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SHEFFER LAW FIRM
81 Throckmorton Ave., Suite 202
Mill Valley, CA 94941
Telephone: 415.388.0911
Facsimile: 415.388.9911

Attorneys for Plaintiff
SUSAN DAVIA

FILED

DEC - 4 2018

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: C. Lucchesi, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

SUSAN DAVIA,

Plaintiff,

v.

ALIFE, INC., ALIFE DESIGN, THE
CONTAINER STORE, INC., THE
CONTAINER STORE GROUP, INC. AND
DOES 1-150,

Defendants.

Case No. CIV 1704288

**JUDGMENT ON PROPOSITION 65
SETTLEMENT**

Action Filed: November 21, 2017
Trial Date: None Assigned

1 In the above-entitled action, Plaintiff Susan Davia and Defendants Alife Design, The
2 Container Store, Inc. and The Container Store Group, Inc., having agreed through their respective
3 counsel that a judgment be entered pursuant to the terms of the Consent to Judgment settlement
4 agreement entered into by the parties in resolution of this Proposition 65 action, and following the
5 issuance of an order approving the Parties' settlement agreement on this day, IT IS HEREBY
6 ORDERED, ADJUDGED AND DECREED that pursuant to Health & Safety Code § 25249.7(f)(4)
7 and Code of Civil Procedure § 664.6, judgment is hereby entered in accordance with the terms of
8 the Consent to Judgment attached hereto as Exhibit A. By stipulation of the parties, the Court will
9 retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

10 **IT IS SO ORDERED.**

STEPHEN P. FRECCERO

11 Dated: DEC - 4 2018

12 Honorable Stephen P. Freccero
13 Judge of the Superior Court
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EXHIBIT A

1 Gregory M. Sheffer, Esq., State Bar No. 173124
SHEFFER LAW FIRM
2 81 Throckmorton Ave., Suite 202
Mill Valley, CA 94941
3 Telephone: (415) 388-0911
Facsimile: (415) 388-9911

4 Attorneys for Plaintiff
SUSAN DAVIA

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 FOR THE COUNTY OF MARIN
8 UNLIMITED CIVIL JURISDICTION
9

10 SUSAN DAVIA,

11 Plaintiff,

12 v.

13 ALIFE DESIGN, THE CONTAINER STORE,
14 INC., THE CONTAINER STORE GROUP,
INC. and DOES 1-150,

15 Defendants.
16

Case No. CIV1704288

**CONSENT TO JUDGMENT AS TO
DEFENDANTS ALIFE DESIGN, THE
CONTAINER STORE, INC. AND THE
CONTAINER STORE GROUP, INC.**

Action Filed: November 21, 2017
Trial Date: None Assigned

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent to Judgment Settlement Agreement (“Agreement”) is entered into by and
4 between Plaintiff Susan Davia, (“Davia”) and defendants Alife Design (hereafter, “Alife”) and The
5 Container Store, Inc. and The Container Store Group, Inc. (hereafter, collectively, “TCS”), with Davia,
6 Alife and TCS each referred to as a “Party” and collectively referred to as the “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendants**

12 Alife and TCS are each persons in the course of doing business for purposes of the Safe
13 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et*
14 *seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Davia alleges that Alife and TCS participated in the manufacture (or other acquisition),
17 distribution and sale, in the State of California, of Alife Design vinyl travel accessory and accessory
18 straps products, which products exposed users to Di(2-ethylhexyl)phthalate (“DEHP”),
19 di(isononyl)phthalate (“DINP”) and di(isodecyl) phthalates (“DIDP”) without first providing a “clear
20 and reasonable warning” under Proposition 65. Pursuant to Proposition 65, DIDP is listed as a
21 developmental toxin, DINP is listed as a carcinogen and DEHP is listed as both a carcinogen and
22 developmental toxin.

23 **1.5 Notices of Violation**

24 On June 7, 2016, Davia served TCS and various public enforcement agencies with a
25 Proposition 65 60-day Notice of Violation, together with a Certificate of Merit (“Notice”), that
26 provided public enforcers and these entities with notice of alleged violations of Health & Safety Code
§ 25249.6 for failing to warn consumers of the presence of DINP and DIDP in and on Happy Flight
vinyl travel accessories (AG Notice 2016-00533). On August 25, 2016, Davia served TCS, Alife, and

1 various public enforcement agencies with a Proposition 65 Supplemental 60-day Notice of Violation,
2 together with a Certificate of Merit, that provided public enforcers and these entities with
3 supplemental notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn
4 consumers of the presence of DINP and DIDP in and on its Happy Flight vinyl travel accessories (AG
5 Notice 2016-00928). On October 11, 2016, Davia served TCS, Alife, and various public enforcement
6 agencies with a Proposition 65 Second Supplemental 60-day Notice of Violation, together with a
7 Certificate of Merit (“Notice”), that provided public enforcers and these entities with supplemental
8 notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers of the
9 presence of DEHP, DINP and DIDP in and on its Happy Flight vinyl travel accessories and accessory
10 straps (AG Notice 2016-01176).

11 TCS received the June 7, 2016, August 25, 2016, and October 11, 2016, Notices of Violation.
12 Alife received the August 25, 2016, and October 11, 2016, Notices of Violation. The Parties represent
13 that, as of the date each executes this Agreement, they believe that no public enforcer is diligently
14 prosecuting a Proposition 65 enforcement action related to DEHP, DIDP and DINP in the Covered
15 Products, as identified in the three Notices.

16 **1.6 Complaint**

17 On November 21, 2017, Davia, acting in the interest of the general public in California, filed a
18 Complaint in the Superior Court of the State of California for the County of Marin, Case No.
19 CIV1704288, alleging violations by Alife, TCS and Does 1-150 of Health & Safety Code § 25249.6
20 based, *inter alia*, on the alleged exposures to DEHP, DIDP and DINP contained in the noticed vinyl
21 travel accessory and accessory straps products.

22 **1.7 No Admission**

23 This Agreement resolves claims that are denied and disputed by Alife and TCS. The Parties
24 enter into this Agreement pursuant to a full and final settlement of any and all claims between the
25 Parties for the purpose of avoiding prolonged litigation. Both Alife and TCS deny the material factual
26 and legal allegations contained in the Notice and Action, maintain that they did not knowingly or
intentionally expose California consumers to DEHP, DIDP and DINP through the reasonably
foreseeable use of the Covered Product, and otherwise contend that all Noticed products they have

1 manufactured, distributed and/or sold in California have been and are in compliance with all
2 applicable laws. Nothing in this Agreement shall be construed as an admission by Alife or TCS of
3 any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement
4 constitute or be construed as an admission by Alife or TCS of any fact, finding, conclusion, issue of
5 law, or violation of law, such being specifically denied by Alife and TCS. However, notwithstanding
6 the foregoing, this section shall not diminish or otherwise affect Alife's and TCS' obligations,
responsibilities, and duties under this Agreement.

7 **1.8** Consent to Jurisdiction

8 For purposes of this Agreement only, the Parties stipulate that this Court has jurisdiction over
9 Alife and TCS as to the allegations contained in the Complaint, that venue is proper in County of
10 Marin, and that this Court has jurisdiction to enter and enforce the provisions of this Agreement. The
11 parties stipulate that, pursuant to C.C.P. §664.6, the Court in which this action is filed shall retain
12 jurisdiction over the parties to enforce this Agreement until performance in full of the terms of the
settlement.

13 **2. DEFINITIONS**

14 **2.1** The term "Complaint" shall mean the November 22, 2017, Complaint, Marin County
15 Superior Court Case No. CIV1704288.

16 **2.2** The term "Products" or "Covered Products" shall mean all Alife vinyl travel
17 accessory and accessory strap products, and products in that product category/type, including, but
18 not limited to, Happy Flight Square Luggage Tag (Asstd. Colors), Happy Flight Passport Cover
19 (Asstd. Colors), Happy Flight Star Luggage Tag (Asstd. Colors), Happy Flight Eiffel Luggage Tag
20 (Asstd. Colors), Happy Flight Airplane Luggage Tag (Asstd. Colors) and Happy Flight RFID
Blocking Case.

21 **2.3** The term "Phthalate Free" shall mean less than or equal to 1,000 parts per million
22 ("ppm") of DEHP, DBP, DINP, DIDP, DnHP and BBP, in any component of any Covered Product,
23 determined by duplicate quality controlled tests using Environmental Protection Agency ("EPA")
24 testing methodologies 3580A and 8270C.

1 **2.4** The term “California Customer” shall mean (1) any customer with a ship to or
2 business address in California to which Alife supplied any Covered Product after January 1, 2016, (2)
3 any retail customer that Alife reasonably understand maintains retail outlets in California to which
4 Alife supplied any Covered Product after January 1, 2016, (3) any ecommerce seller of any Covered
5 Product to which Alife supplied any Covered Product after January 1, 2016, and (4) any retail
6 customer that Alife reasonably understands or believes had any inventory of Covered Products for
7 sale in California as of January 1, 2016. For purposes of this Agreement, each Bed Bath & Beyond,
8 Inc., The Container Store, Inc. and The Container Store Group, Inc. shall be considered a California
9 Customer.

10 **2.5** “Effective Date” shall mean August 21, 2018.

11 **2.6** “Manufactured” and “manufactures” have the meaning defined in Section 3(a)(10)
12 of the Consumer Product Safety Act (“CPSA”) [15 U.S.C. § 2052(a)(10)], as amended from time to
13 time.

14 **3. NON-MONETARY RELIEF**

15 **3.1 Existing Inventory of Covered Products**

16 Promptly after receipt of Davia’s initial Notice, Alife contacted its customers and advised
17 them not to sell the products into California. No later than the Effective Date, Alife shall send a
18 letter, electronic or otherwise (“Notification Letter”) to each California Customer. The Notification
19 Letter shall advise the recipient that the Covered Products “contain DEHP, DINP and/or DIDP,
20 chemicals known to the State of California to cause cancer and birth defects or other reproductive
21 harm,” and request that the recipient either: (a) label the Covered Products remaining in inventory
22 for sale in California, or to California Customers, pursuant to Section 3.3; or (b) return, at Alife’s sole
23 expense, all units of the Covered Product to Alife. The Notification Letter shall request a response
24 from the recipient, confirming the amount of inventory of Covered Product and whether such
25 inventory of Covered Products will be labeled or transferred. Alife shall maintain records of all
26 correspondence or other communications generated pursuant to this Section for two (2) years
following the Effective Date.

1 **3.2 Product Reformulation Commitment**

2 **3.2.1** No later than the Effective Date, Alife shall provide the Phthalate Free phthalate
3 concentration standards of Section 2.3 to the manufacturer or vendor of any Covered Product and
4 any vinyl component thereof (if known) and request each such entity not to manufacture Covered
5 Products or components thereof that do not meet the Phthalate Free concentration standards of
6 Section 2.2. Alife shall maintain copies of any correspondence generated or received pursuant to
7 this Section for two (2) years following the Effective Date.

8 **3.2.2** After the Effective Date, Alife shall provide the Phthalate Free phthalate
9 concentration standards of Section 2.3 to any new manufacturer or vendor of any Covered Product
10 and any vinyl component thereof (if known) and request each such entity not to manufacture
11 Covered Products or components thereof that do not meet the Phthalate Free concentration
12 standards of Section 2.3. Alife shall maintain copies of any correspondence generated or received
13 pursuant to this Section for two (2) years following the Effective Date.

14 **3.2.3** As of the Effective Date, Alife shall only sell or otherwise distribute Covered Product
15 to California Customers that is either Phthalate Free or is accompanied with a warning meeting the
16 requirements of Section 3.3.

17 **3.3 Alife’s Product Warning Obligation**

18 As of the Effective Date, except for Covered Product that is Phthalate Free, Alife shall not sell
19 or ship any Covered Product to a California Customer unless such Covered Product is sold or
20 shipped with one of the clear and reasonable warnings set forth hereafter.

21 Each warning shall be prominently placed with such conspicuousness as compared with
22 other words, statements, designs, or devices as to render it likely to be read and understood by an
23 ordinary individual under customary conditions *before* purchase or use. Each warning shall be
24 provided in a manner such that the consumer or user understands to which *specific* Covered Product
25 the warning applies, so as to minimize the risk of consumer confusion.

26 (a) **California Distribution.**

1 (i) **Products warning labels.** For all Covered Products sold or shipped
2 to a California Customer, Alife shall affix a warning to the labeling or directly on the Covered
3 Product that states either of the below:

4
5 **⚠WARNING:** Cancer and Reproductive Harm -
www.P65Warnings.ca.gov.

6 or

7 **⚠WARNING:** This product can expose you to chemicals,
8 including DEHP, which are known to the
9 State of California to cause cancer and birth
10 defects or other reproductive harm. For more
11 information go to
12 www.P65Warnings.ca.gov.

13 Where the label or other printing on the Covered Product is not printed using the color yellow, the
14 equilateral triangle symbol may be printed in black and white.

15 (b) **Catalog and Internet Sales.** For all Covered Products sold or offered for sale
16 by Alife via catalog or the Internet to customers located in California, any such catalog or Internet
17 site offering any Covered Product for sale shall include a warning in the catalog or within the
18 website, identifying the specific Covered Product to which the warning applies, as specified in
19 Sections 3.2(b)(i) and (ii) below.

20 (i) **Mail Order Catalog Warning.** For all mail order catalogs printed after
21 six (6) months from the Effective Date, any warning provided in such catalog must be in the same
22 type size or larger than the Covered Product description text within the catalog. The following
23 warning shall be provided on the same page and in the same location as the display and/or
24 description of the Covered Product:

25 **⚠WARNING:** This product can expose you to chemicals,
26 including DEHP, 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.

1 Alternatively, the following “short form” warning may be used in the catalog if the same warning
2 language also appears on the product label or consumer packaging itself.

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

5 Where it is impracticable to provide the warning on the same page and in the same location as the
6 display and/or description of the Covered Product, Alife may utilize a designated symbol to cross
7 reference the applicable warning and shall define the term “designated symbol” with the following
8 language on the inside of the front or back cover of the catalog or on the same page as any order
9 form for the Covered Product(s):

10 **WARNING:** Certain products identified with this symbol ▼
11 contain Chemicals Known To The State Of
12 California To Cause Cancer And Birth Defects
13 Or Other Reproductive Harm.

14 The designated symbol must appear on the same page and in close proximity to the display
15 and/or description of the Covered Product. On each page where the designated symbol appears,
16 must provide a header or footer directing the consumer to the warning language and definition of
17 the designated symbol.

18 If Alife elects to provide warnings in any mail order catalog, then the warnings must be
19 included in all catalogs offering to sell one or more Covered Products in California.

20 (ii) **Internet Website Warning.** A warning must be given in conjunction
21 with the sale, or offer of sale, of any Covered Products in California by Alife via the Internet. A
22 warning will satisfy this requirement if it appears either: (a) on the same web page on which a
23 Covered Product is displayed; (b) on the same web page as the order form for a Covered Product; (c)
24 on the same page as the price for any Covered Product; or (d) on one or more web pages displayed
25 to a purchaser during the checkout process. One of the following warning statement shall be used
26 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:

1 **⚠WARNING:** This product can expose you to chemicals,
2 including DEHP, which are known to the
3 State of California to cause cancer and birth
4 defects or other reproductive harm. For
5 more information go to
6 www.P65Warnings.ca.gov.

7 Alternatively, the following “short form” warning may be used in the catalog if the same warning
8 language also appears on the product label or consumer packaging itself.

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

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

15 **WARNING:** Products identified on this page with the
16 following symbol ▼ contain Chemicals Known
17 To The State Of California To Cause Cancer
18 And Birth Defects Or Other Reproductive
19 Harm

20 **3.4 Container Store Retail Outlets**

21 No later than the Effective Date, to the extent that TCS has any remaining inventory of
22 Covered Products for sale in its California retail stores that are not labelled with a Proposition 65
23 warning meeting the requirements of Section 3.3, then TCS shall not sell such product in any
24 California store unless the product is sold with a point-of-sale warnings either on the labeling of the
25 Covered Product, by a placard on each display shelf or rack from which any Covered Product is
26 sold or inclusion on both the rolling receipt displayed on a customer-facing computer screen and
27 the printed customer receipt.

28 Any on-label warning shall contain the following statement:

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

1 Any warning included on a shelf or rack placard, or on both the rolling computer receipt and
2 the printed customer receipt shall contain the following statement:

3 **⚠WARNING:** This product can expose you to chemicals,
4 including DEHP, which are known to the
5 State of California to cause cancer and birth
6 defects or other reproductive harm. For
7 more information go to
8 www.P65Warnings.ca.gov

9 Where the label or other printing on the Covered Product, the placard or receipt is not printed using
10 the color yellow, the equilateral triangle symbol may be printed in black and white.

11 **4. MONETARY PAYMENTS**

12 **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

13 As a condition of settlement of all the claims referred to in this Consent to Judgment, Alife
14 shall pay a total of \$5,000 in civil penalties in accordance with California Health & Safety Code §
15 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health
16 Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Davia.

17 **4.2 Augmentation of Penalty Payments**

18 For purposes of the penalty assessment under this Agreement, plaintiff is relying entirely
19 upon defendant and its counsel for accurate, good faith reporting to plaintiff of the nature and
20 amounts of relevant sales activity. If within nine (9) months of the Effective Date, Davia discovers
21 and presents to Alife evidence that the Covered Products have been distributed by Alife in sales
22 volumes materially different than those identified by Alife prior to execution of this Agreement, then
23 Alife shall be liable for an additional penalty amount of \$10,000.00. Alife shall also be liable for any
24 reasonable, additional attorney fees expended by Davia in discovering such additional retailers or
25 sales, up to a maximum of \$10,000 or some other amount awarded by the court after hearing. Davia
26 agrees to provide Alife with a written demand for all such additional penalties and attorney fees
under this Section. After service of such demand, Alife shall have thirty (30) days to agree to the
amount of fees and penalties owing by Alife and submit such payment to Davia in accordance with
the method of payment of penalties and fees identified in Section 4.1 and 4.4. Should this thirty (30)
day period pass without any such resolution between the parties and payment of such additional

1 penalties and fees, Davia shall be entitled to file a formal legal claim for additional civil penalties
2 pursuant to this Section and shall be entitled to all reasonable attorney fees and costs relating to such
3 claim.

4 **4.3 Reimbursement of Plaintiff's Fees and Costs**

5 The Parties acknowledge that Davia and her counsel offered to resolve this dispute without
6 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
7 issue to be resolved after the material terms of the agreement had been settled. Alife then expressed
8 a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized.
9 The Parties then attempted to (and did) reach an accord on the compensation due to Davia and her
10 counsel under general contract principles and the private attorney general doctrine codified at
11 California Code of Civil Procedure section 1021.5, for all work performed in this matter, except fees
12 that may be incurred on appeal. Under these legal principles, Alife shall pay the amount of \$35,000
13 for fees and costs incurred investigating, litigating and enforcing this matter, including the fees and
14 costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court's approval of
15 this Agreement in the public interest.

16 **4.4 Payment Procedures**

17 Alife shall deliver all settlement payment checks or funds required by this Agreement to
18 its counsel on or before November 30, 2018. Alife's counsel shall confirm receipt of settlement
19 funds in writing to plaintiff's counsel and, thereafter, hold the amounts paid in trust until such
20 time as the Court approves this settlement contemplated by Section 7.

21 Within five business days of the date the Court approves the settlement, but no sooner than
22 December 7, 2018, Alife's counsel shall deliver the settlement payments it has held in trust to
23 plaintiff's counsel as follows:

- 24 1. a civil penalty check in the amount of \$3,750 payable to "OEHHA" (EIN: 68-0284486,
25 Memo line "Prop 65 Penalties, 2016-01176");
- 26 2. a civil penalty check in the amount of \$1,250 payable to "Susan Davia" (Tax ID to
be supplied on request, Memo line "Prop 65 Penalties, 2016-01176 and"); and

1 3. an attorney fee and cost reimbursement check, pursuant to Section 4.3, in the amount
2 of \$35,000 payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2016-
3 01176").

4 All Section 4.2 civil penalty or fee/cost payments shall be paid by the date agreed upon
5 pursuant to that section or as ordered by the Court.

6 All Section 4.1, 4.2 and 4.3 payments shall be delivered to the Sheffer Law Firm at the
7 following address:

8 Sheffer Law Firm
9 Attn: Proposition 65 Controller
10 81 Throckmorton Ave., Suite 202
11 Mill Valley, CA 94941

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

15 **5. CLAIMS COVERED AND RELEASE**

16 **5.1 Davia's Release of Alife and TCS**

17 **5.1.1** This Agreement is a full, final, and binding resolution between Davia, on behalf of
18 herself and in the interest of the general public, and Alife and TCS and each of their parent companies,
19 subsidiaries, attorneys, successors and assigns ("Defendant Releasees") and each entity to whom
20 Alife or TCS directly or indirectly distribute or sell the Covered Products, including, but not limited
21 to, downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members,
22 licensors and licensees ("Downstream Releasees") of any violation of Proposition 65 that was asserted
23 against Defendant Releasees regarding the failure to warn about any actual or potential exposure to
24 DEHP, DIDP or DINP contained in the Covered Products.

25 **5.1.2** Davia, on behalf of herself and in the interest of the general public, hereby waives,
26 and releases all Defendant Releasees from all claims for violation of Proposition 65 through the
Effective Date based upon exposures to DEHP, DIDP or DINP caused by Covered Products as set
forth in plaintiff's August 25, 2016, 60-Day Notice to Alife.

1 **5.1.3** The Parties understand and agree that this Section 5.1 release only extends upstream
2 to any entities that manufactured any Covered Product or any component parts thereof, or any
3 distributors or suppliers who sold any Covered Products or any component parts thereof to Alife
4 and/or TCS and that such upstream release shall be limited to only the manufacture, distribution or
5 supply of Covered Products for or to Alife and/or TCS and not for any other product besides Covered
6 Products.

7 **5.1.4** Upon court approval of the Agreement, the Parties waive their respective rights to a
8 hearing or trial on the allegations of the Complaint.

9 **5.2 Alife's and TCS' Release of Davia**

10 **5.2.1** Both Alife and TCS waive any and all claims against Davia, her attorneys, and other
11 representatives for any and all actions taken or statements made (or those that could have been taken
12 or made) by Davia and her attorneys and other representatives, whether in the course of investigating
13 claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with
14 respect to the Covered Products.

15 **5.2.2** The Parties also provide each other with a general release herein which shall be
16 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations,
17 costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of any nature,
18 character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of
19 the Action. The Parties acknowledge that each is familiar with Section 1542 of the California Civil
20 Code, which provides as follows:

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

26 The Parties expressly waive and relinquish any and all rights and benefits that each 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

1 complete release notwithstanding the discovery or existence of any such additional or different
2 claims or facts arising out of the released matters.

3 **6. SEVERABILITY**

4 If, subsequent to court approval of this Agreement, any of the provisions of this Agreement
5 are determined by a court to be unenforceable, so long as all parties agree, the validity of the
6 enforceable provisions remaining shall not be adversely affected, unless the Court finds that any
7 unenforceable provision is not severable from the remainder of the Agreement.

8 **7. COURT APPROVAL**

9 This Agreement is effective upon execution but must also be approved by the Court. If this
10 Agreement is not approved by the Court in its entirety, the Parties shall meet and confer to determine
11 whether to modify the terms of the Agreement and to resubmit it for approval. In meeting and
12 conferring, the Parties agree to undertake any actions reasonably necessary to amend and/or modify
13 this Agreement in order to further the mutual intention of the Parties in entering into this Agreement.

14 The Agreement shall become null and void if, for any reason, it is not approved and entered
15 by the Court, as it is executed, within one year after it has been fully executed by all Parties.

16 **8. GOVERNING LAW**

17 The terms of this Agreement shall be governed by the laws of the State of California. In the
18 event that Proposition 65 is repealed, or is rendered expressly inapplicable to the Covered Products
19 by a Court decision, then Elfa and TCS may provide written notice to Davia of any asserted change
20 in the law and may make a properly noticed motion to the Marin County Superior Court to be
21 relieved from further injunctive obligations under this Consent Judgment with respect to, and to the
22 extent that, the Covered Products are so affected.

23 **9. NOTICES**

24 When any Party is entitled to receive any notice under this Agreement, the notice shall be sent
25 by certified mail (or equivalent for international mail) and electronic mail to the following:

26 For Alife, to:

Alife Design
Attn: Joy Lee
3F Gana Tower

1 10-9 Nonhyun-Dong, Gangnam-Gu
2 Seoul, Korea 135-010
3 biz@alifedesign.com

4 For TCS, to:

5 William A. Tindell, III, CEO
6 The Container Store Group, Inc.
7 The Container Store Inc.
8 500 Freeport Parkway
9 Coppell, TX 75019-3863

10 With a copy to their counsel:

11 Meredith A. Jones-McKeown
12 Perkins Coie LLP
13 505 Howard Street, Suite 1000
14 San Francisco, CA 94105-3204
15 MJonesMcKeown@perkinscoie.com

16 For Davia to:

17 Proposition 65 Coordinator
18 Sheffer Law Firm
19 81 Throckmorton Ave., Suite 202
20 Mill Valley, CA 94941
21 sheffesq@aol.com

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

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

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

11. MODIFICATION

This Agreement may be modified only: (1) by written agreement of the Parties; or (2) upon a
successful motion of any party and approval of a modified Agreement by the Court.

12. ADDITIONAL POST-EXECUTION ACTIVITIES

The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion
is required to obtain judicial approval of this Agreement. In furtherance of obtaining such approval,
the Parties and their respective counsel agree to mutually employ their best efforts to support the
entry of this Agreement as a settlement agreement and obtain approval of the Agreement - sufficient

1 to render an order approving this agreement - by the Court in a timely manner. Any effort to impede
2 judicial approval of this Agreement shall subject such impeding party to liability for attorney fees
3 and costs incurred by the party seeking approval of this Agreement.

4 **13. ENTIRE AGREEMENT**

5 This Agreement contains the sole and entire agreement and understanding of the Parties with
6 respect to the entire subject matter hereof, and any and all prior discussions, negotiations,
7 commitments, and understandings related hereto. No representations, oral or otherwise, express or
8 implied, other than those contained herein have been made by any Party hereto. No other agreements
9 not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the
10 Parties. No supplementation, modification, waiver, or termination of this Agreement shall be binding
11 unless executed in writing by the Party to be bound. No waiver of any of the provisions of this
12 Agreement shall be deemed or shall constitute a waiver of any of the other provisions whether or not
13 similar, nor shall such waiver constitute a continuing waiver

14 **14. ATTORNEY'S FEES**

15 **14.1** Should Davia, TCS or Alife prevail on any motion, application for order to show
16 cause or other proceeding to enforce a violation of this Agreement, such prevailing party shall be
17 entitled to their reasonable attorney fees and costs incurred as a result of such motion, order or
18 application, consistent with C.C.P. §1021.5.

19 **14.2** Except as specifically provided in the above paragraph and in Section 4.3, each Party
20 shall bear its own costs and attorney's fees in connection with this action.

21 **14.3** Nothing in this Section 14 shall preclude a Party from seeking an award of sanctions
22 pursuant to law.

23 **15. NEUTRAL CONSTRUCTION**

24 All Parties and their counsel have participated in the preparation of this Agreement and this
25 Agreement is the result of the joint efforts of the Parties. This Agreement was subject to revision and
26 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

1 Party to this Agreement agrees that any statute or rule of construction providing that ambiguities are
2 to be resolved against the drafting Party should not be employed in the interpretation of this
3 Agreement and, in this regard, the Parties hereby waive California Civil Code Section 1654.

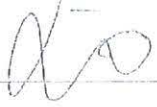
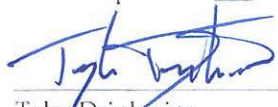
4 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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

8 **17. AUTHORIZATION**

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

12 **IT IS SO AGREED**

<p>13 Dated: ^{September} August 12, 2018</p> <p>14  Joy Lee Alife Design</p>	<p>13 Dated: August 12²², 2018</p> <p>14  Platniff Susan Davia</p>
<p>16 Dated: September 12¹⁶, 2018</p> <p>17  Tyler Drinkwine Director of Legal & Compliance, Staff Attorney The Container Store Group, Inc. The Container Store Inc.</p>	