossill Home, LLC</p>	<p>Dated: February <u>14</u>, 2018</p> <p></p> <p>_____ Susan Davia</p>
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