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15 ENVIRONMENTAL JUSTICE FOUNDATION

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
17 **FOR THE COUNTY OF SAN FRANCISCO**

18 MATEEL ENVIRONMENTAL  
19 JUSTICE FOUNDATION,

20 Plaintiff,

21 vs.

22 HOME ESSENTIALS, INC., et al.,

23 Defendant.

ENDORSED  
FILED  
San Francisco County Superior Court

MAY 19 2008

GORDON PARK-LI, Clerk  
BY:           JOCELYN C. ROQUE            
Deputy Clerk

469271  
Case No. CGC 07-~~469271~~  
**CONSENT JUDGMENT AS TO  
DEFENDANT THE CONTAINER  
STORE**

1       **1. INTRODUCTION**

2           **1.1**     On or about April 18, 2007, MATEEL ENVIRONMENTAL JUSTICE  
3 FOUNDATION ("Mateel") acting on behalf of itself and the general public, filed a  
4 complaint for civil penalties and injunctive relief in the above captioned matter in San  
5 Francisco County Superior Court against several defendants, including The Container  
6 Store, Inc., ("Container Store" or "Settling Defendant"). The Complaint alleges, among  
7 other things, that Settling Defendant violated provisions of the Safe Drinking Water and  
8 Toxic Enforcement Act of 1986, Health and Safety Code Section 25249.5, et seq.  
9 ("Proposition 65"). In particular, Mateel alleges that Settling Defendant has knowingly  
10 and intentionally exposed persons to products which use beverage dispensing jars or  
11 vessels that incorporate leaded brass spigots through which the beverages are dispensed  
12 ("Covered Products") which contain lead and/or lead compounds, which are chemicals  
13 known to the State of California to cause cancer and birth defects or other reproductive  
14 harm, without first providing a clear and reasonable warning to such individuals. Mateel  
15 and Container Store are collectively referred to herein as the "parties."

16           **1.2**     On or about July 18, 2007, a 60 Day Notice Letter ("60 Day Notice Letter")  
17 was sent by Mateel to Settling Defendant, the California Attorney General, all California  
18 District Attorneys, and all City Attorneys of each California city with a population  
19 exceeding 750,000.

20           **1.3**     Settling Defendant is a business that employs ten or more persons and  
21 manufactures, distributes, supplies and/or otherwise markets within the State of California  
22 Covered Products, which are alleged to contain lead and/or lead compounds. Lead and  
23 lead compounds are chemicals known to the State of California to cause cancer, and lead  
24 is a chemical known to the State of California to cause reproductive toxicity pursuant to  
25 Health and Safety Code Section 25249.9. Under specified circumstances, products  
26 containing lead and/or lead compounds that are sold or distributed in the State of  
27 California are subject to the Proposition 65 warning requirement set forth in Health and  
28 Safety Code Section 25249.6. Plaintiff Mateel alleges that the Covered Products

1 manufactured, distributed, sold and/or marketed by Settling Defendant for use in  
2 California require a warning under Proposition 65.

3 1.4 For purposes of this Consent Judgment, the parties stipulate that this Court  
4 has jurisdiction over the allegations of violations contained in the Complaint and personal  
5 jurisdiction over Settling Defendant as to the acts alleged in the Complaint, that venue is  
6 proper in the County of San Francisco and that this Court has jurisdiction to enter this  
7 Consent Judgment as a full settlement and resolution of the allegations contained in the  
8 Complaint and of all claims that were or could have been raised by Mateel or, as to those  
9 matters included in the 60 Day Notice Letter, raised by a member of the general public.

10 1.5 This Consent Judgment resolves claims that are denied and disputed. The  
11 parties enter into this Consent Judgment pursuant to a full and final settlement of any and  
12 all claims between the parties for the purpose of avoiding prolonged litigation. This  
13 Consent Judgment shall not constitute an admission with respect to any material allegation  
14 of the Complaint, each and every allegation of which Settling Defendant denies, nor may  
15 this Consent Judgment or compliance with it be used as evidence of any wrongdoing,  
16 misconduct, culpability or liability on the part of Settling Defendant.

17 **2. SETTLEMENT PAYMENT**

18 2.1 Settling Defendant shall make a combination of an offsetting payment and a  
19 civil penalty payment, calculated as follows: The initial total calculated payment shall be  
20 \$15,600, calculated based upon \$100 per Covered Product for each of the 156 units of the  
21 Covered Products which Settling Defendant represents were sold in California during the  
22 one year prior to this action being filed. This initial total shall be discounted by \$75 per  
23 unit of Covered Product where, within a 120 day period following the entry of this  
24 Consent Judgment, the Settling Defendant successfully contacts, informs and warns a  
25 prior purchaser of the Covered Product of the lead exposure and provides the prior  
26 purchaser with a lead free plastic spigot to replace the leaded brass spigot, as described  
27 more completely in paragraph 7.2 below. The term "successfully contacts, informs and  
28 warns a prior purchaser" as used herein shall mean to send via certified mail to the prior

1 purchaser at his/her last known address a letter in the form attached hereto as Exhibit A  
2 and a lead free plastic spigot to replace the leaded brass spigot on the Covered Product.  
3 Within 10 days following the end of this 120 day period. Settling Defendant will report to  
4 Mateel its success in contacting prior purchasers and shall provide to Mateel payment  
5 based upon an adjusted (discounted) total, equal to the initial total of \$15,600, minus \$75  
6 times the number of prior purchasers successfully contacted. The final discounted total  
7 payment shall be divided as follows. Twenty percent, rounded to the nearest \$100 shall  
8 be paid as a civil penalty, allocated as required by statute. The remaining amount shall be  
9 paid as a penalty offset to the Ecological Rights Foundation for work informing California  
10 consumers about the hazards of and exposures to toxic chemicals and for work to reduce  
11 exposures to and pollution from toxic chemicals. Ecological Rights Foundation is a  
12 California non-profit environmental organization that advocate for workers' and  
13 consumers' safety, and for awareness and reduction of toxic exposures.

14       **2.2** Within ten (10) calendar days of entry of this Consent Judgment, Settling  
15 Defendant shall pay \$15,000 to the Klamath Environmental Law Center ("KELC") to  
16 cover a portion of Mateel's attorneys' fees and costs.

17       **2.3** All payments shall be made by check, payable to the above specified  
18 recipient and mailed, or sent by other overnight delivery, to William Verick, Klamath  
19 Environmental Justice Foundation, 424 First Street, Eureka, CA 95501, to be distributed  
20 within a commercially reasonable time by Mr. Verick to the ultimate recipients.

21 **3. ENTRY OF CONSENT JUDGMENT**

22       **3.1** The parties hereby request that the Court promptly enter this Consent  
23 Judgment. Upon entry of the Consent Judgment, Settling Defendant and Mateel waive  
24 their respective rights to a hearing or trial on the allegations of the Complaint.

25 **4. MATTERS COVERED BY THIS CONSENT JUDGMENT**

26       **4.1** This Consent Judgment is a final and binding resolution between Mateel,  
27 acting on behalf of itself and, as to those matters raised in the 60 Day Notice Letter, the  
28 general public, and Settling Defendant of any violation of Proposition 65 or the

1 regulations promulgated thereunder to the fullest extent that it could have been asserted by  
2 Mateel against the Settling Defendant based upon, arising out of or relating to Settling  
3 Defendant's compliance with Proposition 65 or regulations promulgated thereunder with  
4 respect to the Covered Products sold at retail by Settling Defendant, whether based on  
5 actions committed by Settling Defendant or by any other entity involved in the  
6 manufacture, distribution and/or retail sale of the Covered Products, including but not  
7 limited to parents, subsidiaries or affiliates, predecessors, officers, directors, employees of  
8 Settling Defendant and all customers, vendors, suppliers, manufacturers (including but not  
9 limited to Global Amici, Inc.), distributors, wholesalers, retailers or any other person in  
10 the course of doing business that manufactured, distributed or sold the Covered Products.  
11 As to alleged exposures from Covered Products sold at retail by Settling Defendants to  
12 chemicals listed in the 60 Day Notice Letter pertaining to the Covered Products,  
13 compliance with the terms of this Consent Judgment resolves any issue, now and in the  
14 future, concerning compliance with Proposition 65 by Settling Defendant and its parents,  
15 subsidiaries or affiliates, predecessors, officers, directors, employees, and all customers,  
16 vendors, suppliers, manufacturers distributors, wholesalers, retailers or any other person in  
17 the course of doing business involving the Covered Products (including but not limited to  
18 Global Amici, Inc.), and the successors and assigns of any of these. Notwithstanding any  
19 other provision in this Consent Judgment, the release of claims by the general public is  
20 limited to those claims made and chemicals identified in the 60 Day Notice Letter.

21       **4.2** As to alleged exposures to chemicals identified in the 60 Day Notice Letter  
22 pertaining to the Covered Products sold by Settling Defendant, Mateel, acting on behalf of  
23 itself and, as to the matters in the 60 Day Notice Letter, on behalf of the general public,  
24 and its agents, successors and assigns, waives all rights to institute any form of legal  
25 action and releases all claims which were or could have been brought against Settling  
26 Defendant and its parents, subsidiaries or affiliates, predecessors, officers, directors,  
27 employees, and all customers, vendors, suppliers, manufacturers (including but not limited  
28 to Global Amici, Inc.), distributors, wholesalers, retailers or any other person in the course

1 of doing business involving the Covered Products and the successors and assigns of any of  
2 them. This release of claims by the general public is not understood to extend beyond the  
3 claims included in the 60 Day Notice Letter. In furtherance of the foregoing, Mateel,  
4 acting on behalf of itself and the general public, hereby waives any and all rights and  
5 benefits which it now has, or in the future may have, conferred upon it with respect to the  
6 Covered Products by virtue of the provisions of Section 1542 of the California Civil Code,  
7 which provides as follows:

8           “A GENERAL RELEASE DOES NOT EXTEND TO  
9           CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR  
10           SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF  
11           EXECUTING THE RELEASE, WHICH IF KNOWN BY  
12           HIM MUST HAVE MATERIALLY AFFECTED HIS  
13           SETTLEMENT WITH THE DEBTOR.”

14 Mateel understands and acknowledges that the significance and consequence of this  
15 waiver of California Civil Code Section 1542 is that even if Mateel or any member of the  
16 general public suffers future damages arising out of or resulting from, or related directly  
17 or indirectly to, in whole or in part, the Covered Products, it will not be able to make any  
18 claim for those damages against the Settling Defendant, its parents, subsidiaries or  
19 affiliates, predecessors, officers, directors, employees, and all customers, vendors,  
20 suppliers, manufacturers distributors, wholesalers, retailers or any other person in the  
21 course of business involving the Covered Products (including but not limited to Global  
22 Amici, Inc.), and the successors and assigns of any of them, who may manufacture, use,  
23 maintain, distribute or sell the Covered Products. Furthermore, Mateel acknowledges that  
24 it intends these consequences for any such claims which may exist as of the date of this  
25 release but which Mateel does not know exist, and which, if known, would materially  
26 affect its decision to enter into this Consent Judgment, regardless of whether its lack of  
27 knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

28           **4.3** Any and all notices made by the parties pursuant to the provisions of this  
Consent Judgment shall be made in writing and sent via U.S. Mail or other manner of  
overnight delivery to the following: (a) on behalf of Mateel to William Verick, Klamath

1 Environmental Justice Foundation, 424 First Street, Eureka, CA 95501; and (b) on behalf  
2 of Container Store to Joan Manson, Director of Loss Prevention, The Container Store,  
3 Inc., 500 Freeport Parkway, Coppell, TX 75019 and Randolph Visser, Sheppard, Mullin,  
4 Richter & Hampton, LLP, 333 South Hope Street, 48<sup>th</sup> Floor, Los Angeles, CA 90071.

5 **5. ENFORCEMENT OF JUDGMENT**

6 The terms of this Consent Judgment shall be enforced exclusively by the parties  
7 hereto. The parties may, by noticed motion or order to show cause before the Superior  
8 Court of San Francisco County, giving the notice required by law, enforce the terms and  
9 conditions contained herein.

10 **6. MODIFICATION OF JUDGMENT**

11 This Consent Judgment may be modified only upon written agreement of the  
12 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon  
13 motion of any party as provided by law and upon entry of a modified Consent Judgment  
14 by the Court.

15 **7. INJUNCTIVE RELIEF – CLEAR AND REASONABLE WARNINGS**

16 7.1 Settling Defendant agrees that it has discontinued and will no longer offer for  
17 sale any of the Covered Product that use leaded brass spigots, including those specifically  
18 identified in the 60 Day Notice letter attached to the Complaint in this action. Settling  
19 Defendant represents that it is not aware of any other beverage dispenser which it sells  
20 that also uses a brass spigot for dispensing drinking liquids.

21 7.2 Settling Defendant shall use the following efforts to contact California prior  
22 purchasers of Covered Products. For those prior purchasers which can be specifically  
23 identified, Settling Defendant shall contact each prior purchaser via certified mail to the  
24 prior purchaser's last known address and thereby inform and provide a Proposition 65  
25 warning to the prior purchaser of the Covered Product as to exposure to lead using a letter  
26 of a form and content as set forth in Exhibit A hereto. Through this letter, the Settling  
27 Defendant shall also inform the prior purchaser that the Covered Product may be returned  
28 for a merchandise credit and shall provide to the prior purchaser a plastic replacement

1 spigot of a type which Mateel has tested and confirmed is not made of a leaded PVC or  
2 other lead leaching plastic. If there remain more than 100 units of the Covered Product,  
3 the prior purchasers of which could not be contacted as set forth above, then for those  
4 prior purchasers that Settling Defendant cannot specifically identify (that is, whose last  
5 known addresses are not readily available to Settling Defendant), Settling Defendant shall  
6 use reasonable efforts to provide general information, either by a sign posted in its stores  
7 or by general mailing, attempting to provide a Proposition 65 warning for the Covered  
8 Product which identifies the chemical as lead, a reproductive toxin, and inform prior  
9 purchasers that the Covered Product may be returned for a merchandise credit and a non  
10 lead alternative spigot will be provided at no additional charge. Settling Defendant shall  
11 maintain a list of those prior purchasers who contact Settling Defendant requesting a  
12 merchandise credit or a replacement spigot and were not previously specifically identified.  
13 Each such prior purchaser not previously specifically identified and who has requested a  
14 merchandise credit or replacement spigot shall be counted as a unit by which the initial  
15 total calculated payment shall be discounted as set forth in paragraph 2.1 above.

16 **8. AUTHORITY TO STIPULATE**

17 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
18 by the party he or she represents to enter into this Consent Judgment and to execute it on  
19 behalf of the party represented and legally to bind that party.

20 **9. RETENTION OF JURISDICTION**

21 This Court shall retain jurisdiction of this matter to implement the Consent  
22 Judgment.

23 **10. ENTIRE AGREEMENT**

24 This Consent Judgment contains the sole and entire agreement and understanding  
25 of the parties with respect to the entire subject matter hereof, and any and all prior  
26 discussions, negotiations, commitments and understandings related hereto. No  
27 representations, oral or otherwise, express or implied, other than those contained herein  
28



1 have been made by any party hereto. No other agreements not specifically referred to  
2 herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

3 **11. GOVERNING LAW**

4 The validity, construction and performance of this Consent Judgment shall be  
5 governed by the laws of the State of California, without reference to any conflicts of law  
6 provisions of California law.

7 **12. FEES AND EXPENSES**

8 The parties acknowledge and agree that, except as provided in Section 2.1 of this  
9 Consent Judgment, each party shall bear its own costs, expenses, consultant and expert  
10 fees, and attorneys' fees arising out of and/or in connection with the litigation.

11 **13. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(F)**

12 Mateel agrees to comply with the reporting form and approval requirements  
13 referenced in Health & Safety Code Section 25249.7(f) and as implemented by various  
14 regulations.

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1 **14. COURT APPROVAL**

2 If this Consent Judgment is not approved by the Court, it shall be of no force or  
3 effect, and cannot be used in any proceeding for any purpose.

4 **IT IS SO STIPULATED:**

5  
6 Dated:

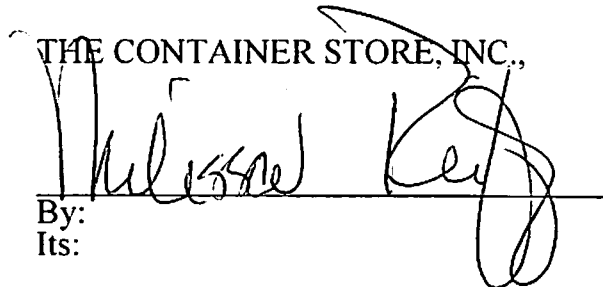
MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION

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9 William Verick  
10 CEO Mateel Environmental Justice Foundation,  
Klamath Environmental Law Center

11 Dated:

12 THE CONTAINER STORE, INC.,

13  
14   
15 By: \_\_\_\_\_  
16 Its: \_\_\_\_\_

17 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

**PETER J. BUSCH**

18 Dated: **MAY 19 2008**

19 \_\_\_\_\_  
20 JUDGE OF THE SUPERIOR COURT

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1 February 20, 2008

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5 Re: Your Purchase of Glass Hexagon Jar with a Brass Spigot – Prop. 65

6 Dear Container Store Customer:

7  
8 Our records indicate that you purchased from one of our California stores a glass hexagon jar  
9 with a brass spigot manufactured by Global Amici, Inc. A picture of the Global Amici Jar is  
10 displayed below. The Container Store has been advised that the brass spigot on the Global Amici  
Jar leaches lead into liquids dispensed through the spigot. Lead is a chemical known to the State  
of California to cause cancer, and birth defects or other reproductive harm. [See enclosed.]

11 Enclosed is a lead-free replacement spigot. Please replace the brass spigot with the enclosed  
12 replacement spigot or, in the alternative, you may also return the Global Amici Jar to any of our  
California stores for a merchandise credit.

13 We are sorry for any inconvenience this may have caused and we look forward to serving you in  
14 the future.

15 Sincerely,

16  
17 THE CONTAINER STORE

18 W02-WEST:1RCV1400740670.1  
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## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

#### THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 22 of the California Code of Regulations, Sections 12000 through 14000.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

***The "Governor's List."*** Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 735 chemical listings have been included as of November 16, 2001. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those chemicals must comply with the following:

***Clear and reasonable warnings.*** A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

***Prohibition from discharges into drinking water.*** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

#### *DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?*

Yes. The law exempts:

***Governmental agencies and public water utilities.*** All agencies of the federal, State or local government, as well as entities operating public water systems, are exempt.

***Businesses with nine or fewer employees.*** Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees.

***Exposures that pose no significant risk of cancer.*** For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "no significant risk" levels for more than 250 listed carcinogens.

***Exposures that will produce no observable reproductive effect at 1,000 times the level in question.*** For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

***Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water.*** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

#### ***HOW IS PROPOSITION 65 ENFORCED?***

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 12903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

#### ***FOR FURTHER INFORMATION...***

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900.