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SUSAN DAVIA  
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF MARIN  
10 UNLIMITED CIVIL JURISDICTION  
11

12 SUSAN DAVIA,  
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14 Plaintiff,

15 vs.

16 WESTPOINT HOME LLC, BED BATH &  
17 BEYOND INC. and DOES 1-150,

18 Defendants.  
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Case No. CIV 1802511

**CONSENT TO JUDGMENT  
SETTLEMENT AGREEMENT**

Case Filed: July 18, 2018

Trial Date: None Assigned

1           **1.     INTRODUCTION**

2                   **1.1     The Parties**

3                   This Consent to Judgment settlement agreement (“Consent Judgment”) is entered into by  
4 and between Plaintiff Susan Davia (“Davia”), on the one hand, and WestPoint Home LLC  
5 (“WestPoint” or “Defendant”), on the other, with Davia and WestPoint collectively referred to as the  
6 “Parties.”

7                   **1.2     Plaintiff Susan Davia**

8                   Davia is an individual who resides in the State of California and alleges that she seeks to  
9 promote awareness of exposure to toxic chemicals and improve human health by reducing or  
10 eliminating hazardous substances contained in consumer products.

11                   **1.3     Defendant WestPoint Home LLC**

12                   WestPoint employs 10 or more individuals. Davia contends that WestPoint qualifies as a  
13 “person in the course of doing business” pursuant to the Safe Drinking Water and Toxic  
14 Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.* (“Proposition 65”). For  
15 purposes of this Consent Judgment, WestPoint does not deny this contention.

16                   **1.4     General Allegations**

17                   Davia alleges that WestPoint manufactures, distributes and/or sells, in the State of  
18 California, bedding products which are packaged in display and storage cases made out of polyvinyl  
19 chloride (“PVC”) or other vinyl materials that expose users to di(2-ethylhexyl)phthalate (“DEHP”)  
20 and/or di(isononyl)phthalate (“DINP”) without first providing “clear and reasonable warning”  
21 under Proposition 65. Pursuant to Proposition 65, DEHP is listed as a carcinogen and reproductive  
22 toxin and DINP is listed as a carcinogen. DEHP and DINP shall be referred to hereinafter,  
23 individually and collectively, as “Listed Chemicals”.

24                   **1.5     Notice of Violation**

25                   On August 25, 2016, Davia served WestPoint and various public enforcement agencies with  
26 a document entitled “60-Day Notice of Violation” that provided public enforcers and the noticed  
27 entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn  
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1 consumers of the presence of DEHP and DINP, toxic chemicals found in the Covered Packaging (as  
2 defined in Section 2.6 below) sold in California (AG Notice 2017-00946). The August 25, 2016, 60-  
3 Day Notice of Violation shall be referred to herein as the "Notice."

4 WestPoint received the Notice. WestPoint represents that, as of the date it executes this  
5 Consent Judgment, it is not aware of any public enforcer that is diligently prosecuting a Proposition  
6 65 enforcement action related to the Listed Chemicals in the Covered Packaging, as identified in the  
7 Notice.

### 8 **1.6 Complaint**

9 On July 18, 2018, Davia filed a Complaint in the Superior Court of the State of California for  
10 the County of Marin, Case No. CIV 1802511, alleging violations by WestPoint, Bed Bath & Beyond  
11 and Does 1-150 of Health & Safety Code § 25249.6 based, *inter alia*, on the alleged consumer  
12 exposures to DEHP and DINP in the Covered Packaging.

### 13 **1.7 No Admission**

14 This Consent Judgment resolves claims that are denied and disputed by WestPoint. The  
15 Parties enter into this Consent Judgment pursuant to a full, final and binding settlement of any and  
16 all claims between the Parties for the purpose of avoiding prolonged litigation. WestPoint denies  
17 the material factual and legal allegations contained in the Notice, maintains that it did not knowingly  
18 or intentionally expose California consumers to any Listed Chemicals through the reasonably  
19 foreseeable use of the Covered Packaging and otherwise contends that all Covered Packaging it has  
20 sold or distributed for sale in California has been and are in compliance with all applicable laws.  
21 Nothing in this Consent Judgment shall be construed as an admission by WestPoint of any fact,  
22 finding, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute  
23 or be construed as an admission by WestPoint of any fact, finding, conclusion, issue of law, or  
24 violation of law, such being specifically denied by WestPoint. However, notwithstanding the  
25 foregoing, this section shall not diminish or otherwise affect WestPoint's obligations,  
26 responsibilities, and duties under this Consent Judgment.  
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1           **2.7** The term “Phthalate Free” shall mean that each component of Covered Packaging  
2 contains less than or equal to 1,000 parts per million (“ppm”) of DEHP, DINP, dibutyl phthalate  
3 (“DBP”), diisodecyl phthalate (“DIDP”), di-n-hexyl phthalate (“DnHP”) and butyl benzyl phthalate  
4 (“BBP”) as determined by analysis using Environmental Protection Agency (“EPA”) testing  
5 methodologies 3580A and 8270C, or equivalent methodologies used by state or federal agencies for  
6 purposes of determining phthalate content in a solid substance. DEHP, DBP, DINP, DIDP, DnHP,  
7 BBP shall herein be collectively referred to as “Listed Phthalates.”

8           **2.8** The term “In The Stream of Commerce” shall mean that a product has left the actual  
9 possession of WestPoint.

10           **2.9** The term “Prior Inventory” shall mean House and Licensed Products, Private Label  
11 Products or Sourced Products manufactured and taken into inventory by WestPoint before August  
12 1, 2017 that are not In The Stream of Commerce.

13           **2.10** The term “Effective Date” shall mean August 1, 2018.

### 14 **3. NON-MONETARY RELIEF**

#### 15 **3.1 Product Reformulation Commitment**

##### 16 **3.1.1 House and Licensed Products**

17 As of the date of execution of this Consent Judgment, WestPoint shall not distribute or sell  
18 any House and Licensed Product to a California Customer unless it is packaged in Phthalate Free  
19 Covered Packaging. This Section 3.1 does not apply to Prior Inventory of House and Licensed  
20 Products, or House and Licensed Products that are In The Stream of Commerce as of the date of  
21 execution of this Consent Judgment.

##### 22 **3.1.2 Private Label Products**

23 As of the Effective Date, WestPoint shall not distribute or sell any Private Label Product to a  
24 California Customer unless it is packaged in Phthalate Free Covered Packaging. This Section 3.1.2  
25 does not apply to Prior Inventory of Private Label Products, or Private Label Products In The Stream  
26 of Commerce as of the Effective Date.

1           After the Effective Date, WestPoint shall provide the Phthalate Free concentration standards  
2 of Section 2.7 to any new retail customer for which WestPoint agrees to manufacture Private Label  
3 Products and before an initial order from such new customer, advise such new customer that  
4 WestPoint shall not distribute or sell any Private Label Products to a California Customer unless it  
5 is packaged in a Phthalate Free Covered Packaging.

6           WestPoint shall maintain copies of material correspondence relating to the Phthalate Free  
7 standards of Section 2.7 and the labeling requirements of Section 3.3 with any new retail customer  
8 for which WestPoint agrees to manufacture Private Label Products for no less than three (3) years  
9 after the date of creation of such documents, and shall produce such copies to Davia within fifteen  
10 (15) days of receipt of a reasonable request therefor made in writing from Davia.

### 11                           **3.1.3 Sourced Product**

12           No later than the Effective Date, WestPoint shall provide the Phthalate Free concentration  
13 standards of Section 2.7 to any existing vendors of Sourced Products intended for distribution or  
14 sale to any California Customer, and instruct such vendors not to incorporate any raw or component  
15 materials that do not meet the Phthalate Free standards of Section 2.7 into any Covered Packaging  
16 in which the Sourced Product is packaged. Before purchasing or otherwise acquiring such Sourced  
17 Products, WestPoint shall obtain and maintain the vendor's written certification of its compliance  
18 with the Phthalate Free standards of Section 2.7 for the Covered Packaging.

19           After the Effective Date, WestPoint shall provide the Phthalate Free concentration standards  
20 of Section 2.7 to any new vendor of a Sourced Product intended for distribution or sale to a California  
21 Customer and shall instruct such new vendor that the Covered Packaging in which they package a  
22 Sourced Product must meet the Phthalate Free concentration standards of Section 2.7. Before  
23 purchase and acquisition of any such Sourced Product from any new vendor, WestPoint shall obtain  
24 written certification from the new vendor demonstrating its compliance with the Phthalate Free  
25 standards of Section 2.7 for the Covered Packaging.

26           WestPoint shall maintain copies of all vendor certifications for Sourced Products distributed  
27 or sold to any California Customer and shall maintain copies of material vendor correspondence  
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1 relating to the Phthalate Free standards of Section 2.7, for no less than three (3) years after the date  
2 of creation of such documents, and shall produce such copies to Davia within fifteen (15) days of  
3 receipt of a reasonable request therefor made in writing from Davia.

### 4 **3.2 Previously Obtained or Distributed Covered Packaging.**

#### 5 **3.2.1 Customer Notification**

6 As a material term of this Agreement, WestPoint represents that, shortly after receiving  
7 Davia's Notice, it implemented a warning program under which it labeled all House and Licensed  
8 Products, Private Label Products, and Sourced Products, packaged in non-Phthalate Free Covered  
9 Packaging and destined for California, with Proposition 65 compliant warnings. Accordingly,  
10 WestPoint has already provided compliant Proposition 65 warnings for those House and Licensed  
11 Products, Private Label Products, and Sourced Products In the Stream of Commerce packaged in  
12 non-Phthalate-Free Covered Packaging that would likely still be in the possession of California  
13 retailers. To avoid retailers from believing mistakenly that House and Licensed Products, Private  
14 Label Products, and Sourced Products packaged in Phthalate Free Covered Packaging require  
15 application of a Proposition 65 warning, WestPoint shall have no customer or retailer notification  
16 obligation under this Agreement.

### 17 **3.3 WestPoint Warning Obligations**

#### 18 **3.3.1 Prior Inventory**

19 As of the execution of this Consent Judgment, WestPoint shall not sell or ship Prior Inventory  
20 packaged in Covered Packaging that is not Phthalate Free to a California Customer, unless such  
21 Prior Inventory is first labelled with one of the following warnings:  
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23 (a) **WARNING:** These storage bags contain  
24 chemicals known to the State of California  
25 to cause cancer and birth defects or other  
reproductive harm.

26 or

27 (b) **WARNING:** This packaging contain  
28 chemicals known to the State of California

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to cause cancer and birth defects or other reproductive harm.

or


(c) The following warning applies only to the exterior packaging and not the product enclosed.

**WARNING:** This package contain chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

or

(d)  **WARNING:** This product’s packaging can expose you to chemicals, including DEHP, which is 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](http://www.P65Warnings.ca.gov).

or

(e)  **WARNING:** This vinyl/PVC packaging product can expose you to chemicals, including DEHP, which is 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. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov). Please discard packaging after purchase.

or,

(f)  **WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

Each warning shall be prominently placed on Covered Packaging with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and



1 understood by an ordinary individual under customary conditions *before* use of the product in the  
2 Covered Packaging.<sup>1</sup>

3 **3.3.2 House and Licensed Products, Private Label and Sourced Products**

4 As a material term of this Consent Judgment, WestPoint represents that as of the execution  
5 of this Consent Judgment all House and Licensed Products manufactured and taken into inventory  
6 after August 1, 2017 are packaged in Phthalate Free Covered Packaging. WestPoint also understands  
7 and believes that all Private Label Products and Sourced Products manufactured and taken into  
8 inventory after August 1, 2017, are also packaged in Phthalate Free Covered Packaging.

9 Notwithstanding this representation, if WestPoint obtains credible information, in the form  
10 of laboratory test reports subject to verification by WestPoint, that WestPoint maintains any  
11 inventory any of House and Licensed Products, Private Label Products or Sourced Products  
12 manufactured or taken into inventory after August 1, 2017 that are not packaged in Phthalate Free  
13 Covered Packaging, then WestPoint shall not sell or ship any such product with non-Phthalate Free  
14 Covered Packaging to a California Customer, unless such Covered Packaging is first labelled with  
15 one of the warnings set forth in Section 3.3.1.

16  
17 **4. MONETARY PAYMENTS**

18 **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

19 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims  
20 alleged in the Notice and referred to in this Consent to Judgment, WestPoint agrees to pay \$8,500 in  
21 civil penalties. The civil penalty payment will be allocated in accordance with California Health &  
22 Safety Code § 25249.12(c)(1) & (d) with 75% of the penalty payment issued to the California Office of  
23 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty

24  
25 <sup>1</sup> After August 30, 2018, WestPoint may provide warnings for internet or catalog purchases of  
26 House and Licensed Products, Private Label Products, Sourced Products, or Prior Inventory under  
27 Cal. Code Regs. tit. 27 § 25602(b) and (c) using the warning message specified in Section 3.2.1(d) or  
28 (e) of this Consent Judgment. After August 30, 2018, WestPoint may provide warnings for internet  
or catalog purchases using the warning message in Section 3.2.1(f) if the product that is the subject  
of the warning is also labeled with a warning under Section 3.2.1(f).

1 payment issued to Susan Davia.

2 **4.2 Augmentation of Penalty Payments**

3 For purposes of the penalty assessment under this Consent Judgment, Plaintiff is relying  
4 entirely upon Defendant for accurate, good faith reporting to Plaintiff of the nature and amounts of  
5 relevant sales activity of House and Licensed Products, Private Label Products and Sourced  
6 Products. WestPoint represents that the information regarding the nature and amount of relevant  
7 sales activity that it provided to Davia in negotiating this Consent Judgment was truthful and a  
8 material factor upon which Davia relied to determine the amount of civil penalties assessed under  
9 Health & Safety Code § 25249.7. If within nine (9) months of the Effective Date, Plaintiff discovers  
10 and presents to Defendant evidence that any House and Licensed Product, Private Label Product,  
11 or Sourced Product packaged in Covered Packaging has been distributed by WestPoint in sales  
12 volumes materially different (more than 15%) than those identified by WestPoint prior to execution  
13 of this Consent Judgment then WestPoint shall be liable for an additional civil penalty amount for  
14 such sales difference. WestPoint shall have thirty (30) days to meet and confer with Davia regarding  
15 a settlement penalty amount relating to the alleged sales difference. In the event the 30-day meet  
16 and confer period passes without any such resolution between Davia and WestPoint, then Davia  
17 shall be entitled to make an appropriate motion to the Court to cure any breach of this Section 3.2 of  
18 the Consent Judgment under Section 664.6 of the Code of Civil Procedure. The prevailing party on  
19 the motion shall be entitled to its reasonable attorneys' fees and costs as approved by the Court or  
20 otherwise negotiated by the parties.

21 **4.3 Reimbursement of Plaintiff's Fees and Costs**

22 The Parties have reached an accord on the compensation due to Davia and her counsel under  
23 general contract principles and the private attorney general doctrine codified at California Code of  
24 Civil Procedure section 1021.5, for all work performed in this matter, except fees that may be incurred  
25 on appeal. Under these legal principles, WestPoint shall pay the amount of \$39,500 for fees and costs  
26 incurred investigating, litigating and enforcing this matter, including the fees and costs incurred (and  
27 yet to be incurred) negotiating, drafting, and obtaining the Court's approval of this Consent  
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1 Judgment in the public interest.

2 **4.4 Payment Timing and Delivery Instructions, Payments Held In Trust**

3 WestPoint shall deliver all settlement amounts required by this Consent Judgment and  
4 resulting Consent Judgment to its counsel within fourteen (14) days of execution of this Consent  
5 Judgment. WestPoint's counsel shall confirm receipt of settlement amounts in writing to Davia's  
6 counsel. Within five business days of its receipt of copies of the order approving this settlement and  
7 the entered Consent Judgment, counsel for WestPoint shall deliver the settlement amounts it has  
8 held pursuant to this Section to Davia's counsel as follows:

9 1. a civil penalty check in the amount of \$6,375 payable to "OEHHHA" (EIN: 68-  
10 0284486, Memo line "Prop 65 Penalties, 2017-00946");

11 2. a civil penalty check in the amount of \$2,125 payable to "Susan Davia" (EIN:  
12 to be supplied upon request by WestPoint), Memo line "Prop 65 Penalties, 2017-00946"); and

13 3. An attorney fee and cost reimbursement check, pursuant to Section 4.3, in the  
14 amount of \$39,500 payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2017-00946").

15 All penalty and fee/cost payments shall be delivered to the Sheffer Law Firm at the following  
16 address:

17 Sheffer Law Firm  
18 Attn: Proposition 65 Controller  
19 81 Throckmorton Ave., Suite 202  
20 Mill Valley, CA 94941.

21 WestPoint shall pay any civil penalties, fees and/or costs pursuant to Section 4.2, if any,  
22 pursuant to written agreement of the parties or as ordered by the Court.

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

26 **4.5 Issuance of 1099 Forms**

27 After this Consent Judgment has been approved and the settlement funds have been  
28 transmitted to Davia's counsel, WestPoint shall cause three separate 1099 forms to be issued, as

1 follows:

2 (a) The first 1099 shall be issued to the Office of Environmental Health Hazard  
3 Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount  
4 of \$6,375;

5 (b) The second 1099 shall be issued to Susan Davia in the amount of \$2,125, whose  
6 address and tax identification number shall be furnished upon request; and

7 (c) The third 1099 shall be issued to the Sheffer Law Firm (EIN: 55-08-58910) in  
8 the amount of \$39,500.

9 **5. CLAIMS COVERED AND RELEASE**

10 **5.1 Davia's Release of WestPoint**

11 **5.1.1** Davia acting on her own behalf and in the public interest releases (a)  
12 WestPoint, its agents, assigns, attorneys, directors, officers, employees, predecessors and successors  
13 and parents, subsidiaries, sister corporations, and affiliates, including, but not limited to, WestPoint  
14 Home (Bahrain) W.L.L., (and their officers, directors, agents, employees and attorneys)  
15 ("Releasees"), (b) each entity to whom WestPoint directly or indirectly distributes or sells Covered  
16 Packaging, including, but not limited, to downstream distributors and retailers, including, but not  
17 limited to, Bed, Bath & Beyond ("Downstream Releasees"), and (c) any entity that manufactures,  
18 distributes or sells Covered Packaging (as defined in Section 2.6), or component part thereof  
19 ("Upstream Releasees"), from all claims for violations of Proposition 65 up through the Effective  
20 Date based on exposure to Listed Phthalates from Covered Packaging. Compliance with the terms  
21 of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures from  
22 Listed Phthalates from Covered Packaging.

23 **5.1.2** Davia also provides a general release herein which shall be effective as a full  
24 and final accord and satisfaction, as a bar to all claims, actions and causes of action, of any nature,  
25 character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter  
26 of the Notice as to Covered Packaging sold by WestPoint, Releasees, and/or Downstream Releasees  
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1 into California prior to the Effective Date. Davia acknowledges that she is familiar with section 1542  
2 of the California civil code, which provides as follows:

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

8 Davia, in her individual capacity expressly waives and relinquishes any and all rights and  
9 benefits that she may have under, or which may be conferred on her by the provisions of Section  
10 1542 of the California Civil Code as well as under any other state or federal statute or common law  
11 principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits  
12 pertaining to the released matters. In furtherance of such intention, the release hereby given shall  
13 be and remain in effect as a full and complete release notwithstanding the discovery or existence  
14 of any such additional or different claims or facts arising out of the released matters.

15 **5.1.3** This Section 5 release shall not release any obligations created by or set forth  
16 in this Consent Judgment.

17 **5.1.4** Except for the Covered Packaging into which House and Licensed Products,  
18 Private Label Products, or Sourced Products have been packaged, the Parties understand and agree  
19 that this Section 5 release shall not extend upstream to any entities, other than Releasees and  
20 Upstream Releasees, that manufacture display and storage cases, or any component parts thereof,  
21 made out of PVC or other vinyl materials, or bedding products packaged therein.

## 22 **5.2 WestPoint's Release of Davia**

23 **5.2.1** WestPoint, on behalf of itself, its past and current agents, representatives,  
24 attorneys, successors, and/or assignees, hereby waives any and all claims against Davia and her  
25 attorneys and other representatives, for any and all actions taken or statements made (or those that  
26 could have been taken or made) by Davia and her attorneys and other representatives through the  
27 execution of this Consent Judgment whether in the course of investigating claims in this matter,  
28 otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered

1 Packaging that were the subject of the Notice. WestPoint acknowledges that it is familiar with  
2 Section 1542 of the California Civil Code, which provides as follows:

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

7 WestPoint expressly waives and relinquishes any and all rights and benefits which it may have  
8 under, or which may be conferred on it by the provisions of Section 1542 of the California Civil Code  
9 as well as under any other state or federal statute or common law principle of similar effect, to the  
10 fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters  
11 identified in this Section 5.2. In furtherance of such intention, the release hereby given shall be and  
12 remain in effect as a full and complete release notwithstanding the discovery or existence of any  
13 such additional or different claims or facts arising out of the released matters.  
14

15 **6. SEVERABILITY**

16 If any of the provisions of this Consent Judgment are found by a court to be unenforceable,  
17 the validity of the enforceable provisions remaining, shall not be adversely affected, unless the  
18 Court, after agreement of the parties, finds that any unenforceable provision is not severable from  
19 the remainder of the Consent Judgment.

20 **7. COURT APPROVAL**

21 **7.1** Upon execution of this Consent Judgment by the Parties, Davia shall notice a Motion  
22 for Court Approval. The Parties shall use their best efforts to support entry of this Consent  
23 Judgment. If the California Attorney General (“AG”) objects to any term in this Consent Judgment,  
24 the Parties shall use their best efforts to resolve the AG’s concern in a timely manner and, if possible,  
25 prior to the hearing on the Motion.

26 **7.2** If this Consent Judgment is not approved by the Court in its entirety, the Parties  
27 shall meet and confer to determine whether to modify the terms of the Consent Judgment and to  
28

1 resubmit it for approval. In meeting and conferring, the Parties agree to undertake any actions  
2 reasonably necessary to amend and/or modify this Consent Judgment in order to further the mutual  
3 intention of the Parties in entering into this Consent Judgment.

4 **7.3** The Consent Judgment shall become null and void if, for any reason, it is not  
5 approved and entered by the Court within one year after it has been fully executed by all Parties.

6 **7.4** Upon approval, WestPoint agrees to accept notice of entry of the order of approval  
7 and judgment by electronic mail service to its counsel of record.

8 **8. GOVERNING LAW**

9 The terms and conditions of this Consent Judgment shall be governed by and construed in  
10 accordance with the laws of the State of California.

11 **9. NOTICES**

12 When any Party is entitled to receive any notice under this Consent Judgment, the notice  
13 shall be sent by FedEx (or other tracked delivery service) or electronic mail to the following:

14 For WestPoint, Inc.:

15 Tyler Bolden,  
16 Vice President, General Counsel & Secretary  
17 WestPoint Home LLC  
18 391 College Avenue #3  
Clemson, SC 29631

19 With copy to their counsel at:

20 Jay W. Connolly  
21 Seyfarth Shaw LLP  
22 560 Mission St., Suite 3100  
23 San Francisco, CA 94105  
24 Tel: (415) 397-2823  
25 Fax: (415) 839-9036  
26 jconnolly@seyfarth.com

27 For Davia to:

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

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

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

4 Davia agrees to comply with the reporting form requirements referenced, in California  
5 Health & Safety Code §25249.7(f) and to file a motion for approval of this Consent Judgment.

6 **11. MODIFICATION**

7 This Consent Judgment may be modified only by (1) a written agreement of the Parties and  
8 (2) upon a successful motion of any party and approval of a modified Consent Judgment by the  
9 Court. A copy of any such motion to modify shall be served on the Office of the Attorney General.

10 **12. ADDITIONAL POST-EXECUTION ACTIVITIES**

11 Pursuant to Health & Safety Code § 25249.7 Davia is obligated to file a noticed motion to  
12 obtain Court approval of this Consent Judgment and Davia agrees to do so. WestPoint shall not  
13 oppose entry of this Consent Judgment and shall support the Court approval of this Consent  
14 Judgment in a timely manner.

15 **13. ENTIRE AGREEMENT**

16 This Settlement contains the sole and entire agreement and understanding of the Parties with  
17 respect to the entire subject matter hereof, and any and all prior discussions, negotiations,  
18 commitments, and understandings related hereto. No representations, oral or otherwise, express or  
19 implied, other than those contained herein have been made by any Party hereto. No other  
20 agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind  
21 any of the Parties. No supplementation, modification, waiver, or termination of this Consent  
22 Judgment shall be binding unless executed in writing by the Party to be bound. No waiver of any  
23 of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the  
24 other provisions whether or not similar, nor shall such waiver constitute a continuing waiver

25 **14. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

26 **14.1** If a dispute arises with respect to either Party's compliance with the terms of this  
27 Consent Judgment entered by the Court, the Parties shall, for a period of no less than thirty (30)  
28



1 days, meet and confer in good faith by person, by telephone, and/or in writing and endeavor to  
2 resolve the dispute in an amicable manner. No action or motion may be filed in the absence of such  
3 a good faith attempt to resolve the dispute beforehand. If the Party alleged to be in violation corrects  
4 the alleged lack of compliance within thirty (30) days of receiving written notice, the Party seeking  
5 to enforce this Consent Judgment shall take no further enforcement action with respect to such  
6 violation. In such case as any action or motion is filed after such thirty day conference period, the  
7 moving party may seek whatever fines, costs, penalties or remedies as may be provided by law and  
8 the prevailing party shall be entitled to their reasonable attorney fees and costs.

9 **14.2** Except as specifically provided in the above paragraph and in Section 4.3, each Party  
10 shall bear its own costs and attorney's fees in connection with this action.

11 **14.3** Nothing in this Section 14 shall preclude a Party from seeking an award of sanctions  
12 pursuant to law.

### 13 **15. NEUTRAL CONSTRUCTION**

14 All Parties and their counsel have participated in the preparation of this Consent Judgment  
15 and this Consent Judgment is the result of the joint efforts of the Parties. This Consent Judgment  
16 was subject to revision and modification by the Parties and has been accepted and approved as to  
17 its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in  
18 this Consent Judgment shall not be interpreted against any Party as a result of the manner of the  
19 preparation of this Consent Judgment. Each Party to this Consent Judgment agrees that any statute  
20 or rule of construction providing that ambiguities are to be resolved against the drafting Party  
21 should not be employed in the interpretation of this Consent Judgment and, in this regard, the  
22 Parties hereby waive California Civil Code Section 1654.

### 23 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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

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**17. AUTHORIZATION**

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

**IT IS SO AGREED**

<p>Dated: August __, 2018</p> <p>_____</p> <p>Plaintiff Susan Davia</p>	<p>Dated: August <u>30</u>, 2018</p> <p></p> <p>_____ Tyler Bolden VP, General Counsel &amp; Secretary WestPoint Home LLC</p>
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